The Industrial Relations Commission

of

New South Wales

Annual Report

Year Ended 31 December 2006

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The President

Industrial Relations Commission of New South Wales

47 Bridge Street Sydney

The Honourable J J Della Bosca MLC
Minister for Education and Training, Minister for Industrial Relations,
Minister for the Central Coast and Minister Assisting the Minister for Finance
and Leader of the Government in the Legislative Council
Level 30, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister,

I have the honour to furnish to you for presentation to Parliament the Eleventh Annual Report of the Industrial Relations Commission of New South Wales made pursuant to section 161 of the *Industrial Relations Act* 1996 in respect of the year ended 31 December 2006.

Yours faithfully,

The Honourable Justice F. L. Wright
President

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Cover: **Chief Secretary's Building, Sydney**: *in addition to providing premises for the Industrial Relations Commission, the building also provides those for the Governor and her staff. This picture shows the Macquarie Street facade of the Chief Secretary's Building which includes the official entrance to the Governor's offices at 121 Macquarie Street.*

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The principal place of business of the Commission is 47 Bridge Street, Sydney. We acknowledge that this land is the traditional lands of the Gadigal people of the Eora nation and that we respect their spiritual relationship with their country. The Industrial Relations Commission of NSW also conducts proceedings in other locations across the State and we acknowledge the traditional custodians of other regions.

INTRODUCTION

The Eleventh Annual Report of the Industrial Relations Commission of New South Wales is presented to the Minister pursuant to section 161 of the *Industrial Relations Act* 1996.

The Commission is constituted by the President, the Vice-President, judicial Members, Deputy Presidents and Commissioners. At the end of the year the Commission was comprised of ten judges, three Deputy Presidents and ten Commissioners.

During the year Commissioners Raymond John Patterson and Brian William O'Neill retired. Each had served the community of this State in their role as Commissioners for over 20 years. Both Commissioner Patterson and Commissioner O'Neill will be remembered for their common-sense and practical approach to the performance of their duties and I wish them well in their retirements.

I note with appreciation the work of the Industrial Registrar and Principal Courts Administrator, Mr G M Grimson, and the staff of the Registry who have greatly assisted the members of the Commission in meeting the demands made during the year. The dedication of the Industrial Registrar, the Deputy Industrial Registrars and the staff of the Registry is greatly appreciated by the Commission.

Early in 2006 Ms Dorothy Martin, my Principal Associate for the last eight and a half years retired and I would like to record my deep appreciation to her for the quality of service that she provided not only to me but the Commission as a whole. Ms Lisa Gava assumed the role of Principal Associate and, together with Ms Lydia D'Souza, took on the significant administrative burden of matters passing through the President's Chambers and I commend their efforts. I also commend the work of the President's Tipstaff, Mr John Bignell, whose assistance has been invaluable.

I wish also to express my thanks to the Research Associates to the President, Mr Damien Timms (until 19 May 2006) and Ms Brigid Maher for their valuable assistance throughout the year.

The Commission continues to be ably assisted by its Librarian, Ms Juliet Dennison, and the library staff. Thanks are also due to the staff of other courts and departmental libraries for the cooperation and assistance they provide to the Librarian and to the Commission.

More so than in previous years, the Commission was faced with some significant challenges in the past twelve months. The Commission, however, remained focussed on ensuring that it continues to meet the objectives of the *Industrial Relations Act*, particularly in ensuring that the Commission's processes are timely and effective. Specific reference is made to those matters elsewhere in this report.

I acknowledge the dedication and commitment of the Members of the Commission in their approach to the duties and responsibilities under the Act.

ABOUT THE COMMISSION

The Industrial Relations Commission of New South Wales is the industrial tribunal and industrial court for the State of New South Wales. The Industrial Relations Commission is constituted as a superior court of record as the Industrial Court. It has jurisdiction to hear proceedings arising under various industrial and related legislation.

The Commission is established by and operates under the *Industrial Relations Act* 1996. The Court of Arbitration (subsequently renamed and re-established as the Industrial Commission of New South Wales) was first established in New South Wales in 1901 and commenced operation in 1902. The present Commission is the legal and practical successor of that Court, the Industrial Commission which existed between 1927 and 1992, and also of the Industrial Court and Industrial Relations Commission which existed between 1992 and 1996.

Broadly, the Commission (other than when sitting as the Industrial Court) exercises its jurisdiction in relation to:

- establishing and maintaining a system of enforceable awards which provide for fair minimum wages and conditions of employment;
- approving enterprise agreements;
- preventing and settling industrial disputes, initially by conciliation, but if necessary by arbitration;
- inquiring into, and reporting on, any industrial or other matter referred to it by the Minister;
- determining unfair dismissal claims, by conciliation and, if necessary, by arbitration to determine if a termination is harsh, unreasonable or unjust;
- claims for reinstatement of injured workers;
- proceedings for relief from victimisation;
- dealing with matters relating to the registration, recognition and regulation of industrial organisations;
- dealing with major industrial proceedings, such as State Wage Cases;
- applications under the *Child Protection (Prohibited Employment) Act* 1998;

- various proceedings relating to disciplinary and similar actions under the *Police Act* 1990.

The Industrial Court has jurisdiction to hear a range of civil matters arising under legislation as well as criminal proceedings in relation to breaches of industrial and occupational health and safety laws. The Industrial Court determines proceedings for avoidance and variation of unfair contracts (and may make consequential orders for the payment of money); prosecutions for breaches of occupational health and safety laws; proceedings for the recovery of underpayments of statutory and award entitlements; superannuation appeals; proceedings for the enforcement of union rules; and challenges to the validity of union rules and to the acts of officials of registered organisations.

The Full Bench of the Commission has appellate jurisdiction in relation to decisions of single members of the Commission and the Industrial Registrar. The Full Bench of the Industrial Court has jurisdiction in relation to decisions of single judges of the Court, industrial magistrates and certain other bodies. The Full Bench of the Industrial Court is constituted by at least three judicial members.

Specifically, the Industrial Court exercises jurisdiction in the following circumstances:

- proceedings for an offence which may be taken before the Commission (including proceedings for contempt) the major area of jurisdiction exercised in this area relates to breaches of the *Occupational Health and Safety Act* 2000 and of its predecessor, the *Occupational Health and Safety Act* 1983;
- proceedings for declarations of right under s 154;
- proceedings for unfair contract (Part 9 of Chapter 2);
- proceedings under s 139 for contravention of dispute orders;
- proceedings under Parts 3, 4 and 5 of Chapter 5 – Registration and regulation of industrial organisations;
- proceedings for breach of an industrial instrument;
- proceedings for the recovery of money payable under an industrial instrument other than small claims under s 380 (which are dealt with by the Chief Industrial Magistrate or an Industrial Magistrate);
- superannuation appeals under s 40 or s 88 of the *Superannuation Administration Act* 1996;
- proceedings on appeal from a Member of the Commission exercising the functions of the Industrial Court; and

- proceedings on appeal from an Industrial Magistrate or any other court.

MEMBERSHIP OF THE COMMISSION

JUDGES AND PRESIDENTIAL MEMBERS

The Judicial and Presidential Members of the Commission during the year were:

President

The Honourable Justice Frederick Lance Wright, appointed 22 April 1998.

Vice-President

The Honourable Justice Michael John Walton, appointed 18 December 1998.

Presidential Members

The Honourable Justice Francis Marks, appointed 15 February 1993;

The Honourable Justice Monika Schmidt, appointed 22 July 1993;

The Honourable Deputy President Rodney William Harrison, appointed Deputy President 2 September 1996; and as a Commissioner 4 August 1987;

The Honourable Justice Tricia Marie Kavanagh, appointed 26 June 1998;

Deputy President Peter John Andrew Sams AM, appointed 14 August 1998;

The Honourable Justice Roger Patrick Boland, appointed 22 March 2000;

Deputy President John Patrick Grayson, appointed 29 March 2000;

The Honourable Justice Wayne Roger Haylen, appointed 27 July 2001;

The Honourable Justice Patricia Jane Staunton AM, appointed 30 August 2002;

The Honourable Justice Conrad Gerard Staff, appointed 3 February 2004;

The Honourable Justice Anna Frances Backman, appointed 19 August 2004.

COMMISSIONERS

The Commissioners holding office pursuant to the *Industrial Relations Act* 1996 during the year were:

Commissioner Raymond John Patterson, appointed 12 May 1980; retired 9 October 2006;

Commissioner Peter John Connor, appointed 15 May 1987;

Commissioner Brian William O'Neill, appointed 12 November 1984; retired 17 February 2006;

Commissioner Inaam Tabbaa, appointed 25 February 1991;

Commissioner Donna Sarah McKenna, appointed 16 April 1992;

Commissioner John Patrick Murphy, appointed 21 September 1993;

Commissioner Ian Walter Cambridge, appointed 20 November 1996;

Commissioner Elizabeth Ann Rosemary Bishop, appointed 9 April 1997;

Commissioner Janice Margaret McLeay, appointed 2 February 1998;

Commissioner Alastair William Macdonald, appointed 4 February 2002;

Commissioner David Wallace Ritchie, appointed 6 September 2002.

Commissioner John David Stanton, appointed 16 June 2005.

INDUSTRIAL REGISTRAR

The Industrial Registrar is responsible to the President of the Commission in relation to the work of the Industrial Registry and, in relation to functions under the *Public Sector Employment and Management Act* 2002, to the Director General of the Attorney General's Department.

Mr George Michael Grimson has held office as Industrial Registrar and Principal Courts Administrator of the Industrial Relations Commission since 26 August 2002.

DUAL APPOINTMENTS

The following Members of the Commission also hold dual appointments as Presidential Members of the Australian Industrial Relations Commission:

The Honourable Justice Frederick Lance Wright

The Honourable Justice Francis Marks

The Honourable Justice Monika Schmidt

The Honourable Deputy President Rodney William Harrison.

ANCILLARY APPOINTMENT

The Honourable Justice Roger Patrick Boland has constituted the Parliamentary Remuneration Tribunal since 2 October 2001.

OVERVIEW

The President is responsible for the arrangement of the business of the Commission (section 159) and there are a number of delegations in place that assist in the allocation of work to Members and are designed to ensure that the speedy and effective resolution of issues brought before the Commission:

INDUSTRY PANELS

Industry panels were reconstituted during 1998 to deal with applications relating to particular industries and awards. Adjustments have been made to the assignments to the panels as appropriate since then. Seven panels are now in operation, each comprising a number of Presidential Members and Commissioners. Each panel is chaired by a Presidential Member of the Commission who allocates matters to the members of the panel. The panels deal with applications for awards or variations to awards, applications for the approval of enterprise agreements and dispute notifications arising in relevant industries.

Four panels now deal essentially with metropolitan (or Sydney-based) matters. Three panels specifically deal with applications from regional areas. The panel dealing with applications from the Hunter region and North Coast is chaired by Deputy President Harrison. The panel dealing with applications from the Western area of the State is chaired by Deputy President Sams. The panel dealing with applications from the Illawarra-South Coast region is chaired by Deputy President Grayson subject to the oversight of the Vice-President.

The membership of the metropolitan Industry Panels at the end of the year is set out at Appendix 1.

REGIONAL AND COUNTRY SITTINGS

The Commission has its own dedicated court premises located in Newcastle and Wollongong. The Registry has been staffed on a full-time basis at Newcastle for many years. During 2002 that situation was extended to Wollongong to assist the clients of the Commission and the sittings of the Commission that occur there.

In July 2004 the Commission entered into an arrangement with the Registrar of the Local Court at Parramatta to provide registry services for clients of the Commission at the Parramatta Court Complex, Cnr George and Marsden Streets, Parramatta. This was initially commenced as a pilot for three months designed, principally, to meet the needs of industrial organisations located in Sydney

West. In short, this initiative allows for any application that may be filed at the Sydney Registry to be filed at Parramatta with the exception of industrial disputes under s 130 of the Act. The Commission acknowledges the contribution of Ms Lin Schipp, a senior officer of the registry, who initially conducted the pilot and continues to maintain the service at Parramatta.

The general policy of the Commission in relation to unfair dismissal applications (s 84) and rural and regional industries has been to sit in the country centre at or near where the events have occurred. Allocation of those matters is carried out by the Heads of the regional panels mentioned earlier. This requires substantial travel but the Commission's assessment is that it has a beneficial and moderating effect on parties to the industrial disputation and other proceedings who can often attend the proceedings and then better understand decisions or recommendations made.

There were a total of 603 (718)[1] sitting days in a wide range of country courts and other country locations during 2006. There are two regional Members based permanently in Newcastle - Deputy President Harrison and Commissioner Stanton. The Commission sat in Newcastle for 262 (272) sitting days during 2006 and dealt with a wide range of industrial matters in Newcastle and the Hunter district.

The regional Member for the Illawarra - South Coast region, the Honourable Justice Walton, Vice-President together with Deputy President Grayson, deal with most Port Kembla steel matters and other Members also sit regularly in Wollongong and environs. There were a total of 169 (184) sitting days in Wollongong during 2006.

The Commission convened in over 40 other regional locations in 2006 including Albury, Armidale, Ballina, Bathurst, Coffs Harbour, Dubbo, Gosford, Goulburn, Griffith, Lismore, Tamworth, Wagga Wagga and Queanbeyan.

[1] Numbers in brackets are figures from 2005

MAJOR JURISDICTIONAL AREAS OF THE COURT AND THE COMMISSION

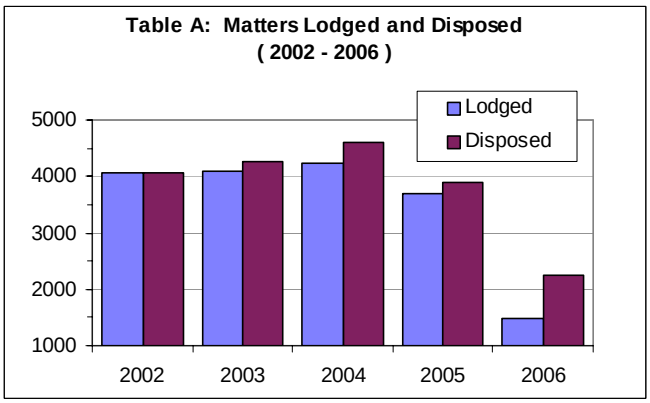
UNFAIR DISMISSALS

Prior to the introduction of the *Work Choices* legislation[2] a large and continuing volume of work arose in the area of unfair dismissal applications brought under s 84 of the *Industrial Relations Act* 1996.

The Act provides that each matter is initially dealt with by listing for conciliation conference (s 86) with a view to reaching an early settlement between the parties. Where the conciliation is unsuccessful the matter proceeds to an arbitrated hearing.

The tables following show matters filed and disposed of in the past five years (Table A); the method of disposal in 2006 (Table B); and median listing times (Table C). The significant impact that the *Work Choices* legislation had on unfair dismissal filings within the Commission will be noted from Table A.

TABLE A



[2] *Workplace Relations Amendment (Work Choices) Act* 2005 (Cth)

TABLE B

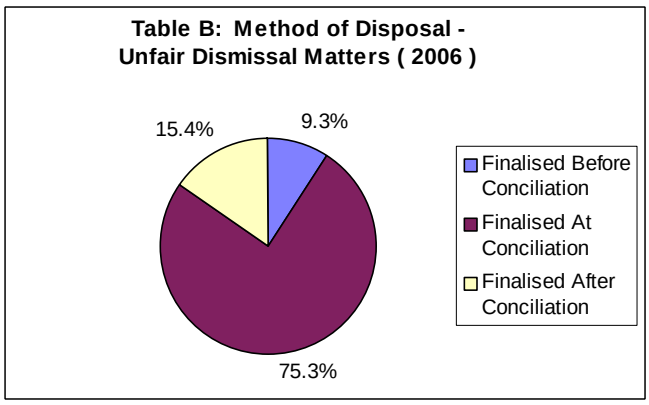
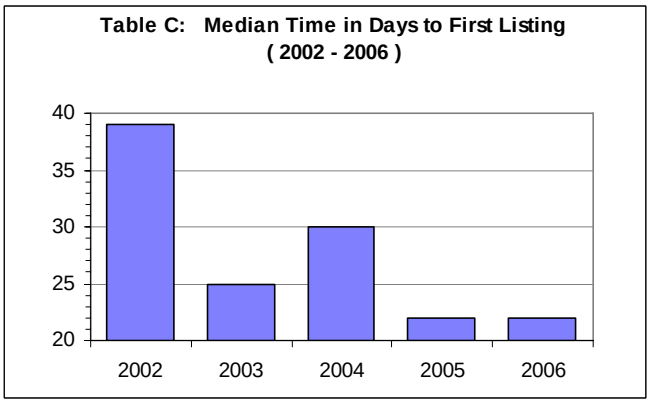
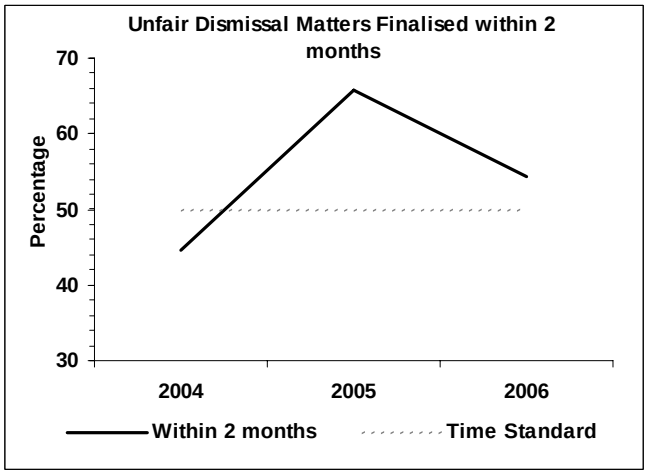


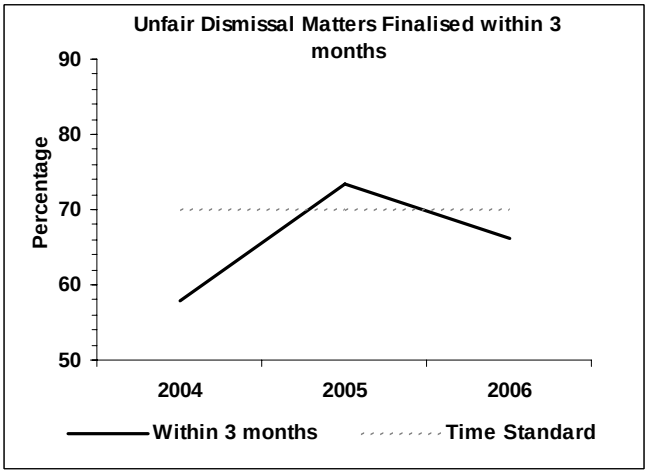
TABLE C



The Commission commenced a significant review in this area in early 2003 and implemented a number of new strategies to ensure that these types of matters were dealt with in a more efficient and timely way. At the commencement of 2006 the Commission introduced a new system for the allocation of hearing dates for the arbitration of unfair dismissal claims in respect of matters in both the Sydney metropolitan and regional areas of the State. *Practice Direction No. 17* was published to support the introduction of the new system. The Commission has received significant positive feedback in relation to the new system, however, as will be noted from Table D, the time to final disposal of these types of matters has slowed. Anecdotally, this would appear to be as a result of the decrease in filings which has freed up time for Members to devote more time to matters in an attempt to bring the parties to a resolution prior to the matter going to hearing.

TABLE D





INDUSTRIAL DISPUTES

The procedure for dealing with industrial disputes is set out in Chapter 3 of the *Industrial Relations Act* 1996. The allocation of disputes are dealt with under the Industry Panel system referred to earlier in this report. The nature of this area of the Commission's jurisdiction often requires that the matters be listed at short notice and the Commission sits outside of normal working hours where necessary. Wide powers are granted to the Commission in respect of dealing with industrial disputes with the statutory and practical focus on resolving such matters by conciliation.

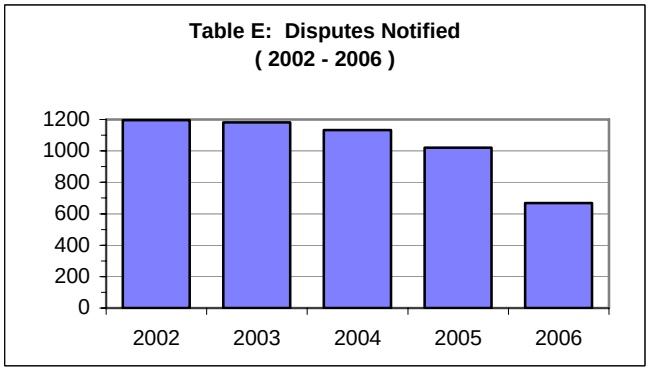
"Industrial dispute" is a broadly defined term linked, as it is, to the definition of "industrial matter" in s 6 of the *Industrial Relations Act* and this area of the Commission's jurisdiction remains significant.

The *Industrial Relations Act* was amended in 2006 to include s 146A which provides that the Commission may assist parties who wish to refer disputes to the Commission where there is an agreement between the parties for this to occur. Such agreements, called 'referral agreements' may relate to a particular dispute or a particular class of disputes.

The Commission issued *Practice Direction No. 18* to facilitate the resolution of these types of matters. Whilst there is no requirement to have a referral agreement registered or certified by the Commission, provision was made within the above practice direction for copies of general referral agreements to be filed with the Commission. During 2006, 120 general referral agreements were filed.

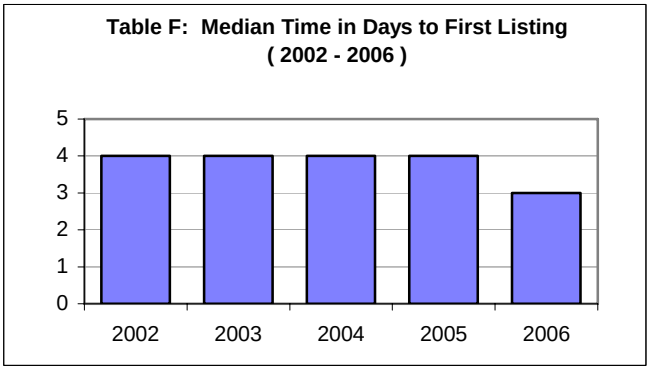
The table below shows disputes filed in the last five years:

TABLE E



The Commission responds in a timely way when an industrial dispute is lodged. The time frame is highlighted by Table F below which shows the median times from lodgement to first listing.

TABLE F



DETERMINATION OF AWARDS AND APPROVAL OF ENTERPRISE AGREEMENTS

One of the important objects of the *Industrial Relations Act* 1996 is to facilitate the appropriate regulation of employment through awards, enterprise agreements and other industrial instruments.

The Commission is given power to:

- make or vary awards (s 10 and s 17 respectively);
- make or vary enterprise agreements (s 28 and s 43);
- review awards triennially (s 19); and
- consider the adoption of National decisions for the purpose of awards and other matters under the Act (s 50) (for example, the State Wage Case).

AWARD REVIEW

The last major round of the triennial Award Review process commenced in the later part of 2003 and continued throughout 2004.

During 2006 only a relatively small number of award matters (5) fell for review.

The Commission had commenced planning for the next major round of the Award Review process, however, given the likelihood that the *Work Choices* legislation would have a significant impact on both employer and employee organisations resources, the Commission deferred initiating any action during 2006. The process is likely to occur in the later part of 2007.

The principles of the Award Review process were defined by the Full Bench in *Principles for Review of Awards - State Decision 1998* (1998) 85 IR 38. The Full Bench of the Commission further considered the principles in *Poultry Industry Preparation (State) Award and other Awards* (2003) 125 IR 64

Table G provides details of filings in the award and enterprise agreement areas in the last five years.

TABLE G

Awards and Enterprise Agreements	2002	2003	2004	2005	2006
Application to make award	123	108	131	194	62
Application to vary award	334	338	296	332	479
Application enterprise agreement	307	348	336	359	224
Terminated enterprise agreement	172	180	219	173*	146
Review of awards (Total) (Notices issued)	0	233	431	74	0
Awards reviewed	1	97	443	67	5
Awards rescinded	0	15	93	16	0
* = data revised since previous report.					

STATE WAGE CASE 2006 (NO 6) [2006] NSWIRCOMM 204; (2006) 153 IR 268

For the first time under the *Industrial Relations Act* 1996, the Commission was required to consider an application to set wage-fixing principles in the absence of a National decision (as defined in s 48 of the Act) triggering the operation of s 50 of the Act. This resulted from the filing by Unions NSW of an application on 10 November 2005 seeking a 'State' decision pursuant to s 51(1) of the Act setting general wage-fixing principles.

As noted in the Statement of the Commission ([2006] NSWIRComm 208; (2006) 153 IR 264), prior to dealing with the application proper, two threshold issues needed to be determined. First, whether a decision of the Commission on the application could be described as a 'State' decision (to found jurisdiction). Second, whether the application should be adjourned pending the question of adjustment of wages being determined by the Australian Fair Pay Commission (AFPC). The Commission held:

> As to the first matter, our decision makes it clear for the reasons given that this is a State decision. As to the second matter, we have again made it plain that by the passage of the *Workplace Relations Amendment (Work Choices) Act* 2005 (Cth), the legislative scheme for wage fixation in the federal industrial system under the *Workplace Relations Act* 1996 (Cth) so dramatically diverged from the requirements of the legislation governing our jurisdiction, in both its objects and provisions governing wage-fixing, as would render a deferral of our decision-making in favour of the AFPC a failure to properly discharge our statutory functions.

The Commission then said:

> After reviewing the extensive economic and other material and the submissions of the parties, we have concluded that Unions NSW has established a substantial case for an increase in minimum award wages. The primary reason for this conclusion is that the applicant has established, on the evidence, that there are "good reasons" for the purposes of s 51(1) of the Act to warrant that outcome. Having regard to the basis for safety net adjustments in modern times, the applicant was entitled to rely upon, subject to countervailing economic considerations, movements in wage costs as reflected in the wage price index and the erosion of the purchasing power of wages within the relevant period to

> establish a case for a general adjustment in wages. The claim is in conformity with those criteria. More significantly, and having regard to the requirements of the Commission to set fair and reasonable conditions of employment for employees under s 10 of the Act (see also s 3(a)), we consider that a powerful case has been established by Unions NSW and the New South Wales Minister for Industrial Relations for the adjustment of wages of the low paid, having regard to the economic position of those workers, including their income and living costs, and questions of wage dispersion and income inequality. These workers have little or no bargaining power so as to engage in enterprise bargaining and have a reduced capacity to sustain themselves and their families at an acceptable standard upon the present levels of minimum wages.

The Full Bench granted an increase in rates of pay by the amount of $20 per week adjusting relevant allowances in State awards by 4 per cent in accordance with the provisions of s 51 of the *Industrial Relations Act* 1996.

UNFAIR CONTRACTS

Under s 106 of the *Industrial Relations Act* 1996 the Commission is granted power to declare contracts, whereby a person performs work in any industry, either wholly or partly void, or to vary any such contract, if satisfied that the contract is unfair.

Due to pending legislative amendments in 2002 designed to limit the class of applications that could be brought before the Commission, filings significantly increased in the later part of 2001 and early in 2002 and then levelled off with a decline in the current year no doubt as a result of the *Work Choices* legislation. Table H shows the relevant trends:

TABLE H

Section 106 Filings

Year	**2002**	**2003**	**2004**	**2005**	**2006**
No.	894	631	550	473	218

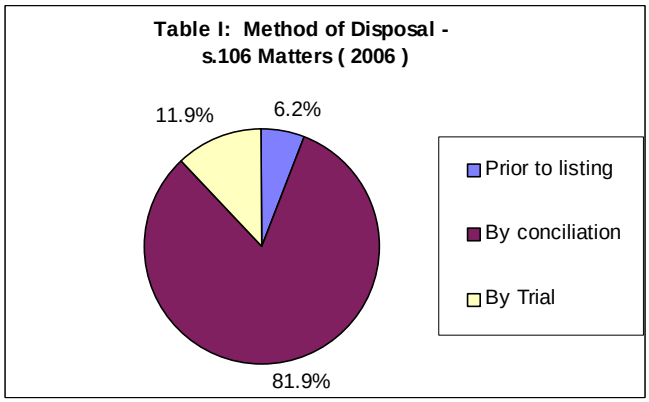
The consequence of this was that significant pressure has been placed on the resources of the Commission in seeking to ensure that these matters were disposed of in a timely way.

As reported earlier, a major initiative of the Commission during 2004 was to pilot the diversion of resources at particular times during the year to conciliation in light of the high settlement rate at this stage of proceedings. This initiative was formalised in 2005 and continued in 2006. As in previous

years this project was co-ordinated by her Honour Justice Schmidt and again proved highly successful.

As the table below highlights a significant proportion of harsh contract matters are resolved at the conciliation stage and it is appropriate that resources be diverted to ensure that these matters are dealt with in a timely way with the consequent benefits to parties particularly in the area of costs.

TABLE I



OCCUPATIONAL HEALTH AND SAFETY PROCEEDINGS

The *Occupational Health and Safety Act* 2000 and the *Occupational Health and Safety Regulation* 2001 have as their primary focus workplace safety. Prosecutions for breach of the relevant provisions may be brought before the Industrial Court for determination.

The majority of prosecutions brought before the Industrial Court are initiated by the WorkCover Authority of New South Wales. However, s 106 of the *Occupational Health and Safety Act* 2000 also provides that a secretary of an industrial organisation of employees may initiate proceedings. It is understood that, as a matter of policy, WorkCover prosecutions relating to workplace fatalities and incidents involving serious injury are instituted in the Industrial Court rather than in the Chief Industrial Magistrate's court.

The significant penalties under this legislation are directed to the vindication of safety in the workplace and are no doubt designed to have the effect of discouraging dangerous practices and encouraging a more thoughtful and professional approach to occupational health and safety.

TABLE J

Occupational Health and Safety Prosecutions

	2002	2003	2004	2005	2006
No.	183	152	186	174	193

As the table above shows this remains a significant area of the Commission's workload given the complexity and seriousness of the matters that fall for determination.

CHILD PROTECTION (PROHIBITED EMPLOYMENT) LEGISLATION

The *Child Protection (Prohibited Employment) Act* 1998 and associated legislation came into force in July 2000. Its provisions include the imposition of prohibitions on persons convicted of serious sexual offences from being employed in child-related employment unless an order is obtained from the Industrial Relations Commission or the Administrative Decisions Tribunal declaring that the Act was not to apply to a person in respect of a specified offence.

While not a high volume area of the Commission's jurisdiction, the importance of the legislation is acknowledged through the adoption of procedures to ensure that matters are dealt with expeditiously.

FULL BENCH

Full Benches of the Commission and of the Court are constituted by the President pursuant to s 156 of the *Industrial Relations Act* 1996 and must consist of at least three Members. The constitution of a Full Bench will vary according to the nature of proceedings being determined. The nature of proceedings range from appeals against decisions of single Members, Industrial Magistrates and the Industrial Registrar; matters referred by a Member (s 193) and major test case decisions (s 51).

During 2006 Full Benches finalised in excess of 120 matters the majority of which involved appeals. A "snapshot" of the significant decisions are referred to hereunder. Other significant decisions may be found in Appendix 2.

Unions NSW v Carter Holt Harvey Wood Products Australia Pty Ltd [2006] NSWIRComm 2; 149 IR 361

These proceedings came before the Full Bench pursuant to a reference pursuant to s 193 of the *Industrial Relations Act* 1996 ("NSW Act"). The reference involved three questions that raised issues concerning the power of the Industrial Relations Commission to deal with an industrial dispute involving the dismissal of an employee whose employment was regulated by industrial instruments made under the *Workplace Relations Act* 1996 (Cth) ("WRA").

Those questions were, firstly, whether the power granted to the Industrial Relations Commission of NSW by s 137(1)(b) of the NSW Act to order the reinstatement or re-employment of dismissed employees is not available in respect of dismissed employees whose employment was regulated by awards made, or agreements certified under the WRA; secondly, whether an order under s 137(1)(b) of the NSW Act for the reinstatement or re-employment of dismissed employees would be inconsistent with federal industrial instruments and invalid, by reason of s 109 of the Constitution and s 152(1) of the WRA; and thirdly, whether, in respect of an application for an order under s 137(1)(b) of the NSW Act the reinstatement or re-employment of the dismissed employee, s 137(1)(b) would be inconsistent with s 170CH of the WRA and invalid by reason of s 109 of the Constitution.

The correctness of the decision in *Moore v Newcastle City Council, Re Civic Theatre Newcastle* (1997) 43 NSWLR 614 was considered by the Full Bench. The Full Bench found that the reasoning in *Moore* which concluded that the NSW Act did not evince "an intention to cross the boundary into the area of Federal regulation" was wrong and should not be followed. The Full Bench found: (i) there was no jurisdictional obstacle to the Industrial Relations Commission of NSW making orders under s 137(1)(b); (ii) that such an order would not be inconsistent with s 109 of the *Constitution* and (iii) that such an order would not be inconsistent with s 170CH of the WRA. The dispute was accordingly remitted to a single member for hearing.

Shop Employees (State) Award [2006] NSWIRComm 5; 152 IR 121

The Shop, Distributive and Allied Employees' Association, New South Wales and the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern New South Wales ("the applicants") filed applications pursuant to s 17 of the *Industrial Relations Act* 1996 to vary the Shop Employees (State) Award. The claim made by the applicants sought to delete the reference to union picnic day in the award and substitute an additional day to be regarded as a

public holiday. The principal concern was that with the commencement of the *Workplace Relations Amendment (Work Choices) Act* 2005 (Cth) employees under the Shop Employees (State) Award would lose their entitlement to a union picnic day.

Consideration was given to the impact of *Work Choices* on award entitlements to union picnic days and to public holidays, and, it was held that it was quite likely that with the commencement of the new legislation employees would lose entitlements to union picnic days. However, that likelihood was not a ground of itself for granting an application to vary the Award. It was held that while union picnic days prescribed by the award had none of the characteristics of a picnic day, it was nevertheless appropriate to substitute an additional public holiday, which would not cause inconvenience or increase costs. It was also held that a special case was established for such substitution, and the award was varied accordingly.

Secure Employment Test Case [2006] NSWIRComm 38; 150 IR 1

These proceedings were made pursuant to an application by Unions NSW for variation of awards regarding a test case standard relating to security of employment, that is: protecting the job security of employees who regularly and systematically work on a casual basis; limiting the circumstances in which an employer may utilise the services of a labour hire business; limiting the circumstances in which an employer may contract out work being performed by its own employees; and reinforcing the occupational health and safety obligations applicable to employers who engage a labour hire business and/or who contract out work. In response to the Unions NSW application, Employers First sought the establishment of "Employment Opportunities Principles" to apply generally to all awards in New South Wales.

In respect of casual employment, an application was made for a State Decision for award variation and a model clause to be inserted in all State awards on application for conversion of casual employment to permanent part-time or full-time employment. This application was granted by the Full Bench.

In regards to labour hire, Unions NSW sought an award variation providing limitation of labour hire to work of a strictly temporary nature which cannot be practically allocated to existing employees. A requirement was sought that would ensure host employers offer labour employees direct

employment after six months work at a site or location. The Full Bench refused both a State Decision and exemplar award variation in relation to this part of the application.

In relation to the process of contracting out employment, an award variation was sought which would provide mandatory consultative processes for contracting out work which affects or has potential to affect the employment of existing employees. This application was also refused.

In respect of the occupational health and safety aspect of the application by Unions NSW, a requirement was sought which would place obligations on host employers to provide occupational health and safety information and rehabilitation for labour hire employees. The Commission granted this part of the application in part, accepting that labour hire employees should be provided with the occupational healthy and safety information of the workplace, as well as given adequate training and protective equipment. However, as to requiring the host employer to provide rehabilitation for labour hire employees, the Commission decided this would cause confusion with existing legislation, which was otherwise sufficient, and accordingly refused this part of the application.

The counter application that was brought by Employers First for employment opportunities test case provisions, which sought to remove minimum engagement provisions of part-time employment, was refused.

Re Inquiry into the Boeing Dispute at Williamtown [2006] NSWIRComm 52

These proceedings involved a reference by the Minister for Industrial Relations pursuant to s 146(1)(d) of the *Industrial Relations Act* 1996 in relation to an industrial dispute concerning Boeing Australia Ltd and the FA 18 Hornet aircraft maintenance workers at Williamtown Air Force Base in New South Wales. There were five terms of reference, which were: (1) the status of the disputing parties at the Royal Australian Air Force Airbase at Williamtown; (2) the actual or potential economic impact of the dispute on the community surrounding the Royal Australian Air Force Airbase at Williamtown and the State as a whole; (3) if, as a consequence of the disputation between Boeing Australia Ltd and its FA-18 Hornet aircraft maintenance workers and their union, the Australian Workers Union, there has been any endangerment or likely endangerment to the health and safety of the workers and/or the community surrounding the Royal Australian Air Force Airbase at Williamtown; (4) the adequacy of currently available remedies to encourage the parties to the dispute to resolve the dispute promptly, effectively and fairly; and (5) if there are any actions

that the Industrial Relations Commission of New South Wales can take in order to assist the parties to resolve the dispute.

The Full Bench was constituted to inquire and report to the Minister. The following conclusions were reached, in relation to each term of reference: (1) the WorkCover Authority of New South Wales fulfil its statutory duties by undertaking a full and proper investigation as to whether the use by Boeing of inexperienced personnel during the current strike action has led to any breach of the provisions of s 8 or any other section of the *Occupational Health and Safety Act* 2000; (2) the Minister give serious and urgent consideration as to whether he ought, under s 167(1) of the *Industrial Relations Act* 1996, initiate proceedings in the Industrial Relations Commission of New South Wales in respect of the Boeing dispute at Williamtown; and (3) in the event the Minister indicated an intention to initiate proceedings under s 167(1) of the *Industrial Relations Act* 1996, or any other interest lodges a dispute notification, steps be taken immediately to have the striking employees return to work at the earliest opportunity.

Family Provisions Case 2005 (No 2) [2006] NSWIRComm 63

This case came before the Commission on its own initiative following the issuing of a summons to show cause pursuant to Part 3 of Chapter 2 of the *Industrial Relations Act* 1996. The requirement for this summons to be issued was the decision of the Full Bench of the Australian Industrial Relations Commission ('the AIRC') in the *Family Provisions Case* 2005, Print 082005, ('the National decision') on 8 August 2005. All parties to the proceedings supported the adoption, with minor modifications, of the National Decision in New South Wales awards; the Full Bench noting that no party to the proceedings had advanced any economic argument against the adoption of the decision and, further, noting that the proposed changes would have minimal economic impact. A General Order was made the Full Bench noting that two previous *Personal Carer's Leave* decisions of the Commission in 1996 and 1998 had both implemented the changes from those decisions by way of General Order, and this decision was a logical and evolutionary extension of those two earlier decisions. Moreover, there was little evidence that the grant of a General Order in those cases created any particular difficulties for the industrial parties in New South Wales or for individual employers.

Re Miscellaneous Workers Kindergartens and Child Care Centres &c (State) Award [2006] NSWIRComm 73; 150 IR 284

These proceedings concerned the making of a new award which applies to pre-schools, long day care centres and other child care services such as out of school hour centres. The award parties reached a measure of agreement in relation to an interim wage increase and alterations to certain conditions, however, there were competing claims which needed to be considered by the Full Bench. The competing claims were pressed under the Commission's Special Case, Work Value Change and Equal Remuneration principles. This was the first occasion that the Commission had been called upon to consider the value of the work of child care workers and various support worker classifications covered by this award.

The Full Bench held that the requirements of the Work Value principle had been established for child care workers and co-ordinators but not for support workers. Further, a case of gender based undervaluation has been held to be established, in the case of child care workers, authorized supervisors and co-ordinators, in accordance with the Equal Remuneration principle. That claim was not advanced in relation to support workers.

The employers' claim, pressed by Employers First and supported by Association of Quality Child Care Centres of NSW Inc and by Australian Child Care Centres Association, for reduced wages for pre-school employees and reduced conditions for co-ordinators was not made out on the evidence and was accordingly rejected. Also rejected by the Full Bench was the claim that co-ordinators should be removed from the hours and overtime provisions of the award, so that they could be required to perform unlimited ordinary hours of work, without payment of any overtime.

The Commission accordingly made a new award, which included a new classification structure and wage increases to be phased in over a two year period.

Inspector Green v Camilleri Properties Pty Limited and Anor [2006] NSWIRComm 90; 152 IR 156

This appeal came before a Full Bench of the Court following the conviction and sentence of the respondent under occupational health and safety legislation before an Industrial Magistrate in the Local Court where the appellant contended the sentence imposed was manifestly inadequate. The

case on appeal alleged the Industrial Magistrate erred in applying the sentencing principles relevant to the proceedings at first instance and made fundamental errors of law. The Full Bench made the following observations in the appeal: firstly, that the objective features of the offence were not given sufficient weight by the Industrial Magistrate; secondly, that the evidence at first instance established there was a reasonable foreseeability of risk to safety; and thirdly, that the Industrial Magistrate failed to give appropriate weight to specific deterrence. Also relevant to the appeal was the Industrial Magistrate's assessment of the respondent's capacity to pay fines.

The Court found that the sentence imposed on the first respondent at trial was inadequate, and the penalty should be increased. However, in relation to the second respondent, the Court exercised its residual discretion not to interfere with the penalty imposed at first instance. In relation to costs, the Full Bench held no order as to costs would be made, referring to the current practice of the Court.

Daly Smith Corporation (Aust) Pty Limited and Anor v WorkCover Authority of New South Wales (Inspector Mansell) [2006] NSWIRComm 111; 151 IR 173

These proceedings involved an appeal against convictions imposed under the *Occupational Health and Safety Act* 1983. The appeal, brought pursuant to s 196 of the *Industrial Relations Act* 1996 and s 5AA of the *Criminal Appeal Act* 1912, primarily alleged that manifestly excessive penalties were imposed. Other main issues for consideration were whether there was a failure to refer to certain evidence at first instance and whether there had been failures to provide training, instruction, supervision and to carry out a risk assessment. It was held that there was a reasonable foreseeability of the risk to safety and the statutory defences under the legislation were not available.

The second appellant also made an application for an order under s 10 of the *Crimes (Sentencing Procedure) Act* 1999. The Court refused this application, stating that the trial judge at first instance correctly applied the principles governing the application of this provision, citing the judgment in *WorkCover Authority of New South Wales (Inspector Downie) v Menzies Property Services Pty Ltd* (2004) 136 IR 449 (at [57] and [90]), which held that the section will only be available in occupational health and safety offences in rare and exceptional circumstances. The Full Bench accordingly dismissed the appeal.

Re Staff Specialists (State) Award [2006] NSWIRComm 124; 152 IR 405

These proceedings commenced in the Commission by way of an application by the Australian Salaried Medical Officers' Federation (New South Wales) ('ASMOF') for variation of the Staff

Specialists (State) Award regarding salary increases and changes to employment conditions. Following conciliation in respect of all claims, the parties reached agreement as to all but two major claims, which were accordingly dealt with by the Full Bench. These were, firstly, whether a claim for an increase in salary of 29 per cent in salary should be granted, and secondly, whether payment of extra allowances for managerial staff should be allowed.

The Full Bench applied the Work Value and Special Case principles to the application. Other issues included the assessment of rates for comparable professionals and workforce shortages. It was held that salaries should be increased by the amount of 14 per cent. In addition to this, new managerial allowances were awarded. The consent variations to the Award were approved and a new award was made accordingly.

Ferraris v Commissioner of Police [2006] NSWIRComm 243;

These proceedings came before a Full Bench following an appeal from an unfair dismissal application where the applicant was unsuccessful at first instance. Relevant to the issues on appeal were the probationary status of the police officer and the inter-relationship of the *Industrial Relations Act* 1996 and the *Police Act* 1990. The appellant argued that her application was not excluded by operation of s 83(2)(b) of the *Industrial Relations Act* and cl 6(1)(c) of the Industrial Relations (General) Regulation to file an unfair dismissal application. The appeal examined the operation of the statutory scheme regulating the employment of probationary police constables and found that there was an intention to preserve the rights of these employees to claim unfair dismissal. Thus, leave to appeal was granted, the appeal was upheld and the appellant's reinstatement was ordered.

Inspector Schultz v Hoffman's Kundabung Sawmilling Pty Ltd [2006] NSWIRComm 277; 155 IR 416

This was an appeal pursuant to s 197A of the *Industrial Relations Act* 1996 against a decision of an Industrial Magistrate where the Industrial Magistrate acquitted the respondent of an offence pursuant to s 8(1) of the *Occupational Health and Safety Act* 2000. In examining the case on appeal, the Full Bench held that the Industrial Magistrate erred in the following respects: failing to give reasons for finding that no causal nexus between the failure to ensure safety of workers at a sawmill and the resultant risk; erred in finding that the experience and expertise of two workers

alone was an adequate safe system of work; and erred in failing to properly consider the absence of safety training and supervision as causally connected to the risk to safety. The offences were held proven. The appeal was upheld and the defendant found guilty.

Graincorp Operations Limited v Inspector Mason [2006] NSWIRComm 304; 157 IR 103

This appeal followed conviction and sentence of a corporate defendant pursuant to a charge under the *Occupational Health and Safety Act* 2000. The matter at first instance involved an employee falling from a height whilst in the workplace. The appellant argued on appeal that the sentence was manifestly excessive on a number of grounds, including: that too much weight was given to the non-dissemination of workplace risk assessment material at the appellant's site where the employee in question was injured; the relevance of evidence of Australian Safety Standards; whether the worker suffered serious injuries; and whether the sentencing judge gave too little weight to procedures and documentation. The Full Bench judgment considered the relevance of good corporate citizenship as well as prior convictions to the sentencing process. The question that remained to be determined was whether, in the absence of identified specified error, the sentence was manifestly excessive. It was held that the sentence was not manifestly excessive in the circumstances and the appeal was dismissed.

Re Crown Employees (Psychologists) Award [2006] NSWIRComm 315; 156 IR 434

This matter arose following an application for an new award by the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (the "PSA") and a cross-application by the Director of Public Employment in relation to Psychologists in Crown employment. The claims included in the application were for an increase in salaries and new allowances and improvements in various employment conditions. The main issues for the Full Bench included an assessment of the work performed by psychologists, the attraction and retention of psychologists, the shortage of workers in the profession and the employment classifications and descriptors. Work Value and Special Case principles were applied to the application for a new award.

Re Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination (No 2) [2006] NSWIRComm 328; 158 IR 17

These proceedings arose from an application by the Transport Workers' Union of New South Wales for the making of two industrial instruments, an award and a contract determination, with the stated purpose of addressing serious occupational health and safety issues facing the road transport industry. There were four aspects to the Union's claim: (a) a requirement, in respect of all long distance work as defined, for employers and principal contractors to formulate and apply a Safe Driving Plan, identifying how any long distance trip that is required to be performed can be undertaken safely and legally and the means by which it is remunerated; (b) a regime of accountability with respect to the preparation and enforcement of Safe Driving Plans that applies, as far as is jurisdictionally possible, to all parties at each stage of the contracting chain; (c) a compulsory basic training requirement for truck drivers in the form of Blue card training covering occupational health and safety matters, and Induction training covering basic industrial rights and other requirements relating to remuneration, hours of work, rest breaks, safety and the like; and (d) a requirement that employers and principal contractors be required to implement a drug and alcohol policy.

Employer groups argued against the application citing recent legislative provisions, pending federal initiatives and WorkCover prosecutions as evidence of the unnecessary nature of the Union's claim. A jurisdictional challenge was brought by the employer respondents against the Commission's power to determine the issue which was dismissed as being premature. Certain concessions as to the jurisdiction of the Commission were later made by the employer respondents. The Commission held that there was a direct link between remuneration systems and fatigue issues. There was a widespread desirability of more specific industrial regulation. Reforms of the industry included mandatory drug and alcohol policies for all employers, where the method of testing is not restricted, can be random and non-consensual. Furthermore, the system of Bluecard training, an occupational health and safety training system, was generally accepted. The Commission made orders accordingly for a new award and contract determination to be made, subject to draft instruments to be prepared by the applicant.

Newcastle Wallsend Coal Company Pty Limited & Ors v McMartin [2006] NSWIRComm 339; 159 IR 121

These proceedings involved an appeal relating to occupational health and safety prosecutions arising from circumstances where four miners were killed following an inrush of water in the mine shaft in which they worked at Gretley Mine. Multiple prosecutions were brought under the *Occupational Health and Safety Act* 1983 at first instance which involved evidence showing reliance by the defendants on inaccurate plans showing the wrong location of old workings full of water, as well as multiple failures to ensure safety. Two corporate defendants and three personal defendants were found guilty at first instance of offences under s 15(1), s 16(1) and s 50(1) of *Occupational Health and Safety Act* 1983 and sentences were imposed. The appeal brought by all defendants and the questions on appeal included whether the proceedings at first instance were a nullity, or abuse of process; whether the trial judge was entitled to rely on evidence of expert witnesses; and whether each of the alleged failures to ensure safety could be causally linked to the defendants liability.

The Full Bench, by majority, held that the two corporate defendants and one individual defendant failed to establish statutory defences under the legislation and dismissed the appeals. In respect of those defendants the Full Bench found that the trial judge did not err at first instance in the application of the sentencing principles or in the penalties imposed. In respect of one of the individual defendants the Full Bench found that the trial judge had erred at first instance, the appeal was upheld and the judgment and orders at first instance set aside. In relation to the remaining individual defendant, the Full Bench found that the trial judge had erred at first instance in respect of two prosecutions and the appeals in respect of those matters were upheld and the judgment and orders at first instance set aside. In respect of the balance of the appeals in respect of this defendant, the Full Bench dismissed the appeals as to liability, however, upheld the appeals in relation to sentencing and discharged the defendant pursuant to s 10 of the *Crimes (Sentencing Procedure)* Act 1999. Costs were reserved.

Kirk Group Holdings Pty Ltd and Anor v WorkCover Authority of New South Wales (Inspector Childs) [2006] NSWIRComm 355; 158 IR 281

These proceedings were instigated by Kirk Group Holdings Pty Ltd and Graeme Joseph Kirk who moved the Court for orders pursuant to r 42(1) of the Industrial Relations Commission Rules 1996 to extend time to appeal two judgments given on 9 August 2004 and 24 January 2005 in Matter Nos

IRC 1730, 1731, 1732 and 1733 of 2003: *WorkCover Authority of New South Wales (Inspector Childs) v Kirk Group Holdings Pty Limited and Anor* (2004) 135 IR 166; *Inspector Childs v Kirk Group Holdings Pty Limited & Anor* (2005) 137 IR 462. The matters related to occupational health and safety prosecutions before the Industrial Court, which had been simultaneously challenged in the Court of Appeal and the Court of Criminal Appeal. These challenges were ultimately unsuccessful, and the applicants subsequently made an application for an extension of time to appeal to the Full Bench of the Industrial Court.

The Full Bench considered the statutory basis as to the time for filing the appeal and for granting the extension of time to appeal, noting that the application was well out of time. The evidence as to delay advanced by the applicants was based on their perceived prospects of success in the Court of Appeal and the Court of Criminal Appeal rather than in the Industrial Court. The Full Bench considered that this reason was an inadequate basis to justify why an appeal could not have been brought within the prescribed time before the Full Bench of the Industrial Court. The Full Bench noted that the effect of certain re-formulations of two alleged errors at first instance by the Court of Appeal would enable the applicant, if granted an extension of time, the benefit of forum shopping but with the added advantage of the re-formulation by the Court of Appeal of their jurisdictional case. It was considered however, that on balance, the extension of time should be granted in relation to the third error alleged; that is, that the Court at first instance failed to deal properly with the responsibility of individuals whose knowledge and acts could be those of the corporate employer. The extension of time to appeal was accordingly granted in respect of that matter.

TIME STANDARDS

In September 2004, in line with the process of reform being undertaken by the Commission and in recognition that time goals for the disposition of cases are integral to assessing the effectiveness of case management strategies, the Commission formally adopted time standards for the disposition of work in the major areas of the Commission's jurisdiction. In doing so, the Commission developed standards which reflect the unique jurisdiction which the Commission exercises. The standards and how the Commission performed against those standards are set out in Appendix 3 of this report. It will be noted that although the Commission is still not meeting standards in some areas that significant improvements have been made in a number of areas as compared to 2005.

At the same time the Commission released its policy on the delivery of decisions and judgments. That policy is set out below:

"The diverse nature of matters that come before the Commission for determination will often result in the decision of a presiding member or Full Bench being reserved. Until recently it was very rare for any decision to be delivered extempore. However, it has now become a common feature of the Commission's work- in appropriate cases – to deliver extempore judgments at the conclusion of a hearing.

The Commission has set a target for the delivery of judgments of three months from the date a judgment is reserved to the date when it should be delivered. Industrial disputes will generally require decision (particularly interim decisions or recommendations), within a shorter time frame, if one is necessary. In respect of unfair dismissal matters the Commission has set a target of 80 per cent of reserved judgments being delivered within two months and 100 per cent within three months. This policy will take effect with respect to decisions or judgments reserved after 30 September 2004.

The capacity for the Commission to achieve this target is dependent on the complexity of the matter for determination and other factors such as the availability of resources in relation to the workload of the Court, leave, timeliness in the replacement of appointments, etc. Because of their size and complexity major industrial cases fall outside the general target, however, every effort has been and

is being made to deliver the judgment as soon as possible after the decision has been reserved consistent with the exigencies of the particular proceedings.

The President is provided with information on reserved judgments and will consult with any Member where the judgment is undelivered within the relevant timeframe.

If the legal representative or a party to proceedings in which there has been a reserved decision or judgment desires to complain about delays over delivery of the decision or judgment, the complaint should be made by letter and should be addressed to the President of the Commission or the Industrial Registrar.

The matter will then be taken up with the Member or Members involved in the reserved decision but this will be done without disclosing the identity of the party making the complaint. If the matter is not satisfactorily resolved, the President or the Registrar should again be informed."

THE REGISTRY

The Industrial Registrar, Mr Michael Grimson, has overall administrative responsibility for the operation of the Commission. The Registrar reports to the President of the Commission in terms of the day to day operational procedures and, as a Business Centre Manager within the Attorney General's Department with reporting and budgetary responsibilities, to the Assistant Director-General, Court Services.

The Registry provides administrative support to the Members of the Commission and focuses on providing high level services to both its internal and external clients. The major sections of the Registry are:

REGISTRY CLIENT SERVICES

The Registry Client Services team provides assistance to users of the Commission seeking information about the work of, or appearing before, the Commission. This team is responsible for receiving all applications and claims, guiding applicants and claimants through the management of their matter, listing matters to be heard by Members and providing formal orders made by the Commission or Industrial Court. In addition, the team provides support to Members and their staff by providing infrastructure for the requisition of stores etc. It also has responsibilities under the *Public Finance and Audit Act* 1983.

Client Service staff are situated in five locations - 47 Bridge Street, Sydney (Principal Registry); Hospital Road Court Complex, Sydney; 237 Wharf Road, Newcastle; 90 Crown Street, Wollongong; and Parramatta Local Court, Cnr George and Marsden Streets, Parramatta;.

The role of Client Service staff is crucial as they are usually the initial point of contact for the Commission's users. The Commission is fortunate that the staff within this area approach their duties with dedication and efficiency.

INFORMATION MANAGEMENT & ELECTRONIC SERVICES TEAM

The Information Management and Electronic Services Team is responsible for the preparation of industrial awards, enterprise agreements and other orders made by Members of the Commission, for publication in the New South Wales Industrial Gazette, which is available in both electronic and

hard copy format. This process is required and driven by legislative requirements and enables the enforcement and implementation of awarded or approved employment conditions for employees. This team is also responsible for the maintenance of records relating to participants to awards and records relating to the Industrial Committees and their members.

The preparation of enterprise agreement comparison reports for the Industrial Registrar is another aspect of the team's responsibilities which involves a detailed comparison of conditions of employment under the proposed agreement to those under the relevant industrial instrument and statutory requirements. This assists the Commission in its deliberations in these matters.

Additionally, this team provides information management, technology services and support to the Commission, the Industrial Registrar and Registry staff. The demand for the provision of on-line services and information has continued to grow and this team's main functions include - caseload reporting; maintenance and support of the Commission's case management system - *CITIS* (Combined Industrial Tribunals Information System) and other internal systems; updating the Commission's *Intranet* and *Internet* sites and the maintenance of the *NSW Industrial Gazette* website.

During 2006 this team:

- completed the electronic backcapture and publication on the Commission's website of all NSW Industrial Committees creating an historical record that includes links to the Gazetted orders variously establishing, extending and rescinding the committees.
- published an index of all current NSW awards on the Commission website where each award is linked to its history of variations, its record of participants and Gazetted orders.
- extended the electronic backcapture of Enterprise Agreements available online to include those to the year 2002.

INDUSTRIAL ORGANISATIONS TEAM

This team processes a diverse range of applications that are determined by the Industrial Registrar, which include:

- registration, amalgamation and consent to alteration of the rules of industrial organisations;
- election of officers of industrial organisations or for special arrangements in relation thereto;
- Authority to Enter Premises for union officials;

- Certificates of Conscientious Objection to membership of industrial organisations;
- special rates of pay for employees who consider that they are unable to earn the relevant award rate because of the effects of impairment;
- special arrangements in respect of the keeping of time and wage records and the provision of pay slips; and
- postponement of the time for taking annual leave.

In respect to industrial organisations, the team also administers provisions relating to the regulation and corporate governance of industrial organisations under Chapter 5 of the *Industrial Relations Act* and provides assistance in the research of historical records.

In addition, the team examines part-time work agreements, to determine their acceptability for filing, as well as, processing applications for registration of employers of outworkers for determination by the Clothing Trades (State) Industrial Committee.

Applications / Renewals for Certificates of Conscientious Objections				
2002	***2003***	***2004***	***2005***	***2006***
214	199	191	175	179

Special Wage Matters - Year End Current Files					
	2002	***2003***	***2004***	***2005***	***2006***
Special Wage Permits	823	765	1213	1110	991
* SWS - P	101	212	262	246	219
** SWP - MC	244	244	269	300	189
TOTAL	**1168**	**1201**	**1744**	**1656**	**1399**

Special Wage Matters - Matters Lodged				
2002	**2003**	**2004**	**2005**	**2006**
1268	1281	1786	1734	1433

* Applications in cases where a State award covers the employment provisions of the applicant and the employer participates in the 'Supported Wage System' program conducted by the Federal Department of Employment and Workplace Relations.

** Wage Agreements filed under the 'Supported Wage System' in respect of employment covered by a State award that includes a 'Supported Wage System' clause. NOTE: Permit not required to be issued as the 'Supported Wage System' clause provides for means by which a special rate of pay can be agreed between the employer and employee.

EXECUTIVE AND LEGAL TEAM

This team includes the Deputy Industrial Registrar and the Assistant Deputy Industrial Registrar. The principal function of this team is to provide information, support and advice to the Industrial Registrar and other members of the Registry to ensure that services are maintained at a high level.

THE ATTORNEY GENERAL'S DEPARTMENT

The Commission and the Industrial Registrar acknowledge the continuing assistance of the Attorney General's Department and, in particular, the assistance of Mr T E McGrath, Assistant Director General, Courts Services.

OTHER

ANNUAL CONFERENCE

The Annual Conference of the Industrial Relations Commission was held from 18 - 20 October 2006. The first day covered a variety of topics with presentations by his Honour Judge Graeme Colgan, Chief Judge of the Employment Court of New Zealand (*What's Going on over the Tasman? Similarities and Differences*); Ms Jenny Kerr, Director, Incorporating Ergonomics (*Physio - The Occupational Hazards of Sitting*); the Honourable Vice-President Michael Lawler, Australian Industrial Relations Commission (*Federal Update*); Mr John West, QC of the NSW Bar (*Comparison of Conciliation and Mediation*) and her Honour Justice Monika Schmidt (*Fair Workplaces - An Achievable Ideal in Australia?*). On the second day of the conference sessions were given by the Honourable Justice Peter McClellan, Chief Judge at Common Law (*Expert Evidence- Aces up Your Sleeve?);* and Professor Andrew Stewart, Flinders University (*The Role of the New South Wales System Following Work Choices*); A skills session was run by Ms Sue Ramsay, NSW Attorney General's Library (*Infosource and Databases)* and his Honour Justice Roger Boland chaired an Open Forum for Members that canvassed the major legislative changes in the preceding twelve months. The Annual Conference was well attended and it continues to provide an invaluable opportunity for Members of the Commission to discuss matters relevant to their work. The presentations and ensuing discussions proved relevant and practical. Appreciation is expressed to the eminent presenters, to all those who contributed as participants and the officers of the Judicial Commission whose assistance is invaluable. The development of the Annual Conference, substantially assisted by the Judicial Commission exercising its mandate to advance judicial education has, once again, proved a most successful initiative. Thanks go to those members of the Commission's Education Committee who designed and delivered a conference that has added much to the professionalism with which the Commission seeks to advance in all its work.

TECHNOLOGY

Medium Neutral Citation

Since February 2000 the Commission has utilised an electronic judgments database and a system of court designated medium neutral citation. The system is similar to that in use in the Supreme Court and allows judgments to be delivered electronically to a database maintained by

the Attorney General's Department (*Caselaw*). The judgment database allocates a unique number to each judgment and provides for the inclusion of certain standard information on the judgment cover page.

The adoption of the system for the electronic delivery of judgments has provided a number of advantages to the Commission, the legal profession, other users of the Commission and legal publishers. The system allows unreported judgments to be identified by means of the unique judgment number and paragraph numbers within the body of the judgment. The judgments are now available shortly after they are handed down through both the Attorney General's Department website (http://www.lawlink.nsw.gov.au/ircjudgments) and the Australian Legal Information Institute website (AustLII).

Prior to December 2004 only decisions of Presidential Members of the Commission were available through *Caselaw*. From 1 December 2004 a separate database for decisions of Commissioner Members was established.

Decisions of Presidential Members made in relation to industrial disputes where the Commission might make a statement, recommendation(s) and/or directions with a view to resolving the dispute, are not usually published on *Caselaw*.

All arbitrated decisions of Commissioner Members (decisions made after taking evidence from the parties) are published. The exception to this rule is decisions that are read onto the record - these will only be published where the matter involves a particular matter of interest, topicality or noteworthiness

COURT USERS' GROUP

This Users' Group was established in 1998 to provide a forum for the major industrial parties, and others who regularly appear before the Commission, to provide feedback as to the Commission's practice and procedure and allow users to have input into the continuing development of the Commission's practice and procedure.

In 2002 it was decided that the Users' Group would meet annually and be complemented by *ad hoc* sub-group meetings to deal with particular areas such as unfair dismissals, unfair contracts and occupational health and safety matters.

For a number of reasons the Commission did not convene a meeting of the Court User's Group in 2006.

COMMITTEES

A list of the committees in operation within the Commission are set out at Appendix 4.

COMMISSION RULES

Pursuant to section 186 of the *Industrial Relations Act*, the rules of the Commission are to be made by a Rule Committee comprising the President of the Commission and two other Presidential Members appointed by the President. There is also scope for co-option of other Members. There were no amendments to the rules of the Commission in 2006.

As I reported last year, a Working Party comprising Members of the Commission, the Attorney General's Department, representatives of the Bar Association and Law Society of New South Wales was formed in 2005 and during 2006 completed a comprehensive review of the Commission's Rules with a view to ensuring that the Rules provide the proper mechanism for matters before the Commission to be dealt with in a timely and appropriate manner, particularly having regard to the recent introduction of the *Uniform Civil Procedure* Act and Rules. It is likely that significant amendments to the Rules will occur in 2007.

COMMISSION PREMISES

In September 2005 the Commission commenced occupation of premises at 47 Bridge Street, Sydney (the *Chief Secretary's Building*) following renovation. During 2006 a number of Members continue to be located at the Hospital Road Court Complex whilst an upgrade to the air-conditioning within the 50 Phillip Street part of the complex takes place. This project is proceeding on time and true co-location will occur early in 2007 and the consequent benefits thereof will finally be achieved.

AMENDMENTS TO LEGISLATION ETC

The legislative amendments enacted during 2006 or which came into force that year, affecting the operation and functions of the Commission are reported at Appendix 5.

Amendments to Regulations affecting the Commission are reported at Appendix 6.

PRACTICE DIRECTIONS

Practice Directions published during 2006 are referred to elsewhere in this Report.

CONCLUSION

This has been a year which will be long remembered. The commencement of the *Work Choices* legislation on 27 March 2006 had significant potential to affect adversely the morale of major stakeholders of the Commission and within the Commission itself. The Commission was gratified by the groundswell of support received at all levels - from the community at large, employer and employee organisations, and at a government level. A number of large organisations that had the option of moving into the federal sphere have made a deliberate decision to remain in this jurisdiction recognising that the Commission has the capacity to resolve their disputes in a timely and effective manner. It is also gratifying that the Members of the Commission and all staff within the Commission approached theirs tasks with no less diligence or enthusiasm than in previous years. The Commission continued to look for opportunities to ensure that its practices and procedures remained responsive to the needs of all parties appearing before the Commission, particularly in regard to a number of legislative changes to the principal Act during the course of 2006.

Last year I said 2006 would be "one of the most significant in the 103 year history of the Commission"; 2007 will also have its own significance given the result of the High Court challenge to the federal legislation[3] handed down on 14 November 2006.

I have no doubt that this Commission still has a valuable role to play in safeguarding the rights and entitlements of employers and employees in New South Wales. The Commission has a long and proud tradition of successfully resolving disputes; is noted for its independence; and, most importantly, for providing a system for the conduct of industrial relations matters that is fair and just.

As we move into 2007 I look forward to working with the Members of the Commission, its staff and the major stakeholders of the Commission to meet the challenges that lie ahead.

[3] *New South Wales v Commonwealth of Australia; Western Australia v Commonwealth of Australia* [2006] HCA 52

APPENDIX 1

INDUSTRY PANELS

PANEL A

Industries

Brick, Tile and Pottery
Building and Construction Industries
Cement and Lime Industry
Electrical
Furniture
Glass and Wood Industry
Household Commodities
Labouring
Manufacturing (including drugs)
Meat and Allied Industry
Metal and Allied Industries
Mining
Optical, Watchmakers and Jewellers
Plant Operators, Engine Drivers and Allied Industries
Printing
Quarrying
Steel Manufacturing and Allied Industries (other than establishments within Panels N & S)
Storemen and Packers

PANEL B/C

Industries
Clerks
Clothing, Textile and Allied Industries
Clubs
Commercial Travellers/Sales (Salesmen, etc.)
Crown (including Juvenile Justice but not including RTA and Prisons/Corrective Services with Panel E or Police with Panel D)
Dental
Education
Funeral and Undertaking
MSB, Ports Authorities etc (except Newcastle with Panel N)
Professionals
Real Estate Industry
Rural and Allied Industries
Shop Employee and Allied Industries
Universities/Colleges of Advanced Education

PANEL D

Industries
Fire Fighting
Health Industry (except Health Surveyors Newcastle with Panel N)
Leather, Rubber and Allied Industries
Local Government (except Newcastle with Panel N)
Miscellaneous
Nurses
Police
Water Supply
Welfare

PANEL E

Industries
Baking and Allied Industries
Breweries
Domestic and Personal Services (Cleaning, Restaurants, Catering, Hotels)
Gas Industry
Grain Handling
Household Commodities
Journalists
Oil Industry
Prisons/Corrective Services (generally, including regional areas but excluding Juvenile Justice - Panel B/C)
RTA
Security Industry
Theatrical (Entertainment, Darling Harbour, Carnivals, etc)
Transport

APPENDIX 2

OTHER SIGNIFICANT FULL BENCH DECISIONS

T & M Industries (Aust) Pty Ltd and Anor v Inspector Sequeira [2006] NSWIRComm 25; 151 IR 130

These proceedings were brought by way of an appeal pursuant to s 197(1)(b) of the *Industrial Relations Act* 1996, s 47(4) of the *Occupational Health and Safety Act* 1983 and s 105(3) of the *Occupational Health and Safety Act* 2000 against sentences imposed by an Industrial Magistrate for various breaches of occupational health and safety legislation. The appellant company was found guilty of two offences of failing to comply with improvement notices pursuant to s 92 of the 2000 Act. A director of the appellant company was found guilty of one offence pursuant to s 26(1) of the 2000 Act, as well as being guilty of obstructing the respondent inspector pursuant to s 31N(a) of the 1983 Act.

During the course of the proceedings the company was deregistered. This however, did not prevent the company's director from appealing the company's s 26(1) conviction. The Full Bench held, firstly, that no error of law in relation to that conviction occurred and, secondly, that the s 92 conviction, at first instance, was to be confirmed. In regard to the s 31N(a) offence, the Full Bench considered the interpretation of particulars, the meaning of the expression "obstruct", whether the obstruction was "momentary" and held it was inappropriate to infer acquiescence on the part of the inspector. No error of law at first instance was found and the conviction was upheld. The penalty in relation to the s 31N(a) offence was dealt with by the Full Bench, who were not convinced that there were extenuating circumstances to warrant dismissal of the charge without proceeding to conviction. There was held to be nothing to suggest that the Industrial Magistrate erred in the exercise of discretion and the penalty was accordingly upheld. The appeal was dismissed.

Inspector Singh v ABB Australia Pty Limited [2006] NSWIRComm 68; 151 IR 90

This matter concerned a reference to the Full Bench pursuant to s 196 of the *Industrial Relations Act* 1996 and s 5AE of the *Criminal Appeal Act* 1912. The reference was made in proceedings instituted by Inspector David Singh of the WorkCover Authority of New South Wales against ABB Australia Pty Limited, in which it was alleged in the application for an order made pursuant to s 246 of the *Criminal Procedure Act* 1986, as applied to this jurisdiction by s 168 of the *Industrial Relations Act* 1996, that the defendant had contravened s 8(2) of the *Occupational Health and Safety Act* 2000, or in the alternative, had contravened s 10(1) of the *Occupational Health and Safety Act* 2000. On 10 January 2005, *Haylen* J issued an order to the defendant to "answer to the said offence charged" in the proceedings. *Haylen* J heard the matter and referred three questions to the Full Bench for determination, which were: (1) Insofar as the Application for Order filed in these proceedings alleges offences against provisions of the *Occupational Health and Safety Act 2000* in the alternative against the Defendant, is the Order to Appear consequent upon the Application for Order defective as a matter of law?; (2) If the answer to question 1 is yes, does the Prosecutor have a right to elect upon which offence to proceed in order to cure the defect?; and (3) If the answer to question 2 is no, does the [Industrial Court] have a discretion to afford the Prosecutor an opportunity to elect upon which offence to proceed?

The Full Bench held that the order was not defective, and that s 30 and s 31 of the *Occupational Health and Safety Act* 2000 does not preclude alternative charges being laid. Moreover, the laying of alternative charges in the proceedings was permitted by the *Criminal Procedure Act* 1996, as well as the common law. No duplicity, unfairness or prejudice was found in the alternative charges and the order was held to be valid, leaving the matter to be remitted to the trial judge.

Australian Workers' Union, New South Wales v Bluescope Steel (AIS) Pty Limited [2006] NSWIRComm 71; 151 IR 153

The Australian Workers' Union, New South Wales ("the AWU") applied for leave to appeal and appeal pursuant to s 187 of the *Industrial Relations Act* 1996 from judgments at first instance given on 5 April 2005 and 24 June 2005 in *Bluescope Steel (AIS) Pty Limited v AWU and Anor* [2005] NSWIRComm 99 and *Bluescope Steel (AIS) Pty Limited v AWU and Anor (No 2)* [2005] NSWIRComm 210 respectively. The first judgment concerned a summons directed to the AWU on the application of Bluescope Steel (AIS) Pty Limited ("Bluescope") to show cause why the Court should not take action against the AWU in respect of alleged contraventions of dispute orders made by the Commission on 16 and 17 February 2004. The second judgment involved findings at first instance that the AWU had breached certain dispute orders and were penalised accordingly in the nature of $15,000 in respect of the contraventions.

The issues on appeal were whether "all reasonable steps" were taken to ensure compliance with dispute orders; whether obligations in ancillary orders are not separate dispute orders; and, the proper statutory construction of s 139(4)(a). The Full Bench held that leave to appeal be refused and the appeal be dismissed regarding the contravention of dispute orders. In regard to the appeal in terms of penalty, leave was granted and the appeal was allowed.

Scevola v Inspector Robert Sealey (No 2) [2006] NSWIRComm 72; 151 IR 75

This matter involved an appeal against a decision of the Chief Industrial Magistrate, who convicted the appellant for offences under s 155(1) of the *Workers Compensation Act* 1987 and s 244 of the *Workplace Injury Management and Workers Compensation Act* 1998. The matter involved a director of a corporation that contravened provisions requiring payment of workers compensation premiums. The appeal, which was ultimately dismissed, was made on the grounds of severity of sentence. It was argued that the Chief Industrial Magistrate incorrectly assessed the maximum penalty available for the offences in question. The Full Bench found that the Chief Industrial Magistrate correctly assessed the maximum penalty but erred when applying the Local Court's jurisdictional limit for the offence. The matters for determination were the effect of the mistake on the sentencing process and whether it formed requisite appellable error. In coming to its conclusions, the Full Bench held by majority that there was no error warranting appellant intervention and that the penalty was not excessive.

Re Cleaning and Building Services Contractors (State) Award [2006] NSWIRComm 86; 151 IR 253

These proceedings arose from a summons to show cause issued by the Commission on its own initiative pursuant to Part 3 of Chapter 2 of the *Industrial Relations Act* 1996. The summons was issued as a result of the decision of the Full Bench of the Industrial Relations Commission in Court Session in *Tempo Services Ltd v Strezouski* **(**2005) 146 IR 411 in which the Full Bench upheld an appeal from certain declarations made in *Strezouski v Tempo Services Ltd* [2004] NSWIRComm 374. The issue that arose from the litigation before the Industrial Court was whether the provisions of clause 12(v) of the Cleaning and Building Services Contractors (State) Award were consistent with the requirements of s 22 of the *Industrial Relations Act* 1996.

Agreement as to the variation of the award was reached between the parties and an application to vary the award by consent was made to the Full Bench. It was decided that the application should be granted as a matter of industrial merit and having regard to the fact that the award as varied would be consistent with the requirements of s 22 of the *Industrial Relations Act* 1996.

Re Social and Community Services Employees (State) Award [2006] NSWIRComm 87; 152 IR 149

These proceedings involved an application by the Australian Services Union for variation of the existing Social and Community Services Employees (State) Award and an application by Employers First for a new Award. Agreement was reached between the parties following substantial conciliation. The agreed terms involved the following: that all rates of pay and allowances in the SACS award be increased by 3.5 per cent, that Employers First discontinue its application; and that the award shall be for a term of three years and be operative as at 1 March 2006. The Full Bench held that the claim established a special case consistent with the Special Case Principle. Further, work value changes were also made out. A new award was made accordingly.

Nelmac Pty Ltd v Inspector Franke [2006] NSWIRComm 100; 151 IR 63

These proceedings involve an appeal under s 196 of the *Industrial Relations Act* 1996 against a judgment at first instance in which the trial judge convicted the appellant of an offence under s 8(1) of the *Occupational and Health Safety Act* 2000 following a plea of guilty and imposed a fine of $156,000: *Inspector Franke v Nelmac Pty Ltd* [2005] NSWIRComm 44.

The appellant appealed against the alleged severity of sentence. The question for determination was whether it was appropriate to consider if the penalty imposed fell within a range of comparative sentences. It was also necessary to determine whether the trial judge fell into error in assessing objective seriousness, as well as determining whether penalty in the absence of specific error was nevertheless excessive. It was held that no error was found and the penalty imposed at first instance was not excessive. The appeal was accordingly dismissed.

Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (on behalf of Peter Riley) v WorkCover Authority of New South Wales [2006] NSWIRComm 108; 151 IR 396

This matter involved an appeal by the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (on behalf of Peter Riley) against a decision and orders of a Commissioner given on 3

March 2005 in Matter Nos. IRC 5317 and 6979 of 2003. The first instance decision involved an unfair dismissal application, wherein the employee's employment was terminated because he was unable to fulfil inherent requirements of the job because of travel restrictions placed on him arising from a medical condition. The employee was medically retired and sought relief in the nature of reinstatement under s 84 and s 92 of the *Industrial Relations Act* 1996 ('the Act').

The Full Bench found that adequate consideration was not given by the Commissioner at first instance as to whether there was another position that the employer had available. The meaning of various terms was considered by the Full Bench which included "available", "suitable employment" and "vacant". In light of the fact that adequate consideration had not be given by the Commissioner at first instance as to the requirements of s 94(3)(b) of the Act, leave to appeal was granted and the decision and orders of the Commissioner were set aside. The matter was remitted to the Commissioner for further hearing.

Tsougranis v Inspector Carmody (No 2) [2006] NSWIRComm 133; 154 IR 58

These proceedings came before the Full Bench following trial of an occupational health and safety prosecution under s 16(1) of the *Occupational Health and Safety Act* 1983 ("the OH&S Act"). The appellant, a structural engineer, was found guilty and convicted at first instance, and fined the sum of $24,300. On appeal it was argued, inter alia, that a miscarriage of justice occurred.

The Full Bench held the central issue for determination was whether the incident in question occurred at the employer's place of work, as defined in the OH&S Act. In upholding the appeal on this basis, the Full Bench noted the considerable body of authority which establishes that the Court must determine beyond reasonable doubt that the place in question was the "employer's place of work" at the time of the accident or when the breach of the OH&S Act occurred (see *WorkCover Authority of New South Wales v James Hitchcock* (2004) 135 IR 377). It was held that the appellant should be acquitted of the charges at first instance. No error was found to be committed by the trial judge regarding a failure to give himself appropriate warnings, cautions or directions. Nevertheless, considering the success as to the "place of work" issue, the Full Bench ordered that the appeal be upheld and the orders made at first instance and the conviction recorded against the appellant be set aside.

Perfection Dairies Pty Ltd v Finn [2006] NSWIRComm 137; 151 IR 197

Following a successful unfair dismissal application by Mr Russell Finn (the respondent), Perfections Dairies Pty Ltd (the appellant) chose to appeal on procedural grounds regarding the respondent's standing at first instance to bring proceedings under s 84 of the *Industrial Relations Act* 1996, given that at the time the application was made, Mr Finn was an undischarged bankrupt. Provisions of *Bankruptcy Act* 1966 (Cth) were considered by the Full Bench and the issue for determination was whether the bankrupt's employment was considered as "property" for the purposes of the *Bankruptcy Act* 1966 (Cth).

The Full Bench held that "whatever legal 'interest' an employee has in his or her employment, it is not a property interest. In any event, it seems clear from reference to the relevant statutory provisions and the case law that, although the expression 'property', and cognate expressions such as 'the property of the bankrupt' and 'after acquired property', are to be construed in a very wide sense, the bankrupt's employment is not considered 'property' for the purposes of the *Bankruptcy Act*." Thus, the respondent's s 84 application was available to him at first instance.

In further deliberation, the Full Bench considered whether the Commissioner's discretion miscarried in finding the dismissal harsh, unreasonable or unjust, as well as the impact of the extreme language used by the Commissioner at first instance. It was held that leave should be granted but that the appeal be dismissed, on the grounds that whilst the language used was inappropriate for decisions of the Commission, there was not any substantive errors of law or principle found at first instance.

Commissioner of Police v Evans [2006] NSWIRComm 170; 153 IR 144

These proceedings concerned an appeal relating to an application under s 181 of the *Police Service Act* 1990, following the removal of a police officer that assaulted a civilian whilst off-duty. The officer was convicted of assault for the incident, which was alcohol related. The decision at first instance found the officer's removal was harsh and too severe. The main issue on appeal was concerned with the principles concerning leave to appeal. The Full Bench stated the law governing the granting of leave to appeal, noting that it will not be lightly granted: *Knowles v Anglican Church Property Trust (No 2)* (1999) 95 IR 380 at 381 - 382; *King v State Bank of New South Wales (No 2)* (2002) 126 IR 407 at [52]; and *Inspector Moore v Blacktown City Council* (2003) 124 IR 59 at [13].

It was established that the test to be applied to unfair dismissal applications is also applicable to the review of removals under s 181E of the *Police Service Act* 1990, and, the operation of s 181F does not impinge on this test. It was noted that the public interest was one factor to be taken into account when consideration as to leave was being made to appeal applications. The Full Bench held that no error of law or principle was made at first instance and that leave should be refused. Also of significance was the *Nutshack Franchise Pty Ltd and Others v Smith and Another* (1999) 90 IR 355 claim made by the applicant at first instance, alleging that the Commissioner of Police failed to comply with the orders made at first instance and thus resulted in an abuse of process which could, in some circumstances, result in the Court declining to hear the application for leave to appeal. This claim was rejected however, as the circumstances in this case are different to those that were before the Court in *Nutshack.*

New South Wales Department of Education and Training v New South Wales Teachers Federation (on behalf of Mossfield) [2006] NSWIRComm 210; 155 IR 257

These proceedings related to an appeal against an unfair dismissal application where the applicant was reinstated at first instance. The first instance proceedings came about following the removal of a teacher after he assaulted a student. In the appeal proceedings, leave was granted to the appellant and the Full Bench was left to determine whether there was a proper determination at first instance.

Following an examination of the first instance decision at length, the Court came to the view that the findings of fact were not reasonably open at trial in finding that the dismissal was harsh. There were no extenuating circumstances in the evidence presented before the Full Bench that could lead to a successful unfair dismissal application. Thus, the appeal was upheld and the orders made for reinstatement were set aside.

Twentieth Superpace Nominees v TWU [2006] NSWIRComm 218; 156 IR 323

An appeal was made following a successful application for victimisation by the applicant at first instance pursuant to s 213 of the *Industrial Relations Act* 1996 ('the Act'). The thrust of the argument on appeal claimed that the aggrieved applicant had in fact not been victimised and that the Commissioner had failed to properly apply the legislative framework to support such a finding. The Full Bench addressed the proper meaning of s 210(1)(j) of the Act, whether causation had been established and whether the orders made at first instance were appropriate on the evidence before the Commissioner.

The Full Bench held that the ordinary meaning should be given to the words in the statute, and the phrase "make a complaint" in s 210(1)(j) is protective in nature and should be interpreted broadly. Furthermore, it was noted that from a policy viewpoint, every reasonable avenue should be available to an employee to raise occupational health and safety concerns without fear of victimisation or retribution and, accordingly, it is appropriate that s 210(1)(j) should be construed broadly. The Full Bench held that the evidence did not support the appellant's contention that the applicant's complaints were not the substantial and operative cause of the refusal to employ the applicant in the first instance. The appeal was accordingly dismissed.

Inspector Wolf v Rockdale Beef Pty Ltd [2006] NSWIRComm 280; 155 IR 366

These proceedings involved three matters, which included a Full Bench reference, an application for appeal and an application for declaratory relief. In respect of the Full Bench reference, six questions of law were referred to the Full Bench pursuant to s 5AE of *Criminal Appeal Act* 1912 as applied by s 196 of the *Industrial Relations Act* 1996, in relation to the validity of charging in the alternative under the *Occupational Health and Safety Act* 2000 ('the OH&S Act'). Amongst the questions raised for the reference, five questions were held to be unnecessary to answer or without jurisdiction and the remaining question, relating to whether a permanent stay of proceedings was justified by the court at first instance for the prosecutor's conduct, was answered in the negative.

In regard to the appeal application, which was essentially to extend the time within which to appeal, several issues were raised with the Court, which were as follows: whether s 189 of the *Industrial Relations Act* 1996 applied and that leave to extend time to appeal was required; whether dismissal of the charge under s 10(2) of OH&S Act at first instance amounted to acquittal; whether the order at first instance dismissing the charge under s 10(2) of OH&S Act was to quash the charge; whether charges under s 8(2) and s 10(2) may be laid in the alternative under OH&S Act; and, whether the provisions of s 10(3) and s 10(4) of the OH&S Act constitute essential legal elements of a charge under s 10(2) of that Act. It was held that there was no requirement for application to extend time to appeal. Moreover, the dismissal of the charge did not amount to acquittal, but the dismissal of the charge was to quash the charge. Charges may be laid in the alternative and the provisions of s 10(3) and s 10(4) do not constitute essential legal elements of a charge under s 10(2) of the OH&S Act. The matter was subsequently remitted to the judge at first instance.

The application for declaratory relief concerned matters which overlapped with those already covered in the reference and appeal and it was thus held that there was no utility in entertaining the application and it was dismissed.

Budlong v NCR Australia Pty Limited [2006] NSWIRComm 288

These proceedings came before the Commission following an unsuccessful unfair dismissal application at first instance where the employee was dismissed for having pornographic material on his laptop computer at work. The Full Bench made observations regarding the approach to be taken in cases involving dismissal where pornography was involved. The application for appeal raised other issues such as whether the Commissioner at first instance erred in relying on what the respondent claimed to be a zero tolerance policy in respect of pornographic material being on its infrastructure systems, there being no such policy in existence; whether the Commissioner failed to take into account the similar conduct of other employees and the respondent's failure to take any or similar disciplinary action against them, or even investigate their conduct; and whether the Commissioner erred in failing to take into account the culture in which the appellant worked over many years which permitted the appellant to view pornography in the workplace.

The Full Bench found that the Commissioner did err at first instance in the areas raised by the appellant, stating that no zero tolerance policy existed; no warning was given to the appellant as had been afforded previous employee's for similar conduct; and no allowance was made for the evidence relating to the substantial culture in the workplace. The dismissal was found to be harsh, unreasonable and unjust, and summary dismissal not justified. Reinstatement was held not to be impracticable in regard to remedy and was ordered on conditions.

Dr Bilal trading as the Hornsby Medical Centre v Marshall [2006] NSWIRComm 360; 158 IR 269

The appeal concerned the correctness of an Industrial Magistrate's construction of the provisions of the Clerical and Administrative Employees (State) Award. Leave to appeal was granted and the appeal upheld as it was found that the statutory duty under s 371 of the *Industrial Relations Act* 1996 was not met and the rules of natural justice were not observed. The matter was dealt with as a small claim, however, there was no request under s 370 for the application to be dealt with in such a manner. The decision was quashed as the Full Bench found that there was a failure to hear the parties, failure to consider the relevant award provisions and failure to decide the claim on the basis argued by the parties. The orders were set aside except for the moneys already paid to the respondent.

Building and Construction Industry (State) Award, Re [2006] NSWIRComm 387; 158 IR 110

This matter came before the Full Bench following the filing of an application for variation of the Building and Construction Industry (State) Award. The application came before the Full Bench as it fell within the Special Case Principles. The application dealt primarily with the rates of pay of apprentices and trainees. The application was consented to by all major parties with the exception of one minor interest, the Housing Industry Association, but this did not prevent the variation from being made. The Full Bench applied the relevant principles, and noted the comprehensive conciliated settlement of the parties to the award. Of significance to the application was the skills shortage and the public interest, changing demographics, higher educational levels of workers and the consent of all major parties to the award. All these factors formed a substantial basis to merit the increases and the variation to the award was accordingly made.

United FM Group Services Pty Limited trading as United KFPW v National Union of Workers, New South Wales Branch [2006] NSWIRComm 391; 158 IR 336

The proceedings were made pursuant to s 187 of the *Industrial Relations Act* 1996, when United FM Group Services Pty Limited t/as United KFPW sought leave to appeal and appeal from a decision and orders at first instance by a Commissioner given on 30 June 2006 in *National Union of Workers v United FM Pty Ltd trading as United KFPW* [2006] NSWIRComm 1112, which related to award interpretation. The first of the two main issues raised on appeal concerned what the appellant described as a conflation by the Commissioner of the applications before her which, it was said, led to a failure to exercise jurisdiction in respect of the actual claim made by the appellant in its application of 11 October 2005. The Full Bench held that error had occurred. However, the Full Bench noted that the question to be determined here was whether it should intervene as the appellant proposed, and remit the matter to the Commission differently constituted to be dealt with again. It was decided that the case was not made out on the first issue by the appellant to warrant appellate intervention.

The second issue concerned the meaning of the phrase "obtains acceptable alternative employment" as set out in the award. The loss by the employer of a service contract led to redundancy which involved difficulties over the payment of severance pay. The Full Bench held that where an employer, through its efforts, has obtained alternative

employment involving minimal dislocation for employees, no loss of accumulated employment benefits such as sick leave and long service leave, where there is continuity of service and the employees are not disadvantaged by the terms offered in the new employment (as would be the case in a succession, assignment or transmission of business), the employer would have a *prima facie* case for the exercise of discretion in its favour for the granting of an exemption, either in whole or in part, from the award obligation to make severance payments. Leave was accordingly granted and the appeal in respect of this ground was upheld.

Lyco Industries Pty Limited v Inspector Ruth Buggy (WorkCover Authority of New South Wales) [2006] NSWIRComm 396; 159 IR 82

These proceedings relate to an appeal against conviction and sentence under s 196 of the *Industrial Relations Act* 1996 and s 5AA(1) of the *Criminal Appeal Act* 1912 imposed at first instance in *Inspector Ruth Buggy v Lyco Industries Pty Limited* [2005] NSWIRComm 298 and *Inspector Ruth Buggy v Lyco Industries Pty Limited* [2005] NSWIRComm 423. Following pleas of not guilty to two charges under ss 18(1)(a) and 18(1)(b) respectively of the *Occupational Health and Safety Act* 1983 (1983 Act), at first instance the trial judge found both offences proven and imposed penalties. The appeal explored the meaning of "supplies" in s 18(1), whether the plant was supplied in New South Wales as well as the application of s 3A of the *Crimes Act* 1900. The Full Bench held that the plant was supplied in New South Wales and, after comparing the culpability of the appellant with other offenders prosecuted for the same incident considered by reference to the principle of parity, also found that the sentence imposed was not manifestly excessive. The appeal was accordingly dismissed.

APPENDIX 3

TIME STANDARDS

Industrial Relations Commission

Applications for leave to appeal and appeal

Time from commencement to finalisation	Standard for 2005/ Achieved in 2005		Standard for 2006/ Achieved in 2006	
Within 6 months	50%	**63.0%**	50%	**67.5%**
Within 12 months	90%	**86.9%**	90%	**87.5%**
Within 18 months	100%	**95.6%**	100%	**95.0%**

Award Applications [including Major Industrial Cases]

Time from commencement to finalisation	Standard for 2005/ Achieved in 2005		Standard for 2006/ Achieved in 2006	
Within 2 months	50%	**74.4%**	50%	**85.0%**
Within 3 months	70%	**79.5%**	70%	**87.7%**
Within 6 months	80%	**85.8%**	80%	**90.4%**
Within 12 months	100%	**94.3%**	100%	**94.0%**

Enterprise Agreements

Time from commencement to finalisation	Standard for 2005/ Achieved in 2005		Standard for 2006/ Achieved in 2006	
Within 1 month	75%	**86.7%**	75%	**86.4%**
Within 2 months	85%	**93.5%**	85%	**93.2%**
Within 3 months	100%	**96.8%**	100%	**96.4%**

Industrial Disputes

Time to first listing	Standard for 2005/ Achieved in 2005		Standard for 2006/ Achieved in 2006	
Within 72 Hours	50%	**51.3%**	50%	**51.8%**
Within 5 Days	70%	**64.6%**	70%	**66.3%**
Within 10 Days	100%	**82.4%**	100%	**83.8%**

Applications relating to Unfair Dismissal

Time from commencement to finalisation	Standard for 2005/ Achieved in 2005		Standard for 2006/ Achieved in 2006	
Within 2 months	50%	**65.8%**	50%	**54.3%**
Within 3 months	70%	**73.5%**	70%	**66.1%**
Within 6 months	90%	**87.7%**	90%	**82.0%**
Within 9 months	100%	**93.2%**	100%	**94.5%**

TIME STANDARDS

Industrial Court

Applications for leave to appeal

Time from commencement to finalisation	Standard for 2005/ Achieved in 2005		Standard for 2006/ Achieved in 2006	
Within 9 months	50%	**63.3%**	50%	**60.1%**
Within 12 months	90%	**73.2%**	90%	**78.9%**
Within 18 months	100%	**88.7%**	100%	**94.2%**

Prosecutions under OHS legislation

Time from commencement to finalisation	Standard for 2005/ Achieved in 2005		Standard for 2006/ Achieved in 2006	
Within 9 months	50%	**20.2%**	50%	**26.2%**
Within 12 months	75%	**37.1%**	75%	**43.8%**
Within 18 months	90%	**55.4%**	90%	**68.4%**
Within 24 months	100%*	**76.0%**	100%*	**82.8%**

Applications for relief from Harsh/Unjust Contracts

Time from commencement to finalisation	Standard for 2005/ Achieved in 2005		Standard for 2006/ Achieved in 2006	
Within 6 months	30%	**12.6%**	30%	**19.3%**
Within 12 months	60%	**47.4%**	60%	**59.8%**
Within 18 months	80%	**63.2%**	80%	**73.4%**
Within 24 months	100%*	**72.4%**	100%*	**80.4%**

APPENDIX 4

COMMITTEES

Library Committee

The Hon. Justice Kavanagh (Chair)
The Hon. Justice Staff
Commissioner Alastair Macdonald
Mick Grimson, Industrial Registrar
Yvonne Brown, Director, Library Services, Attorney General's Department
Jack Hourigan, Manager, NSW Law Libraries
Juliet Dennison, Librarian, IRC of NSW

Education Committee

The Hon. Justice Walton, Vice President
The Hon. Justice Schmidt (Chair)
Commissioner Connor
Commissioner McLeay
Mick Grimson, Industrial Registrar
Ruth Windeler, Judicial Commission of NSW
Charlotte Dennison, Judicial Commission of NSW

Section 106 Committee

The Hon. Justice Walton, Vice President (Chair)
The Hon. Justice Marks
The Hon. Justice Schmidt
The Hon. Justice Kavanagh
The Hon. Justice Haylen

Award Review Committee

The Hon. Justice Walton, Vice President (Chair)
The Hon. Deputy President Harrison
Deputy President Sams
Deputy President Grayson
Mick Grimson, Industrial Registrar
Tome Simonovski, Information Manager

Building Committee

The Hon. Justice Walton, Vice President (Chair)
The Hon. Justice Kavanagh
Mick Grimson, Industrial Registrar
Simon Furness, Director, Asset Management Services, Attorney General's Department
Kerry Marshall, Assistant Director - Major Works, Attorney General's Department
[This committee co-opts other members as circumstances require]

APPENDIX 5

LEGISLATIVE AMENDMENTS

***Industrial Relations Amendment Act* 2006 No 1**

This Act was assented to on 13 March 2006 and commenced on 17 March 2006. It is an Act that amends the principal Act to enable the Industrial Relations Commission to resolve certain disputes in circumstances where the parties to the dispute have agreed in writing for the Commission to do so; to remove the requirement that a Full Bench of the Commission (other than in Court Session) be constituted with at least one of its members being a Commissioner; to confirm that the power of the President of the Commission to direct the business of the Commission includes the power to make a direction in relation to particular proceedings or classes of proceedings, and to provide that certain awards made by the Commission to give effect to an agreement of the parties to such awards are to have effect as enterprise agreements under the principal Act.

***Public Sector Employment Legislation Amendment Act* 2006 No 2**

This Act was assented to on 13 March 2006 and commenced on 17 March 2006. The principal object the amending Act is to change the basis on which certain public sector staff (including staff in the public health system) are employed. In particular, the Bill: removes the employment functions of certain statutory corporations that currently employ their own staff (such as the RTA, STA and the TAFE Commission) and provides instead for the staff to be employed by the Government of New South Wales in the service of the Crown; creates the Government Service of New South Wales (which will also include the Public Service) to facilitate the employment of staff in the public sector; provides for the employment of staff in Divisions of the Government Service (which will include Public Service Departments whose staff will continue to be employed subject to Chapter 2 of the *Public Sector Employment and Management Act 2002* (***the PSE&M Act***) as well as other Divisions in which staff will be employed to enable statutory corporations to exercise their functions); removes the employment functions of public health organisations (such as area health services) that currently employ staff in the public health system and the employment-related functions of the Health Administration Corporation, and provides instead for that staff to be employed in the NSW Health Service (as created by the *Health Services Act 1997*) by the Government of New South Wales in the service of the Crown; abolishes the Ambulance Service as a statutory corporation and provides instead for its functions to be exercised by the Director-General of the Department of Health and for its staff to be employed in the Ambulance Service of NSW as part of the NSW Health Service; makes a number of other miscellaneous and consequential amendments to the PSE&M Act, the *Health Services Act 1997*, the *Health Administration Act 1982* and a number of other Acts in connection with the employment of staff in the public sector and the public health system.

***Superannuation Legislation Amendment Act* 2006 No 53**

This Act was assented to on 20 June 2006 and commenced in part on 30 June 2006, except for Sch 1.4 [1] and [3]-[27] which are not yet in force. It is an Act to amend various public sector and parliamentary superannuation Acts with respect to police hurt on duty benefits, police superannuation benefits, the making of salary sacrifice contributions, the determination of salary for superannuation purposes and the nomination of the commencement of the payment of pensions; and for other purposes. The amendments mainly affect the invalidity benefits payable from the Police Superannuation Scheme to officers who cease employment because of injury or ill-health.

***Police Amendment (Miscellaneous) Act* 2006 No 94**

This Act was assented to on 22 November 2006 and is not yet in force. The Act amends the *Police Act* 1990 to make further provisions for the testing of police officers for the presence of alcohol, prohibited drugs and steroids and with respect to police complaints: to rename NSW Police as the NSW Police Force and to make miscellaneous amendments to the *Police Act* 1990 and other Acts following a statutory review of the *Police* Act 1990, and for other purposes. Schedule 1 provides for the implementation of the recommendations of the Police Integrity Commission's report on Operation Abelia regarding the testing of police officers for illegal drugs and steroids. Schedule 2 includes legislative proposals arising from the statutory review of the *Police Act* 1990 which sought to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

***Industrial Relations (Child Employment) Act* 2006 No 96**

This Act was assented to on 27 November 2006 and commenced on 1 December 2006. The Act makes provision with respect to the employment of certain children by trading, financial or foreign corporations; to make a consequential amendment to the *Industrial Relations Act* 1996; and for other purposes. The major purposes of the Act are to provide a safety net of minimum conditions to protect children from substandard wages and conditions if and when they enter into workplace agreements or other arrangements. The Act also gives children who are unfairly dismissed remedies that are no longer available under the *Workplace Relations Act* 1996.

***Industrial Relations Further Amendment Act* 2006 No 97**

This Act was assented to on 27 November 2006 and commenced on 1 December 2006. It is an Act to amend the *Industrial Relations Act* 1996 with respect to dispute resolution by the Industrial Relations Commission, co-operation with industrial relations tribunals of other States, a NSW industrial relations website and outworkers in clothing trades; to amend the *Occupational Health and Safety Act* 2000 and the *Workers Compensation Act* 1987 with respect to the protection of workers from dismissal; and for other purposes. The Act introduces five key measures which are: protection for injured workers; protection for raising legitimate OH & S issues at work; alternative dispute resolution services delivered by the NSW Industrial Relations Commission; joint sittings of the NSW Commission and interstate tribunals; electronic publishing of the industrial gazette; and minor amendments to other provisions of the *Industrial Relations Act* 1996.

***Workers Compensation Amendment (Permanent Impairment Benefits) Act* 2006 No 98**

This Act was assented to on 27 November 2006 and commenced on 1 January 2007. The Act amends the *Workers Compensation Act* 1987 to provide for an increase in certain benefits paid to workers who receive injuries that result in permanent impairment; and for other related purposes. The Act provides for a 10 per cent increase in dollar terms to the lump sums paid to workers for permanent impairment under section 66 of the *Workers Compensation Act* 1987. The increased benefits will apply to workers who suffer a permanent impairment from an injury sustained on or after 1 January 2007

APPENDIX 6

AMENDMENTS TO REGULATIONS AFFECTING THE COMMISSION

Building and Construction Industry Long Service Payments Regulation 2006

The commencement date of this Regulation was 1 September 2006. The object of this regulation is to remake, with minor amendments, the provisions of the Building and Construction Industry Long Service Payments Regulation 2000 which was repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act* 1989. The new Regulation deals with, among other things, the following matters: (a) the definition of standard pay, (b) the circumstances in which a registered worker does not accumulate a service credit, (c) the retirement age for certain workers, (d) the circumstances in which a long service levy is not payable in respect of the erection of a building (these include where the cost of erecting the building is less than $25,000, or where the building is erected for a statutory body or a non-profit organisation), (e) the rates of long service levies based on the cost of erecting the building concerned, and (f) the records to be kept by employers about their workers, and the particulars to be contained in those records.

Industrial Relations (Child Employment) Regulation 2006

This regulation came into force on 1 December 2006 and is made under the *Industrial Relations (Child Employment) Act* 2006, including sections 7(2) and (4) and 21 (the general regulation-making power). The objects of the Regulation are to prescribe the manner and form in which records are to be kept for the purposes of section 7 (Record-keeping requirements) of the *Industrial Relations (Child Employment) Act* 2006, and to provide for the transfer of such records to the successor of an employer to whom section 7 applies. This Regulation comprises or relates to matters of a machinery nature, and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Superannuation Regulation 2006

The object of this Regulation is to remake, without any changes of substance other than the omission of a spent transitional provision, the Superannuation Regulation 2001, which was repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act* 1989. The regulation provides for the reduction and calculation of benefits payable under the State Superannuation Scheme (*the Scheme*) to or in respect of a contributor or former contributor to the Scheme who has received early release of a benefit on the grounds of severe financial hardship or on compassionate grounds. It is necessary to remake the provisions of the Superannuation Regulation 2001 concerning the superannuation contributions surcharge despite the Commonwealth's abolition of the surcharge (with effect from 1 July 2005). This is because any liability for the surcharge accrued by a contributor or former contributor to the Scheme before that abolition is not affected by the abolition. This Regulation is made under the *Superannuation Act* 1916, including sections 61RA, 61RH and 86 (the general regulation-making power).

APPENDIX 7

MATTERS FILED IN INDUSTRIAL RELATIONS COMMISSION (OTHER THAN IN THE INDUSTRIAL COURT)

Matters filed during period 1 January 2006 to 31 December 2006 and matters completed and continuing as at 31 December 2006 which were filed under the *Industrial Relations Act* 1996.

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

(other than in the Industrial Court)

Nature of Application	Filed 1.1.2006 – 31.12.2006	Completed 1.1.2006 – 31.12.2006	Continuing as at 31.12.06 (including previous years)
APPEALS	42	42	24
Appeal - from Industrial Registrar	0	0	0
Appeal - from an Award matter	1	3	0
Appeal - from a Child Protection matter	0	0	0
Appeal - from a dispute matter	4	6	3
Appeal - from an Enterprise Agreement matter	0	0	0
Appeal - from an unfair dismissal matter	30	31	14
Appeal - other	7	2	7
AWARDS	553	639	32
Application create new Award	63	90	14
Application vary an Award	479	524	16
Application vary – nominal term	0	4	0
Application – State Wage Case	1	1	1
Rescission of Award	5	6	0
Review of Award	0	5	0
Application for exemption (s.18)	2	4	0
Award - other	3	5	1
DISPUTES	668	955	217
s130 of the Act	637	922	205
s130, s380 of the Act	11	15	1
s332 contract determination	10	13	6
s332, s380 of the Act	2	1	1
s146A of the Act	8	4	4
Other	0	0	0
ENTERPRISE AGREEMENTS	224	276	1
Approval (Employees and Union)	1	3	0
Approval (Employees)	2	7	0
Approval (Union)	221	266	1
UNFAIR DISMISSALS	1490	2250	155
Application (by individual only)	696	1019	47
Application (representative)	558	873	60
Application (organisation representative)	233	353	48
Application (organisation – multiple)	3	5	0
OTHER	206	193	90
Contract Agreements	1	1	0
Contract Determinations	10	12	6
Contract of Carriage (claim for compensation)	26	0	27
Application under Child Protection (Prohibited Employment) Act	3	0	3
Application for Demarcation Order	3	4	8
Application under *Employment Protection Act* 1992	0	0	0
Registration pursuant to Clothing Trades Awards	47	51	2
Application extend duration of Industrial Committee	22	24	1
Application for reinstatement injured employee (by individual)	6	8	1
Application for reinstatement injured employee (by organisation)	15	15	6
Application for Review of Order under s181D *Police Service Act*	24	22	12
Application for Rescission of Order under s173 *Police Service Act*	10	8	5
Application for Relief from Victimisation s213 of the Act	31	41	13
Child Employment Principles Case	1	0	1
Miscellaneous (not categorised)	7	7	5
SUB-TOTAL	**3183**	**4355**	**519**

APPENDIX 8

MATTERS FILED IN INDUSTRIAL COURT

Matters filed during period 1 January 2006 to 31 December 2006 and matters completed and continuing as at 31 December 2006 which were filed under the *Industrial Relations Act* 1996.

INDUSTRIAL COURT OF NEW SOUTH WALES

Nature of Application	Filed 1.1.2006 – 31.12.2006	Completed 1.1.2006 – 31.12.2006	Continuing as at 31.12.06 (including previous years)
APPEALS	60	84	37
Appeal from Local Court (Industrial Magistrate)	16	30	5
Appeal – superannuation	5	10	4
Appeal – OHS prosecution	10	22	9
Appeal – against decision of VETAB	3	1	2
Appeal – s106 matter	23	16	15
Appeal – other	3	5	2
CONTRAVENTION	0	6	2
Contravention of Dispute Order s139 of the Act	0	6	2
HARSH CONTRACTS	218	598	341
Application under s106 of the Act	218	598	341
PROSECUTIONS	193	175	281
Offences under *Industrial Relations Act* or *Regulations* (s.397)	0	0	0
Prosecution – s8(1) *OHS Act* 2000	70	81	91
Prosecution – s8(2) *OHS Act* 2000	50	51	70
Prosecution – s9 *OHS Act* 2000	3	4	4
Prosecution – s10(1) *OHS Act* 2000	8	3	14
Prosecution – s10(2) *OHS Act* 2000	3	3	9
Prosecution – s11 *OHS Act* 2000	2	0	4
Prosecution – s13 *OHS Act* 2000	0	0	0
Prosecution – s20(1) *OHS Act* 2000	2	0	3
Prosecution – s26(1) *OHS Act* 2000	46	12	55
Prosecution – s81(1) *OHS Act* 2000	4	2	4
Prosecution – s92 *OHS Act* 2000	0	1	0
Prosecution – s94 *OHS Act* 2000	0	1	0
Prosecution – s15(1) *OHS Act* 1983	0	9	10
Prosecution – s16 *OHS Act* 1983	0	0	0
Prosecution – s16(1) *OHS Act* 1983	0	0	6
Prosecution – s16(2) *OHS Act* 1983	0	0	0
Prosecution – s17(1) *OHS Act* 1983	0	1	6
Prosecution – s18(1) *OHS Act* 1983	1	0	1
Prosecution – s18(2)(a) *OHS Act* 1983	0	1	0
Prosecution – s19(a) *OHS Act* 1983	0	0	0
Prosecution – s27(1) *OHS Act* 1983	0	0	0
Prosecution – s50(1) *OHS Act* 1983	2	4	4
Prosecution –not categorised *OHS Act* 2000	2	2	0
OTHER	63	54	49
Declaratory jurisdiction (s154, s248)	11	14	7
Cancellation of registration industrial organisation	2	2	0
Civil Penalty for breach of industrial instrument	32	24	21
Monetary claim s357 of the Act	2	1	1
Monetary claim s365 of the Act	4	8	7
Monetary claim under *Long Service Leave Act* 1955	0	0	0
Miscellaneous (not otherwise categorised)	12	5	13
SUB-TOTAL	**534**	**917**	**710**

TOTAL (IRC & IC MATTERS)	**3717**	**5272**	**1229**