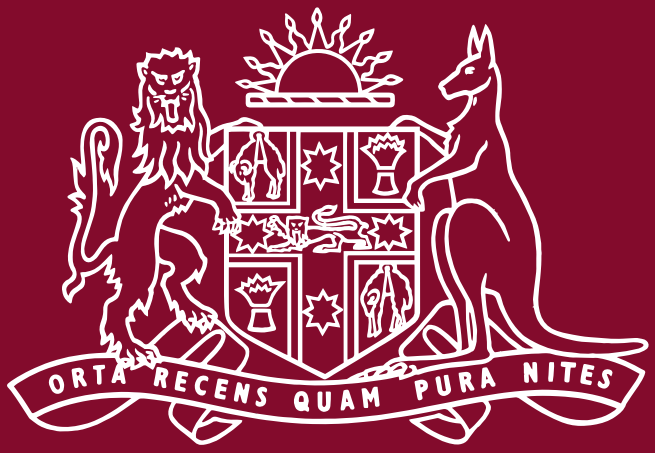


Industrial Relations Commission of New South Wales

ANNUAL REPORT 2022

ISSN 1832-2093

Website:	www.irc.nsw.gov.au
Email:	IRC.Registry@courts.nsw.gov.au
Street Address:	Level 10, 10-14 Smith St, Parramatta NSW 2150
Registry Hours:	9.00am – 4.00pm Mon – Fri
Postal Address:	PO Box 927 Parramatta NSW 2124
Contact details:	Telephone: 02 8688 3516 Facsimile: 02 8688 3541

The principal place of business of the Industrial Relations Commission of New South Wales is Level 10, 10 Smith Street, Parramatta. We acknowledge that this land is the traditional land of the Darug people of the Eora Nation and we respect their spiritual relationship with their country.

The Commission also conducts proceedings remotely and in other locations across the State and we acknowledge and pay our respects to the traditional custodians of those locations.

Letter of transmittal to the Minister

The Hon. Sophie Cotsis MP
Minister for Industrial Relations,
and Minister for Work Health and Safety
52 Martin Place
Sydney NSW 2000

Dear Minister

I am pleased to submit to you the Annual Report of the operations of the Industrial Relations Commission of New South Wales for the year ended 31 December 2022 for presentation to each House of Parliament in accordance with s 161 of the *Industrial Relations Act 1996*.

Yours sincerely

Nichola Constant
Chief Commissioner

TABLE OF CONTENTS

'22

FOREWORD

FOREWORD BY THE CHIEF COMMISSIONER

The year of 2022 was eventful and significant for the Commission and the work it performs in New South Wales.

On 30 April 2022, the Commission marked 120 years as the longest continuously running industrial tribunal in the world. This remarkable milestone was recognised by a ceremonial sitting of the Commission on 18 July 2022. The ceremony was attended by former heads of the Commission, the Minister for Employee Relations, many former members of the Commission, and special guests, and was live-streamed.

A number of public health orders, policies and administrative directions were made during 2021 and the beginning of 2022 which impacted on the work of the Commission. These orders, policies and directions required certain employees to be vaccinated against COVID-19 as a condition of continued employment. The implementation of these orders and policies led, in many circumstances, to the termination of employment of employees who were not vaccinated. By way of illustration, there was a 62% increase in the number of unfair dismissal claims filed with the Commission when compared with 2021, and of the 444 unfair dismissal claims filed in 2022, 268 were vaccine related. Consequently, in the first three months of 2022, the number of unfair dismissal applications filed almost equalled the number filed for the full year in 2021 and surpassed the number of unfair dismissals filed in each of the previous four years.

The total filings for the year increased marginally, from 1081 to 1087 in a year when no s 19 three-yearly award reviews were undertaken. Despite the consistent workload, the Commission achieved a completion rate of 115.5% in 2022.

As New South Wales moved past COVID-19 restrictions, the Commission returned gradually to in-person hearings firstly in Parramatta, Newcastle, and other regional centres including Ballina and Forster. All remaining restrictions on access to the Commission were lifted on 4 July 2022. In the interests of justice and to promote access to the Commission, remote hearings remain available in appropriate circumstances. However, the Commission considers that the attendance of parties in-person often aids significantly in the process of resolving industrial disputes and other claims.

Commissioner John Murphy retired on 26 July 2022. The Commissioners and I thank Commissioner Murphy for his hard work and dedication to the Commission and to the practice of Industrial Relations generally. Commissioner Murphy was replaced by Commissioner Janet McDonald, who was sworn in at a ceremonial sitting, and commenced her role as a Commissioner on 29 August 2022. A ceremonial sitting was also held in August to acknowledge Commissioner O'Sullivan's appointment, which occurred during the COVID-19 lockdown in 2021.

The Industrial Registrar, Elizabeth Robinson, and the Deputy Industrial Registrar, Ruwinie Delgoda, both joined the Commission in 2022.

On 2 December 2022, the Rule Committee made the Industrial Relations Commission Rules 2022. These new Rules reflect changes in the Commission's jurisdiction since 2009, and particularly since 2016. I acknowledge the hard work of my past and present colleagues on the Rule Committee and the work of the Parliamentary Counsel's Office in the making of these Rules.

The Rule Committee, including the non-Commissioner members who generously volunteered to be co-opted pursuant to subs-s 186(2) of the *Industrial Relations Act 1996*, also continued to work to modernise the Commission's most common application and response forms so that these could be filed online. Eleven forms, including unfair dismissal and public sector disciplinary forms may now be filed through the Online Registry, at any time of the day or night, significantly enhancing parties' access to the Commission. When filed through this system the documents are automatically uploaded to the Justicelink system, thus also providing a substantial benefit to the Registry by reducing manual data entry. I acknowledge the work of the co-opted Rule Committee, current and past Registrars, and the Digital Reform Team, in particular Alex Roussos, without whose work these forms would not exist. I am especially grateful for the work of the Registrars and the Digital Reform Team in assisting parties to embrace the Commission's online forms.

Improvements were made to the Commission's premises in Parramatta in 2022, including a new chambers to accommodate the sixth Commissioner, and the installation of added AVL equipment to allow a Commission meeting room to function as an additional AVL hearing room, when required.

The Registrars, the Registry staff and the Commission's members, as in previous years, worked with dedication throughout 2022. The content of this Annual Report is again a testament to their hard work and dedication to the people of New South Wales, and in particular, the users of the Commission.

In 2023, the Commission will continue to strive for improvements to meet the ongoing needs of users in consultation with stakeholders. The Commission will maintain its commitment to conciliate promptly and where resolution by conciliation is not possible, to determine industrial disputes and other matters taking into account the principle of just, quick and cheap administration of justice.

1. COMMISSION PROFILE

The Industrial Relations Commission is established under the *Industrial Relations Act 1996* ("the Act").

Purpose and role of the Commission

The Commission's principal role is to resolve industrial disputes and unfair dismissal claims, fix wage rates and set terms and conditions of employment by making industrial awards and approving enterprise agreements. The Commission seeks to ensure that industrial disputes arising between public sector and local governments employers, and their employees in New South Wales, and those involving contracts of bailment and contracts of carriage, are resolved quickly, in a fair manner and with the minimum of legal technicality.

The Commission has conciliation and arbitral functions in relation to a range of industrial matters. Section 3 of the Act sets out the Commission's functions as follows:

- to provide a framework for the conduct of industrial relations that is fair and just;
- to promote efficiency and productivity in the economy of the State;
- to promote participation in industrial relations by employees and employers at an enterprise or workplace level;
- to encourage participation in industrial relations by representative bodies of employees and employers and to encourage the responsible management and democratic control of those bodies;
- to facilitate appropriate regulation of employment through awards, enterprise agreements and other industrial instruments;
- to prevent and eliminate discrimination in the workplace and, in particular, to ensure equal remuneration for men and women during work of equal, or comparable, value;
- to provide for the resolution of industrial disputes by conciliation and, if necessary, by arbitration in a prompt and fair manner; and
- to encourage and facilitate cooperative workplace reform and equitable, innovative and productive workplace relations.

In particular, the Commission exercises its jurisdiction in relation to:

- establishing and maintaining a system of enforceable industrial 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;
- resolving unfair dismissal claims by conciliation and, if necessary, by arbitration to determine if a termination of employment 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;
- determining the annual State Wage Case following the FWC Annual Wage Review, and dealing with other major industrial proceedings;
- various proceedings relating to removal and disciplinary actions under the *Police Act 1990* ("*Police Act*");
- proceedings relating to disciplinary decisions in the public sector under the Act (Ch 2, Pt 7);
- applications under the *Entertainment Industry Act 2013* ("*Entertainment Industry Act*"); and
- various proceedings relating to contracts of carriage and bailment under Ch 6 of the Act .

The Commission also has jurisdiction to hear proceedings arising under various other industrial and related statutes including the *Workers Compensation Act 1987* ("*Workers Compensation Act*"), the *Work Health and Safety Act 2011* ("WHS Act"), the *Essential Service Act 1988*, and the *Industrial Relations (Child Employment) Act 2006*.

A brief history of the Commission is set out in Appendix 7.

1. COMMISSION PROFILE *CONT.*

Membership of the Commission

Chief Commissioner

Chief Commissioner Nichola Jane Constant was appointed Chief Commissioner on 2 March 2020, and as a Commissioner on 23 July 2018.

Commissioners

Commissioner John Vincent Murphy was appointed 4 December 2015 and retired on 26 July 2022.

Commissioner Damian James Sloan was appointed 30 July 2018.

Commissioner Janine Gai Webster was appointed 3 December 2018.

Commissioner Christopher Andrew Muir was appointed 30 August 2021.

Commissioner Daniel David O'Sullivan was appointed 22 October 2021.

Commissioner Janet Clare McDonald was appointed 29 August 2022.

Table 1.1 Commission Members

	2018	2019	2020	2021	2022
Total Members of the Commission	**8**	**5.4**	**4.4**	**4.78**	**5.9**

Table 1.1 depicts the number of members over the previous five years. In 2018, the Annual Report counted the total number of Commissioners who served at any time during the year. After 2019 the total number of Commissioners is listed as an average headcount. The Commission had six Commissioners for the majority of 2022 with a brief period from 26 July 2022 to 29 August 2022 between the retirement of Commissioner Murphy and the appointment of Commissioner McDonald where there were five Commissioners. The average number of Commissioners over the 2022 year was 5.9.

The Industrial Registry

The Industrial Registrar has administrative responsibility for the operation of the Commission. The Industrial Registrar reports to the Executive Director and Principal Registrar of the Supreme Court in relation to reporting, staff and budgetary responsibilities. The Industrial Registrar works with the Chief Commissioner to manage the day-to-day operational procedures and activities of the Commission.

The Industrial Registrar has duties under the Act and other legislation including:

- issuing summonses for the purpose of dealing with a matter;
- determining applications, and issuing certificates, for conscientious objection to union membership, and approving and revoking right of entry permits;
- publishing the orders, awards and other instruments made by the Commission on the Commission's website so that these orders and instruments have legal effect;
- administering the registration, amalgamation and consent to alteration of the rules of industrial organisations, and
- overseeing the election of officers of industrial organisations.

Industrial Registrar Elizabeth Robinson and Deputy Industrial Registrar Ruwinie Delgoda

Elizabeth Robinson commenced in the role of Industrial Registrar on 22 February 2022. Registrar Robinson took over from Acting Industrial Registrar Irina Hoskinson who filled the role following former Industrial Registrar Melinda Morgan's assignment to the Land and Environment Court in 2021. The Commission is grateful to former Acting Registrar Irina Hoskinson for her hard work and service to the Commission in the lead up to Registrar Robinson's appointment and commencement.

The Deputy Registrar's role was left vacant as a consequence of the restructure of the Registry in 2016. After six years the role was filled again and, on 18 July 2022, Ruwinie Delgoda was appointed as the Deputy Industrial Registrar.

1. COMMISSION PROFILE *CONT.*

The Registrar, aided by the Deputy Registrar, is working to improve and modernise the Registry, while meeting the Commission's statutory responsibilities and to enhance the parties' interactions with the Commission.

The Registrars have worked hard to implement new initiatives and to educate and support parties to engage with the Commission's Online Registry to access online applications forms, case manage and to order transcripts.

Registry team - Client Services and Commissioner Support

The Registry provides administrative support to the members of the Commission, supports the Industrial Registrar in carrying out her statutory functions, and provides services to its internal and external clients. The Registry has two teams, Client Services and Commissioner Support.

In 2022 the Registry welcomed additional staff and new roles were created in Client Services and Commissioner Support. Over the year, Registrar Robinson sought to upskill Registry team members to undertake the duties in Client Services or Commissioner Support to enhance job satisfaction and teamwork and to aid flexibility to improve support to clients and Commissioners.

Registry staff working in Client Services' roles are the usual initial point of contact for the Commission's users. The Client Services team receives new applications, evidence and other materials filed in the Commission. These team members assist users of the Commission who seek information about the operation of the Commission and appearing before the Commission. They also undertake duties related to the publishing of industrial awards, enterprise agreements and other orders made by members of the Commission. The team maintains records concerning parties to awards, Industrial Committees and their members, as well as processing right of entry and Work Health and Safety permit applications, and administering provisions relating to the regulation and corporate governance of industrial organisations under Ch 5 of the Act.

The Commissioner Support team provides administrative support to the Chief Commissioner and the Commissioners. The team is responsible for communication with parties about case management, listing matters to be heard by members, and providing formal orders and decisions made by the Commission to parties.

Regional Sittings of the Commission and Remote Access to the Commission

The Commission maintains its premises at 237 Wharf Road, Newcastle. With the retirement of Commissioner Stanton in 2021 there are currently no Commission members based permanently in Newcastle. However, members of the Commission use the premises for matters involving parties from the Hunter area and other nearby regions.

Commissioners continued in 2022 to make themselves available to hear matters in other regional areas. In addition to Newcastle, members of the Commission heard matters in Ballina, Forster, and Goulburn throughout the year.

While the Commissioners believe strongly in the value to parties of attending hearings in person, AVL facilities are available on a case-by-case basis. The Commission will consider the circumstances of the parties and witnesses to determine whether, in the interests of justice, the matter, or a portion of it, should be heard remotely.

In 2022, additional AVL facilities were installed in a Commission meeting room to allow the room to function as an overflow AVL hearing room. The Commission has also commenced using a second AVL system which allows the member of the Commission to place parties in separate virtual rooms to improve the ability for parties, especially those in regional areas, to engage more effectively and efficiently in conciliation.

Governance

Commissioners are appointed by the Governor on the advice of the Minister for Finance, and Minister for Employee Relations, and from 26 March 2021 to the end of the reporting period, jointly with the Attorney General.

Decisions of Commissioners may be appealed, with leave, to a Full Bench of the Commission. Decisions of the Commission may be reviewed by the Supreme Court of NSW as part of its jurisdiction to undertake judicial review.

Commissioners are judicial officers under the *Judicial Officers Act 1986*. The Judicial Commission of NSW provides oversight of all judicial officers by considering and determining complaints about their conduct and/or behaviour.

The Registry of the Commission operates within the Superior Courts Division of the Courts and Tribunals Services Delivery division of the NSW Department of Communities and Justice. Corporate services, including human resources management, security, facilities and asset management, are managed by Courts and Tribunals Services Delivery in conjunction with the Registrars. Financial and budget management is facilitated by the Industrial Registrar. The Industrial Registrar and the Executive Director and Principal Registrar of the Superior Courts have financial delegations in relation to the operations of the Commission, including the delegation to enter into contracts on behalf of the Commission.

2. PERFORMANCE

Performance snapshot

- The total number of filings was 1087
- An average of 197.12 matters per Commissioner
- 161 arbitrated hearings
- 369 arbitrated hearing days
- Arbitrated hearing days per Commissioner was 62.54 (up 10.32%).
- 1256 matters finalised
- Clearance rate of 115.5% (up 23.8%).

Filings in 2022

Figure 2.1 Distribution of filings in 2022 by matter type

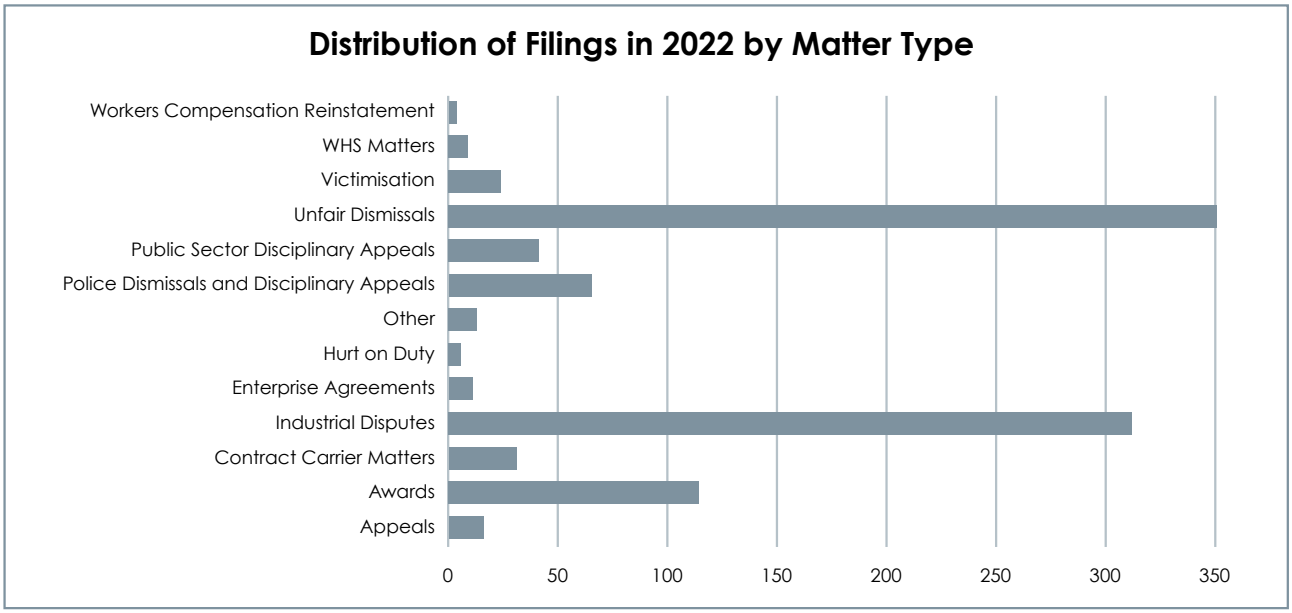


Figure 2.2 Distribution of filings by matter type (rounded to nearest percent)

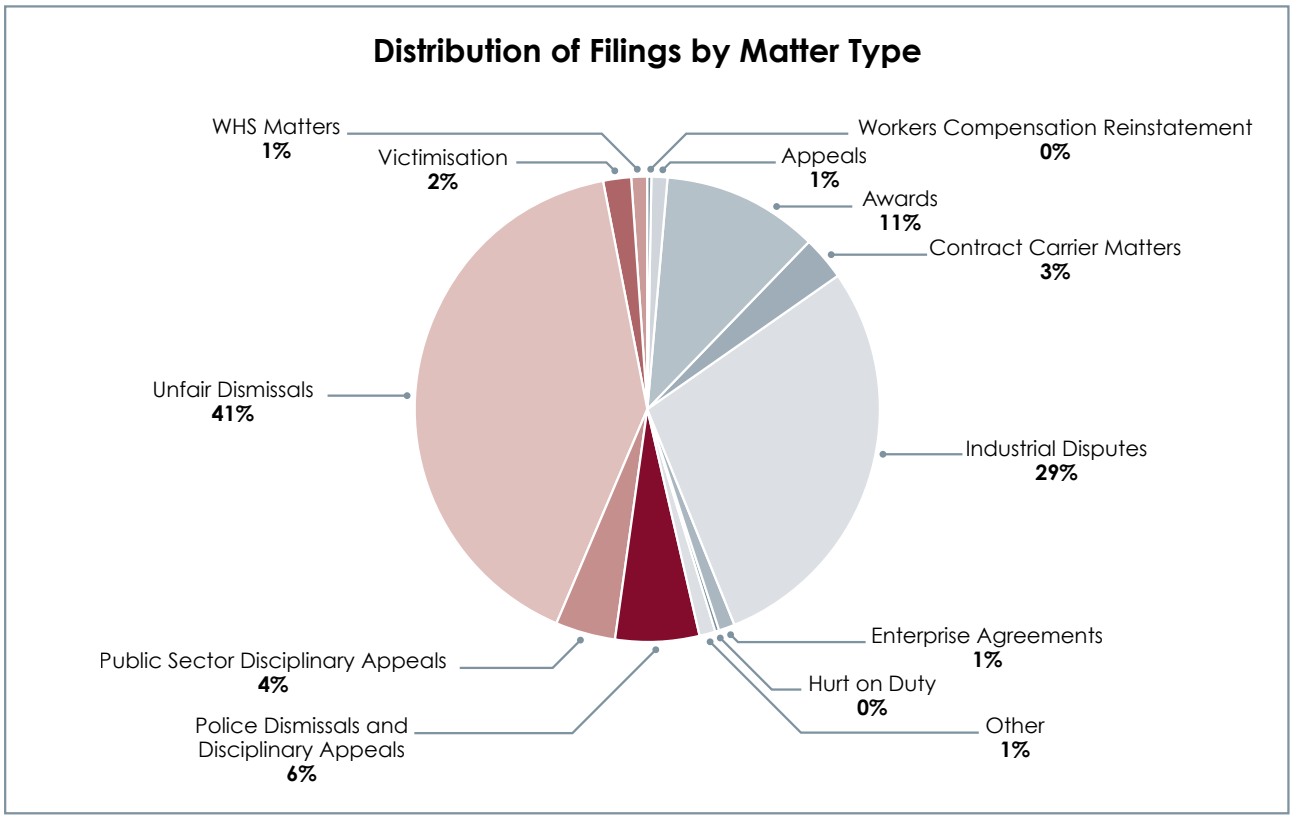
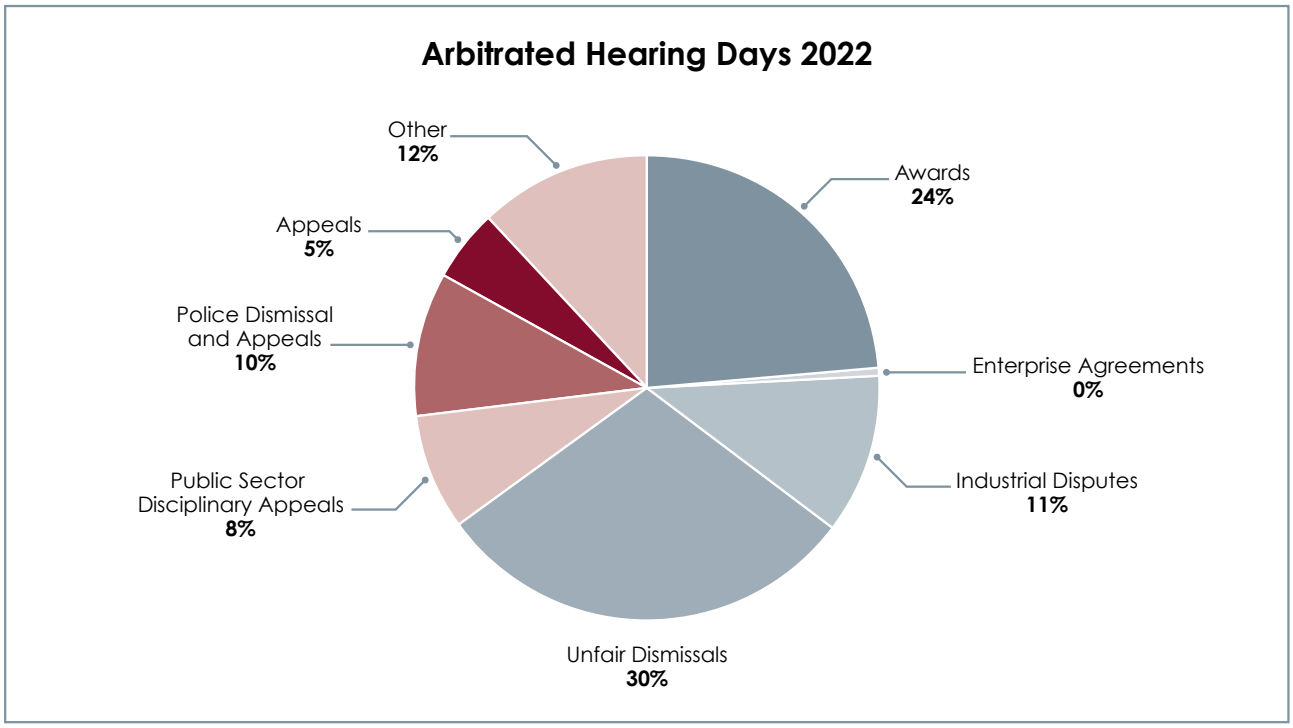


Figure 2.3 Distribution of arbitrated hearing days (rounded to nearest percent)



2. PERFORMANCE *CONT.*

Overall Caseload

The comparative caseload statistics for the Industrial Relations Commission between 2018 and 2022 are summarised below in Table 2.1.

Table 2.1 Caseload Statistics

	2018	2019	2020	2021	2022
Appeals					
Filed	12	16	23	12	**16**
Finalised	15	12	16	10	**13**
Pending	6	8	15	6	**9**
Awards					
Filed	173	162	118	285	**114**[1]
Finalised	147	181	86	280	**222**
Pending	80	108	83	121	**13**
Industrial Disputes					
Filed	300	372	331	352	**311**
Finalised	373	340	356	318	**344**
Pending	80	108	83	121	**88**
Enterprise Agreements					
Filed	7	6	8	15	**11**
Finalised	7	8	8	12	**10**
Pending	2	0	0	1	**2**
Unfair Dismissals					
Filed	218	248	244	273	**444**
Finalised	250	205	257	259	**482**
Pending	49	91	78	106	**68**
Public Sector Disciplinary Appeals					
Filed	47	55	46	30	**41**
Finalised	41	50	52	26	**49**
Pending	14	18	14	18	**10**
Police Dismissals and Disciplinary Appeals					
Filed	43	38	20	34	**65**
Finalised	38	40	27	26	**42**
Pending	23	21	14	20	**43**

Table 2.1 Caseload Statistics (continued)

	2018	2019	2020	2021	2022
Hurt on Duty Appeals					
Filed	1	2	3	6	**5**
Finalised	8	7	5	3	**6**
Pending	10	5	3	6	**5**
Other[2]					
Filed	70	53	65	75	**80**
Finalised	109	45	68	60	**88**
Pending	20	26	23	43	**35**
TOTALS					
Total filed for the year	875	946	858	1081	**1087**
Total finalised for the year	993	889	904	994	**1256**
Total pending for the year	267	324	278	365	**196**

[1] There were no s 19 matters commenced by the Registrar in 2022.

[2] Other category includes contract carrier matters, victimisation, work health and safety, workers compensation reinstatement, and those classified as "other" by the Commission.

Table 2.1 above shows the following trends:

- Despite there being no s 19 matters commenced in 2022, total filings increased from 1081 in 2021 to 1087 in 2022.
- Unfair dismissals (444; 40.92% of the total number of filings) and industrial disputes (311; 28.66% of the total number of filings) made up the majority of filings in 2022.
- There was a significant increase (62%) in the number of unfair dismissal applications in 2022 from 2021, during which unfair dismissals made up only 25% (273) of the total filings for the year.
- There was a slight decrease (11.65%) in the number of industrial disputes from 2021, during which industrial disputes made up 33% (352) of the total filings for the year.
- There was a substantial drop (60%) in award-related filings in 2022. In 2021, 100 of the award-related filings were related to the legislatively-mandated review of awards pursuant to s 19.
- There was a substantial increase (91.18%) in the number of police dismissal and disciplinary appeals from 2021.
- The increase in police dismissal and disciplinary appeals and unfair dismissal claims was largely the consequence of the implementation of vaccine mandates across New South Wales.
- The number of matters across other categories filed has remained largely consistent with the previous 5 years.

These filings do not include applications relating to industrial organisations (described in Table 2.15). Applications relating to industrial organisations are not, in the ordinary course, dealt with by a Commissioner. They constitute a substantial proportion of the Commission's total filings. In 2022 there were 347 applications concerning industrial organisations, up slightly from 342 in 2021, which include rule changes, right of entry permits, WHS permits and special wage permits. The majority of applications relating to industrial organisations are applications for work health and safety permits.

2. PERFORMANCE *CONT.*

Method of Lodgment

Table 2.2 Method of Lodgment – Registry vs Online Filing

Matter Type	Registry	Online Filing	% of Total Applications
Unfair dismissal	386	58	15%
Industrial Disputes	308	3	0.97%
Police Dismissals and Disciplinary Appeals[3]	64	1	1.56%
Public Sector Disciplinary Appeals	39	2	5.13%

[3] Forms relating to Police Dismissals and Disciplinary Appeals were not available online at the time of writing this Report. The one Police Dismissal filed represents a matter being filed as the wrong matter type but accepted nonetheless.

On 25 May 2022 the Registry began accepting Unfair Dismissal forms for filing through a new online system. On 28 November 2022, the Commission began accepting online filing for Industrial Disputes and Public Sector Disciplinary Appeals. Adoption of the new filing method was initially slow but rose towards the end of the year making up 46% of the lodgment of Unfair Dismissal applications in December 2022. As awareness increases of the new filing method and users of the Commission become more comfortable using the Online Registry, these numbers are likely to increase in 2023.

Clearance Rates

The comparative clearance rate statistics for the Commission between 2018 and 2022 are summarised in table 2.3.

Table 2.3 Clearance Rates: Finalised / Filed Matters

	2018	2019	2020	2021	2022
Commission Clearance Rate	113.4%	94.0%	105.4%	91.7%	115.5%

The clearance rate represents the number of matters finalised in the year (1256) divided by the number of matters filed in that same year (1087).

The increase in the clearance rate at the Commission is largely a consequence of the increase in the number of Commissioners at the end of 2021.

Arbitrated Hearings

A matter will be listed for arbitration when it cannot be resolved through conciliation or compulsory conferences presided over by the Commission. When a matter is set down for arbitration, parties gather evidence and prepare arguments in preparation for the arbitrated hearing, at which time their evidence will be examined and cross-examined. Parties are encouraged to work to narrow the issues in dispute to assist in resolving matters expeditiously. Parties are given the opportunity to reach settlement at any point prior to, and during, the arbitrated hearing and are encouraged by the Commission to do so. Consequently, arbitrated hearings (and the resulting published decisions) represent only a small proportion of all appearances before the Commission.

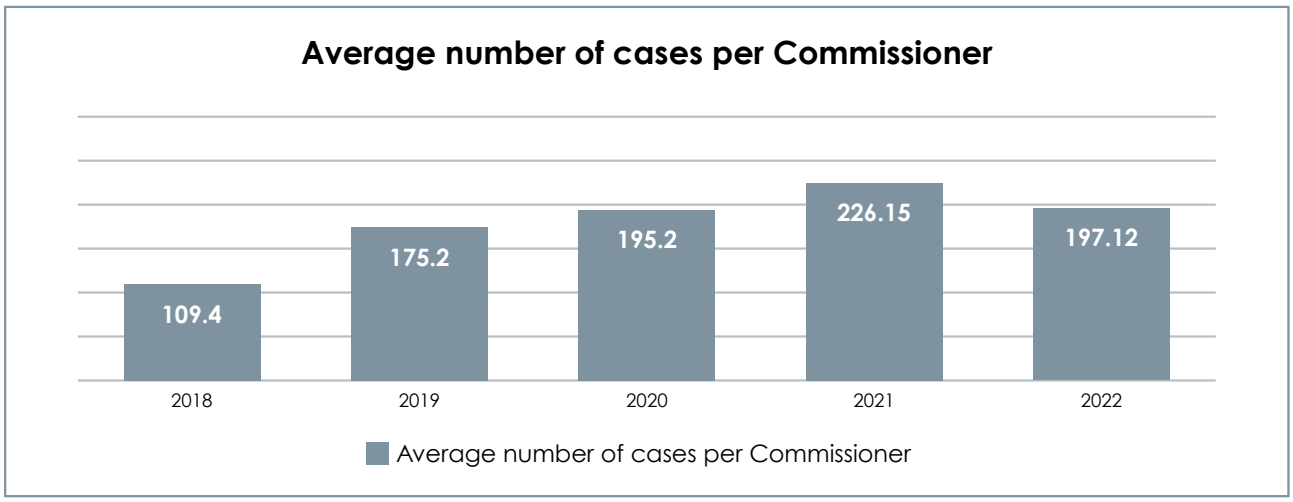
Table 2.4 Arbitrated Hearings

	2018	2019	2020	2021	2022
Total number of arbitrated hearings	103	94	104	111	161
Total number of hearing days	218	205	249	271	369
Average length of arbitrated hearing (days)	2.12	2.18	2.39	2.44	2.29

The calculation of the total number of arbitrated hearings and the total number of arbitrated hearing days in the above table excludes hearings of motions, consent hearings and other interlocutory hearings.

Workload of Commissioners

Figure 2.4 Number of matters filed compared with number of Commissioners

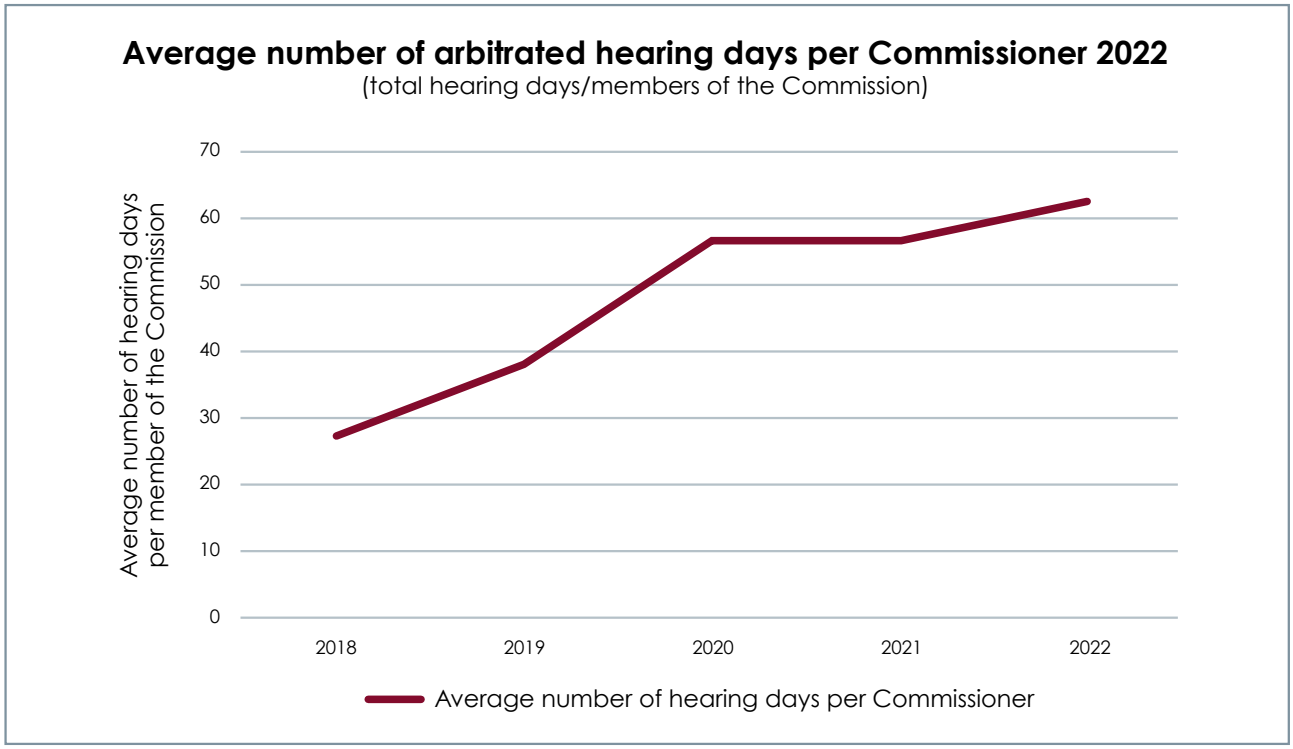


2. PERFORMANCE *CONT.*

Table 2.5 Number of matters and arbitrated hearing days per Commissioner

Year	Total matters filed	Total members of the Commission	Average number of cases per Commissioner	Average number of arbitrated hearing days per Commissioner
2018	875	8	109.4	27.3
2019	946	5.4	175.2	38
2020	859	4.4	195.2	56.6
2021	1081	4.78	226.15	56.69
2022	1087	5.9	197.12	62.54

Figure 2.5 Number of arbitrated hearing days compared with number of Commissioners



Figures 2.4, 2.5 and Table 2.5 indicate that the average number of cases per Commissioner rose from 2018 to 2021 but dropped in 2022, although the number of cases in 2022 was still significantly higher than in 2018 and 2019.

The reduction in the number of arbitrated matters per Commissioner can largely be attributed to the appointment of a sixth Commissioner in late 2021. The increase in the number of arbitrated hearing days per Commissioner is due to the increased complexity of matters before the Commission, the number of witnesses called by parties, and an increasing propensity for parties to request and be granted a separate day for submissions.

Time Standards

The Commission established time standards in 2004 for the time between lodgment (filing) and the first listing of a matter, and the time taken to finalise a matter after its commencement. These standards differ depending on the type of matter.

Since the introduction of time standards, the number of Commissioners has reduced, averaging 5.7 Commissioners for the last five years, and the volume of evidence submitted in matters listed for arbitration has increased significantly. The Commission re-evaluated the time standards in 2018 and 2022, as attached as Appendix 1. Since 2018 the average number of matters per Commissioner has increased by 87.72 matters to 197.12.

Matters Before the Full Bench

A Full Bench of the Commission is composed of at least three members and is convened for various types of proceedings.

Parties may appeal decisions of single members of the Commission to the Full Bench of the Commission under s 187 of the Act.

A member of the Commission may refer to the Chief Commissioner a matter or specific question for decision by the Full Bench of the Commission. The Chief Commissioner will decide whether or not the Full Bench will deal with the matter or question.

In accordance with the Wage Fixing Principles most recently set out in *State Wage Case 2022* [2022] NSWIRComm 1081, any claim for increases in wages and salaries, or changes in award conditions, other than those allowed elsewhere in the Principles, will be processed as an Arbitrated Case by a Full Bench of the Commission, unless otherwise allocated by the Chief Commissioner. The Full Bench also hears the State Wage Case.

In 2022, the Full Bench heard 42 matters, constituting 105 hearing days.

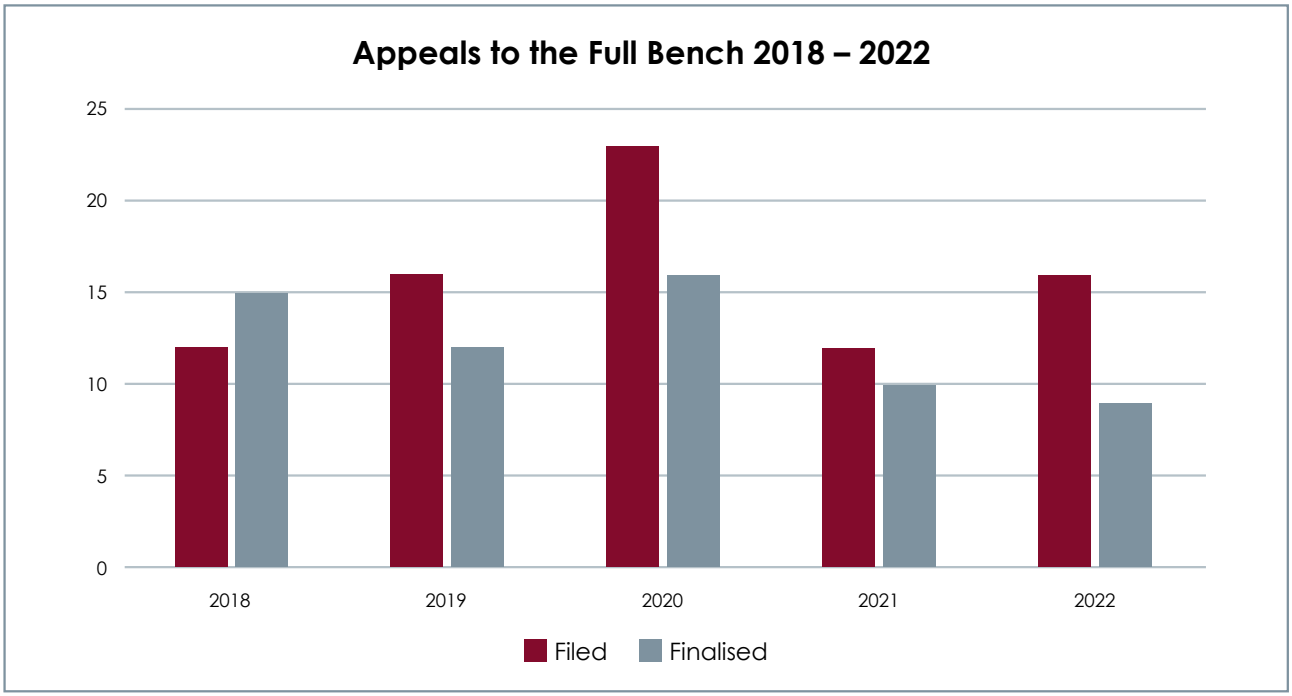
Appeals to a Full Bench of the Commission

Appeals to the Full Bench are by leave only, and the Full Bench will only grant leave where, in the opinion of the Full Bench, the matter is of such importance that, in the public interest, leave should be granted (s 188). An appeal to the Full Bench from the decision of a single Commissioner is not a new hearing; instead, with limited exceptions, the appeal is to be determined based on the evidence in the decision below.

The Commission provides notice of the likely listing dates of appeals to the Full Bench by allocating a week each quarter in March, June, September and November. The dates of these appeal weeks are notified on the Commission's website prior to the end of the previous year.

2. PERFORMANCE *CONT.*

Figure 2.6 Filed and finalised appeals to the Full Bench



There were 16 appeals to the Full Bench of the Commission filed in 2022, up from 12 in 2021, but still less than 2020 which saw the highest number of appeals in the last six years.

The limited number of appeals from a single member heard by the Full Bench stems from the condition for the grant of leave to appeal under s 188, that the "matter is of such importance that, in the public interest, leave should be granted". An additional reason for the relatively low number of Full Bench matters being appeals from a single member, is that many of the single member decisions made in 2022 involved applications as a consequence of the termination of employment of employees for reasons relating to vaccinations and the questions of law were largely similar in these matters.

Table 2.6 Full Bench Appeals by matter type

Matter Type	Number of Appeals Filed
Award Appeal	1
Industrial Dispute Appeal	3
Police Disciplinary and Dismissal Appeal	2
Public Sector Disciplinary Appeal	2
Unfair Dismissal Appeal	7
Victimisation Appeal	1

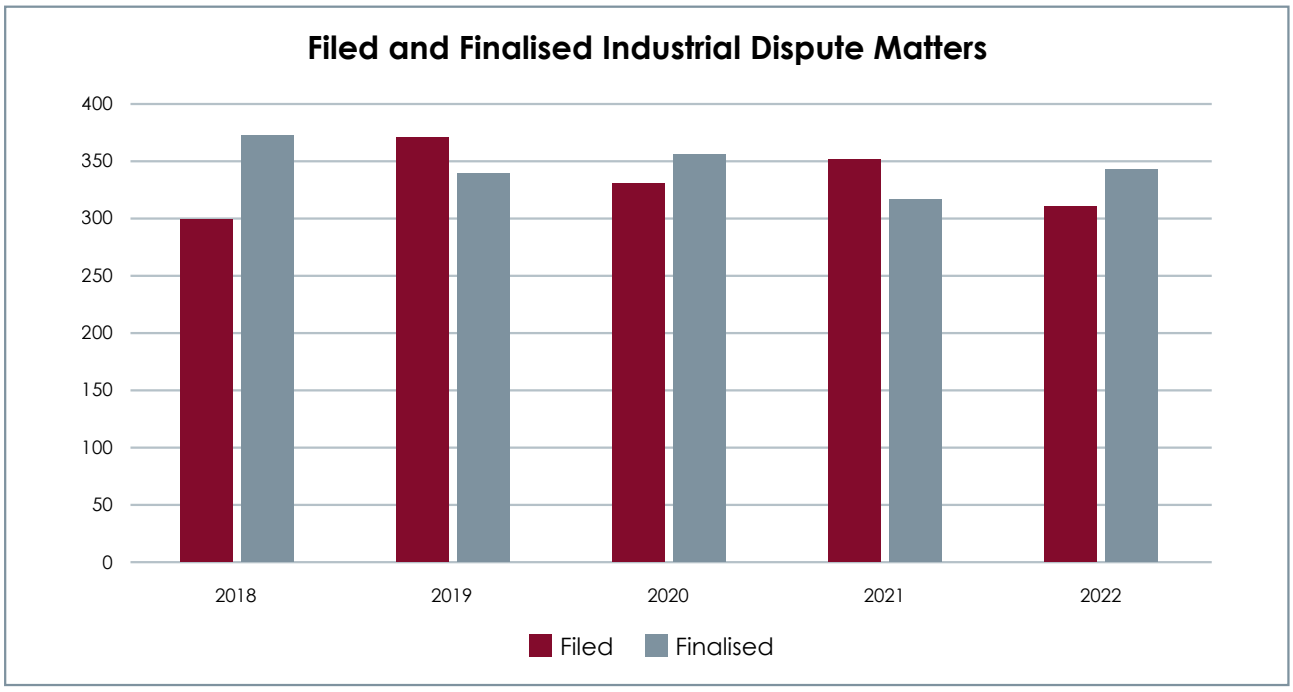
Appeals to the Full Bench in 2022 were from decisions issued in matters in respect of industrial disputes, police disciplinary and dismissal matters, public sector disciplinary appeals, unfair dismissals, and victimisation matters. Appeals from decisions in respect of unfair dismissal claims made up the majority of the Full Bench appeals (7 of 16). This is a consequence of the relatively large number of unfair dismissal claims filed in 2022.

Industrial Disputes

The Commission is responsible for the timely and efficient resolution of industrial disputes in NSW, including disputes filed under s 130 of the Act; disputes relating to contract determinations under s 332 of the Act; disputes under s 20 of the *Entertainment Industry Act*; and disputes over federal enterprise agreements under s 146B of the Act.

The Commission must first attempt to conciliate the dispute between the parties pursuant to ss 133 and 134 of the Act prior to any arbitrated hearing. This usually involves a Commissioner meeting with the parties to attempt to resolve the parties' differences and achieve agreement on key issues. If a dispute cannot be resolved by way of conciliation, the Commission will then arbitrate the dispute and is empowered to make a range of orders that are binding on all parties. Conciliation can also occur over the course of an arbitrated hearing.

Figure 2.7 Filed and finalised industrial disputes commenced pursuant to s 130 of the Act[4]

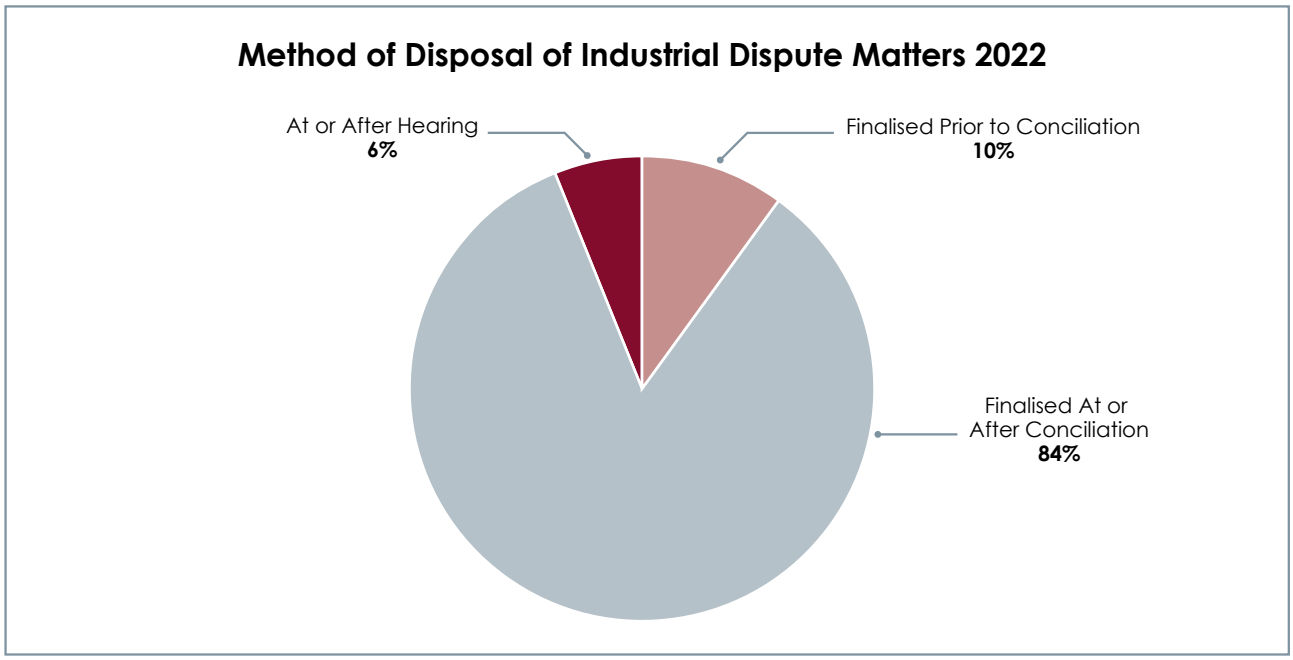


[4] Disputes filed in accordance with s 322 are not included in this table, nor the tables and figures in this section below. There were 13 such disputes filed in 2022.

In 2022 industrial disputes were the second most common type of matter filed with the Commission, representing 30% of the total filings for the Commission in the year. Prior to the large number of unfair dismissal applications filed in 2022, typically, industrial disputes made up the majority of matters filed. The number of industrial disputes filed with the Commission has remained reasonably consistent over the past five years.

2. PERFORMANCE *CONT.*

Figure 2.8 Method of disposal of industrial disputes



The above chart shows that the vast majority of industrial dispute matters (94%) are resolved prior to arbitration. This demonstrates the importance of conciliation as a dispute resolution tool and the Commission's success in resolving disputes early without the expense of arbitration.

Time Standards

The successful discharge of the Commission's statutory functions requires the Commission to attend to industrial disputes in a timely manner.

Table 2.7 Time taken for first listing of industrial dispute matters after filing

Time to first listing	72 Hours (50% Target)	5 Days (70% Target)	10 Days (100% Target)
2018	24.6%	38.5%	84.5%
2019	25.0%	37.0%	65.2%
2020	31.2%	44.6%	67.5%
2021	26.10%	42.45%	77.3%
2022	37.3%	50.48%	75.24%

Table 2.8 Time taken to finalise industrial dispute matters

Finalised within	2 months (50% Target)	3 months (70% Target)	6 months (90% Target)	9 months (100% Target)
2018	25.4%	36.2%	76.9%	99%
2019	44.2%	60.3%	88.5%	99%
2020	44.3%	60.4%	80.8%	90.1%
2021	44.42%	58.88%	86.5%	93.75%
2022	37.5%	54.65%	81.10%	89.83%

Industrial disputes are filed with the Commission for a broad range of reasons. Dispute notifiers include industrial organisations, Government agencies, employer groups and peak council bodies. Individual employees cannot notify the Commission of a dispute under s 130 of the Act.

Industrial disputes may be listed before the Commission on an extremely urgent basis. This generally occurs: where employees may be engaging in, or threatening, industrial action; or where an employer is making, or intends to make, changes to employees' working conditions and the employees' industrial organisation is seeking to maintain the status quo. If an industrial dispute is urgent, parties are able to inform the Registrar by phone of the impending dispute, with written confirmation provided following the verbal notification. The Commission endeavours to hear these matters as early as practicable and if necessary, outside usual Commission sitting hours. Filing of industrial disputes is also available through the Online Registry.

Unfair Dismissals

Under Pt 6 of Ch 2 of the Act, the Commission is responsible for determining applications by NSW Government Sector and Local Government employees who claim to have been unfairly dismissed from their employment.

The Act provides that each unfair dismissal matter is to be listed initially for a conciliation conference (s 86) to assist the parties in reaching an early settlement. Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing (often after multiple conciliations and report backs). To succeed in a claim for Unfair Dismissal, the applicant must demonstrate that the dismissal was harsh, unjust or unreasonable. In making that determination, the Commission is able to take a wide range of factors into consideration, outlined in s 88, such as whether the employee was given an opportunity to defend their conduct, whether they were warned regarding their conduct, the facts surrounding the conduct, and the impact of the dismissal on the employee. Beyond those specific matters the Commission may consider, Commissioners may also consider any other matter that they believe may be relevant to determining the claim.

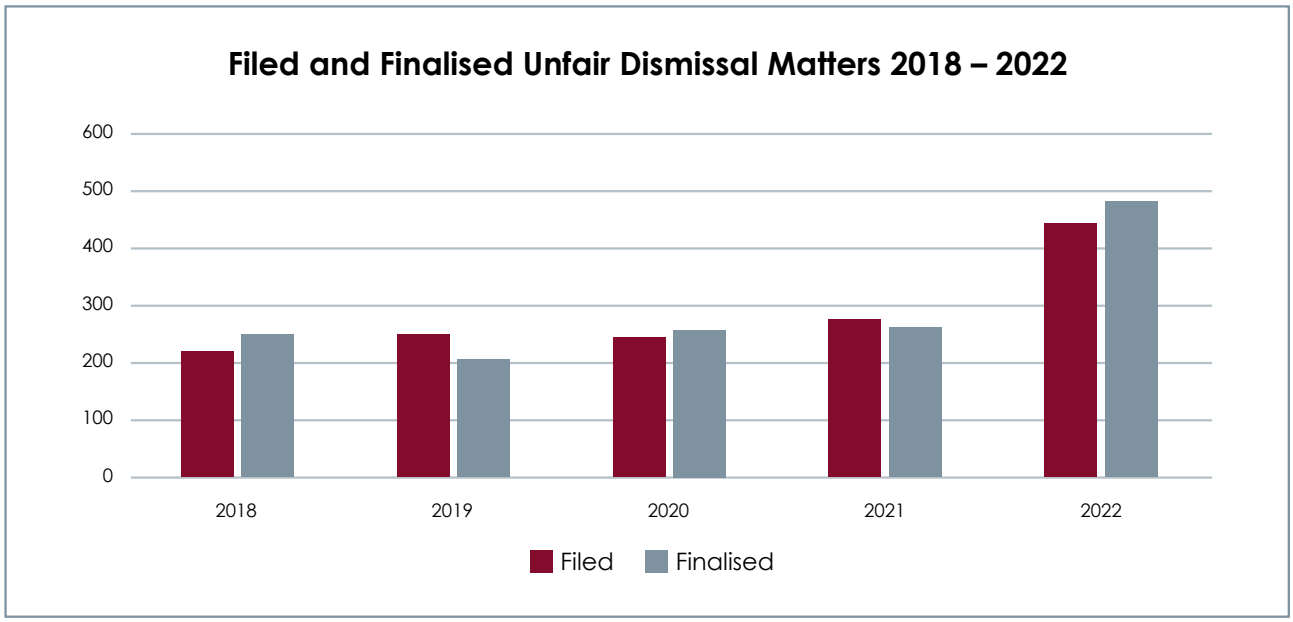
If an unfair dismissal matter proceeds to an arbitrated hearing, the Commission has jurisdiction under s 89 of the Act to order reinstatement, re-employment and/or compensation equivalent to up to six months' pay.

2. PERFORMANCE *CONT.*

Certain employees are prevented from lodging an unfair dismissal claim. These include employees serving a probation period; casual employees engaged for a short period of time; employees contracted for a specific task or period of time; and employees whose employment is governed by special arrangements that cover termination of their employment.

Applicants must lodge an unfair dismissal application within 21 days after their dismissal, with the calculation starting from the day after the employee was dismissed. There is a discretion vested in the Commission to hear matters filed outside of the legislated timeframe where the Commission considers "there is a sufficient reason to do so". There are a range of factors that the Commission may take into consideration in determining whether to accept an out of time application, such as the reason for and length of delay, hardship caused to the parties, and the conduct of the employer relating to the dismissal.

Figure 2.9 Filed and finalised unfair dismissal matters



Uniquely in 2022, unfair dismissals made up the largest proportion of matters before the Commission at 41% of matters filed. In the previous four years unfair dismissal claims were the second most commonly lodged applications in the Commission, after industrial disputes, and the number of unfair dismissal applications remained steady over those years.

The sharp increase in 2022 is related to employees who did not comply with Public Health Orders and other directives and policies issued in NSW requiring employees to be vaccinated against COVID-19 as a condition of employment in certain sectors. Of the 444 unfair dismissal claims filed in 2022, 268 were vaccine related. The Commission worked through a significant number of these matters to finality in 2022, and with the repeal of the last remaining Public Health Order in NSW on 30 November 2022, it is likely the number of unfair dismissal matters filed and finalised in 2023 will be more consistent with numbers observed in previous years.

Figure 2.10 Disposal of Unfair Dismissal Matters in 2022

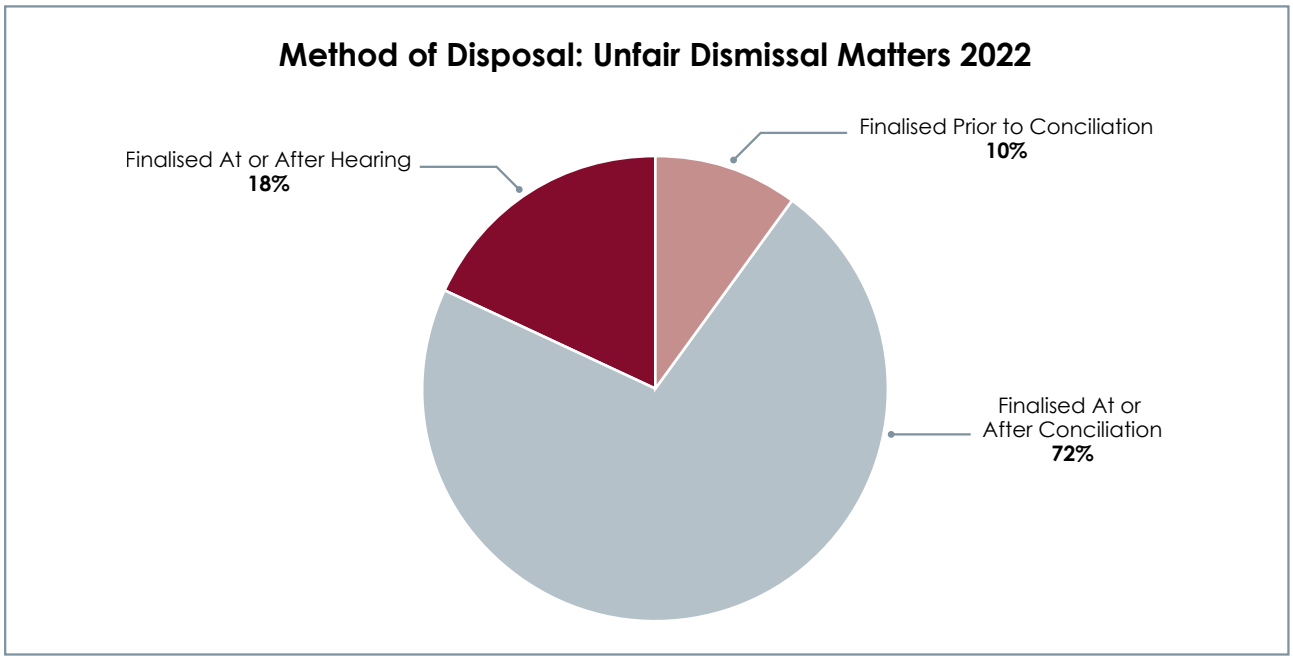


Table 2.9 Representation of applicants at time of filing of unfair dismissal claims

Application filed by:	2018	2019	2020	2021	2022
Individual (Unrepresented)	61	46	37	89	168
Legal or Industrial Organisation Representative	157	201	207	184	312
TOTAL	**218**	**247**	**244**	**273**	**480**[5]

[5] This number excludes matters that were reopened or relisted.

In 2021 there was a substantial increase in both the number of unfair dismissal claims lodged by parties with legal or industrial organisation representation as well as those lodged by unrepresented applicants. This coincides with the sharp increase in unfair dismissal claims in 2022. The proportion of unfair dismissal applicants filing their own applications, as unrepresented litigants, rose from 33% to 35% between 2021 and 2022.

Time Standards

There are two sets of time standards relating to unfair dismissals:

1. An application for unfair dismissal should be listed for conciliation hearing within 28 days of filing; and
2. 50% of unfair dismissal applications should be finalised within 2 months; 70% within 3 months; 90% within 6 months and 100% within 9 months.

2. PERFORMANCE *CONT.*

Table 2.10 Time taken to first listing of unfair dismissal matters after filing

Listed within	7 Days	14 Days	21 Days	28 Days
2019	6.4%	19.7%	45.4%	72.9%
2020	9.4%	26.9%	51.4%	70.3%
2021	6.74%	24.71%	60.31%	76.78%
2022	8.56%	33.78%	63.29%	81.08%

The number of unfair dismissal listings meeting benchmarks improved across all listing timeframes. While short of the goal of all matters being listed within 28 days, the improvement in 2022 over previous recorded years is largely attributable to an increase in the number of Commissioners at the Commission.

A significant reason for matters not being listed within the time standards is that applicants and/or their representatives request that their matters be listed on a date convenient to their circumstances.

Another reason for delays in listing is the time taken between when an unfair dismissal application is accepted for filing at a Local Court and when it is received at the Commission. The day that the application is received at the Local Court is the date recorded as the date filed. There have been occasions when applications have not been received by the Commission at Parramatta for periods of up to three weeks after the filing date and, in some instances, longer. This has resulted in matters being listed after 28 days.

After an application for unfair dismissal is filed with the Commission, the employer must file a notice in reply at least 48 hours before the commencement of the conciliation proceedings, or such other time as directed by the Commission. Depending on the urgency of the matter, the Commission will usually provide some time to the respondent to prepare the notice in reply. It is therefore unlikely that the matter will be listed within seven days of the unfair dismissal application being filed.

With the commencement of online filing for unfair dismissal applications and employer responses, the average time between the filing of applications and the first listing is expected to reduce.

Figure 2.11 Online filing of unfair dismissal applications

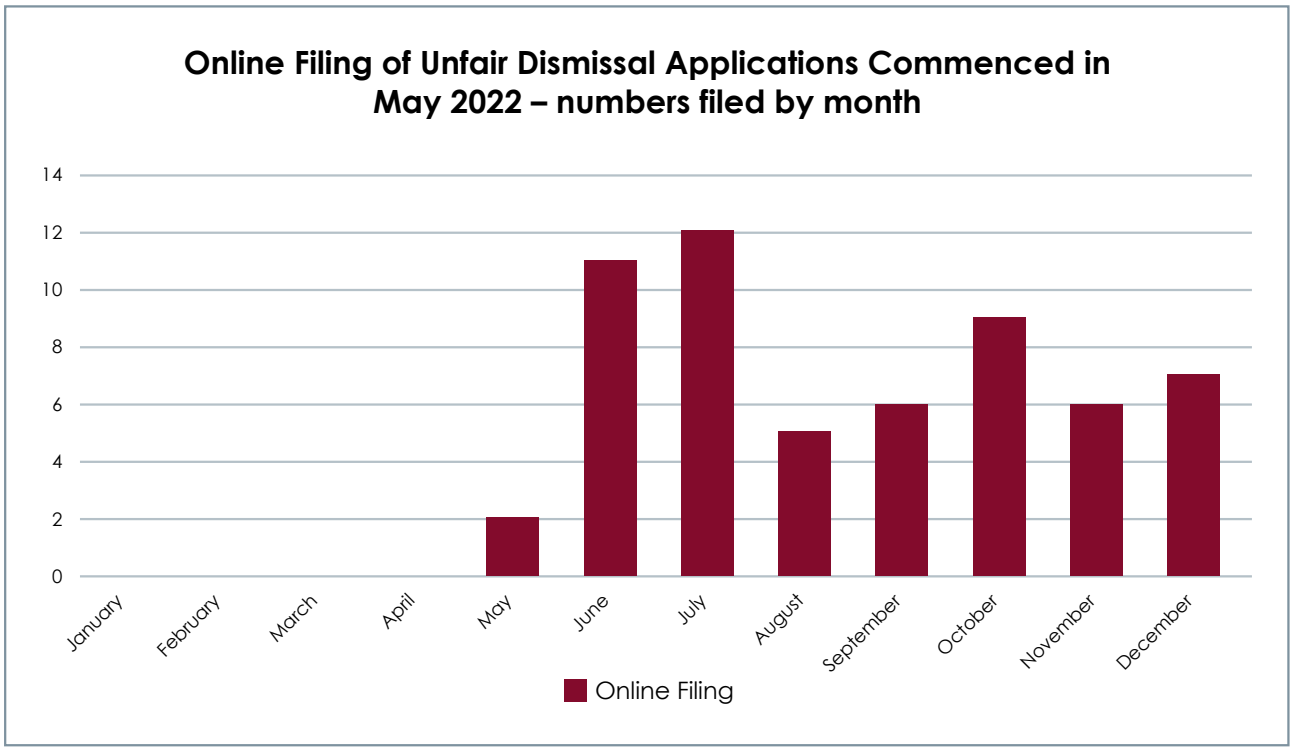
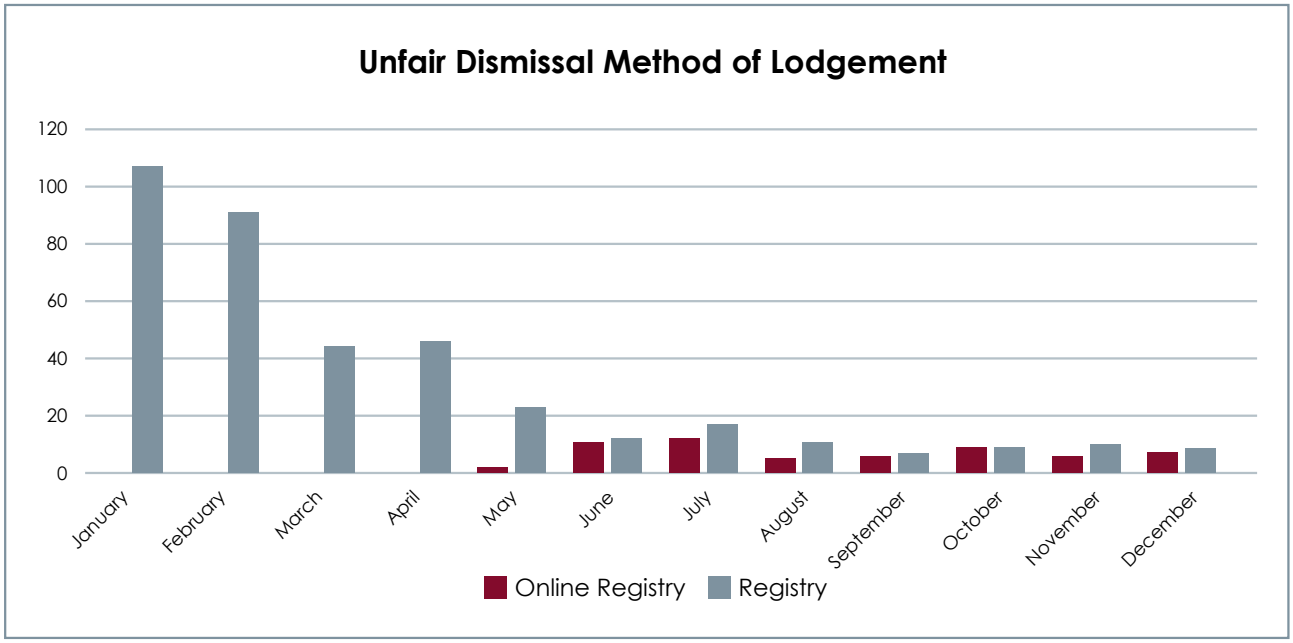


Figure 2.12 Online compared with manual filing of unfair dismissal applications



2. PERFORMANCE *CONT.*

Online filing commenced in May 2022. By December 2022, 46% of unfair dismissal applications were lodged online through the online registry. As practitioners and industrial organisations become more familiar with the online registry, we expect that the proportion of unfair dismissal applications filed online will continue to increase and time standards will likely continue to improve.

Table 2.11 Time taken to finalise unfair dismissal matters after filing

Finalised within	2 months (50% Target)	3 months (70% Target)	6 months (90% Target)	9 months (100% Target)
2018	25.4%	36.6%	88.9%	98.2%
2019	43.0%	64.7%	90.7%	98.6%
2020	27.4%	50.2%	78.5%	91.3%
2021	33.69%	55.55%	85.30%	92.47%
2022	21.77%	37.17%	81.31%	95.07%

The number of unfair dismissal matters meeting finalisation benchmarks at the two, three and six months' marks fell when compared with 2021. This was a result of the large number of unfair dismissal applications filed in 2022 which related to vaccine mandates and the associated Public Health Orders. Despite the increase in unfair dismissal applications in 2022, the Commission was able to improve on the number of unfair dismissal matters finalised within nine months when compared with 2020 and 2021.

Awards and Enterprise Agreements

Object 3(e) of the Act is to facilitate the appropriate regulation of employment through awards, enterprise agreements, public sector industrial agreements and other industrial instruments such as contract determinations and contract agreements.

The Commission is given power to:

- make or vary awards (s 10 and s 17 respectively);
- approve enterprise agreements and variations of enterprise agreements (s 35 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 adoption of the Annual Wage Review decisions of the Fair Work Commission by the State Wage Cases).

Awards

An award may be made on the Commission's initiative; on application to the Commission by an employer, industrial organisation or State peak council; or during arbitration conducted by the Commission to resolve an industrial dispute (s 11 of the Act).

Once made, an award will be binding on all relevant employees and employers; any industrial organisations that were party to the making of the award; and, if the award applies to a particular industry, all employees and employers in that industry. It will then apply for a specified nominal term which must be between 12 months and 3 years, and after the expiry of the nominal term, applies until the Commission rescinds the award.

Figure 2.13 Filed and Finalised Award matters

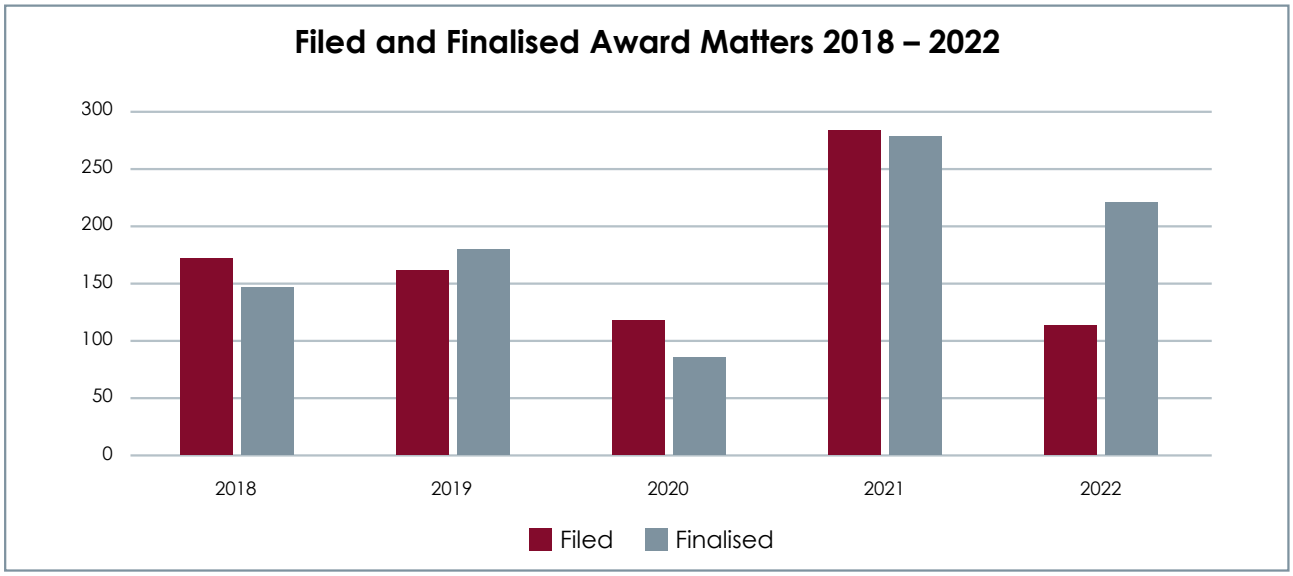


Table 2.12 Award Applications and Award Reviews between 2018 – 2022[6]

	2018	2019	2020	2021	2022
Award Applications filed by parties					
Application to make Award (s 10)	78	82	41	81	82
Application to vary Award (s 17)	12	26	72	42	20
Review of Awards Pursuant to s 19					
Notice of Review issued	62	50	0	98	0
Awards Reviewed	28	58	2	64	19
Awards Rescinded	5	0	0	11	0
Declaration of Non-Operative Awards	0	0	0	0	0

[6] These figures exclude Awards varied to State Wage Case.

The number of award matters filed in 2022 decreased from 285 in 2021 (26.22% of total matters filed) to 114 in 2022 (11.47%). This 60% decrease in the total number of award matters filed was due to the large number of awards that were subject to triennial review under s 19 of the Act in 2021 and there being no s 19 matters commenced in 2022.

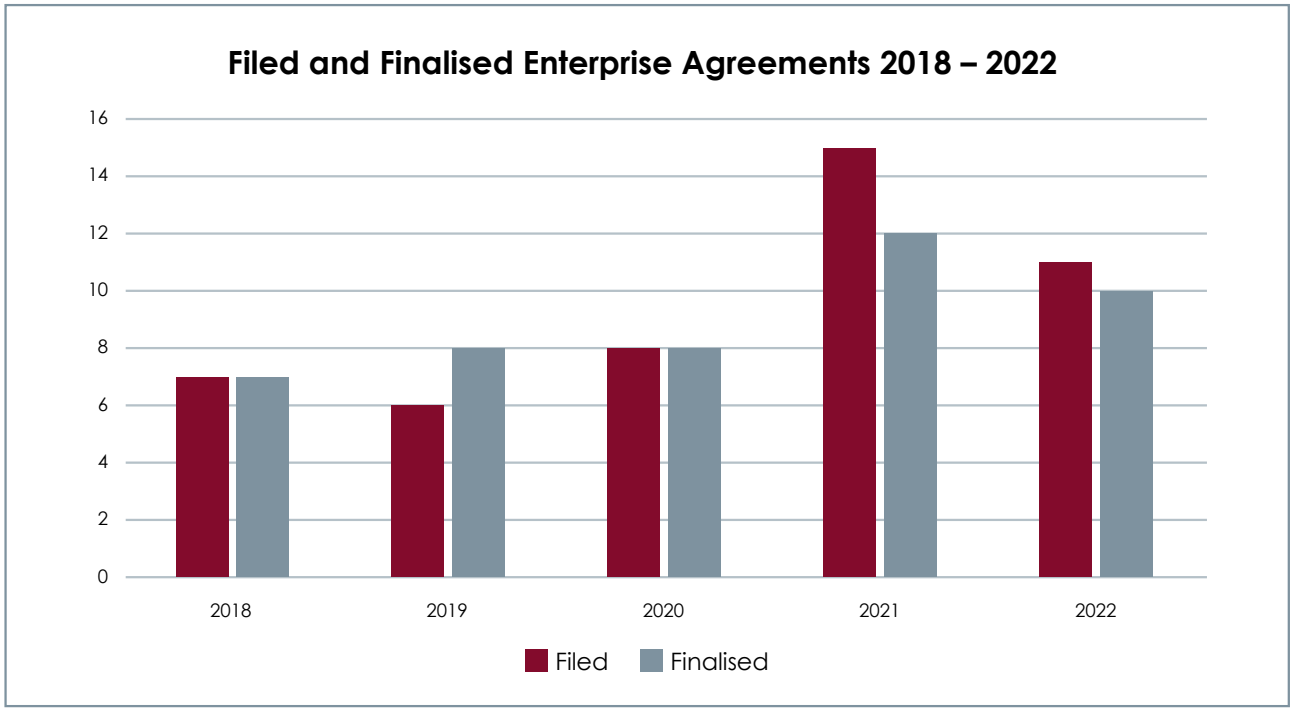
The combined number of applications to make, or vary awards in 2022 was largely consistent with previous years.

2. PERFORMANCE *CONT.*

Enterprise Agreements

Enterprise agreements operate to govern the terms and conditions of employment and are generally developed through a process of bargaining or negotiation between employers and industrial organisations or employers with employees directly. An enterprise agreement may be made in relation to a group of employees under s 30 of the Act: specifically, employees of a single employer, employees of two or more associated employers, employees involved in a project or proposed project, and public sector employees. The Commission must approve an enterprise agreement for it to have effect (s 32). In determining whether to approve an enterprise agreement, the Commission is to follow principles established by a Full Bench of the Commission, which are to take into account various factors including the public interest and the objects of the Act (s 33). These principles were reviewed in 2021 and published on 23 February 2022 in *Review of the Principles for Approval of Enterprise Agreements 2021/2022* [2022] NSWIRComm 1005.

Figure 2.14 Filed and finalised Enterprise Agreement matters



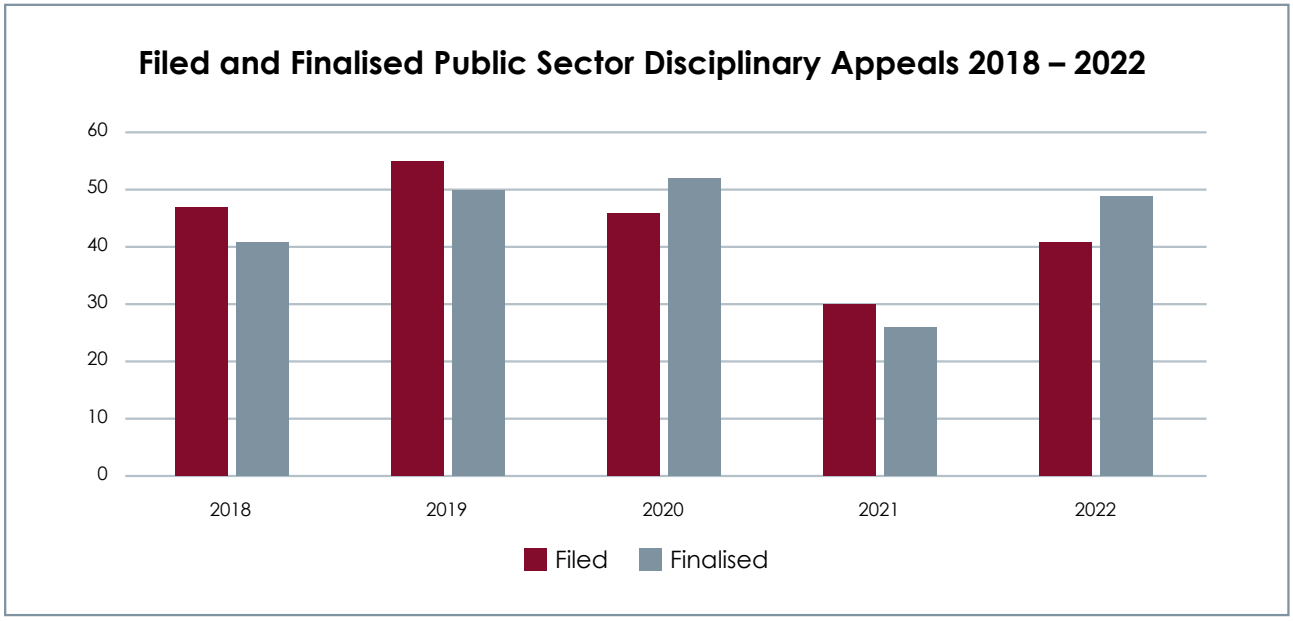
There were 11 enterprise agreement matters filed with the Commission, constituting 1.01% of the total number of matters filed in 2022. This is four fewer than 2021 (a 26.67% decrease), but is higher than preceding years.

Public Sector Disciplinary Appeals

Section 98 of the Act empowers a public sector employee to appeal certain disciplinary decisions made by their employer to the Commission. Decisions capable of being appealed to the Commission are listed in s 97 of the Act, and include decisions to dismiss an employee, require an employee to resign, reduce the "rank, classification, position, grade or pay" of an employee, and to defer the payment of an increment for over six months. However, an employee engaged for less than six months or who is serving under a probation period of three months or less, generally cannot file a public sector disciplinary appeal with the Commission (s 98 of the Act). Employees seeking review of a disciplinary decision have 28 days in which to file an appeal with the Commission. Unlike unfair dismissals, there is no discretion vested in the Commission to accept a public sector disciplinary appeal filed outside of the time frame listed in s 100B(2).

The Act provides that each public sector disciplinary appeal is dealt with initially by listing for conciliation (s 100E). Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing. The Commission has a broad discretion to uphold, or dismiss, an appeal and may make a wide range of orders that must be given effect by the employer.

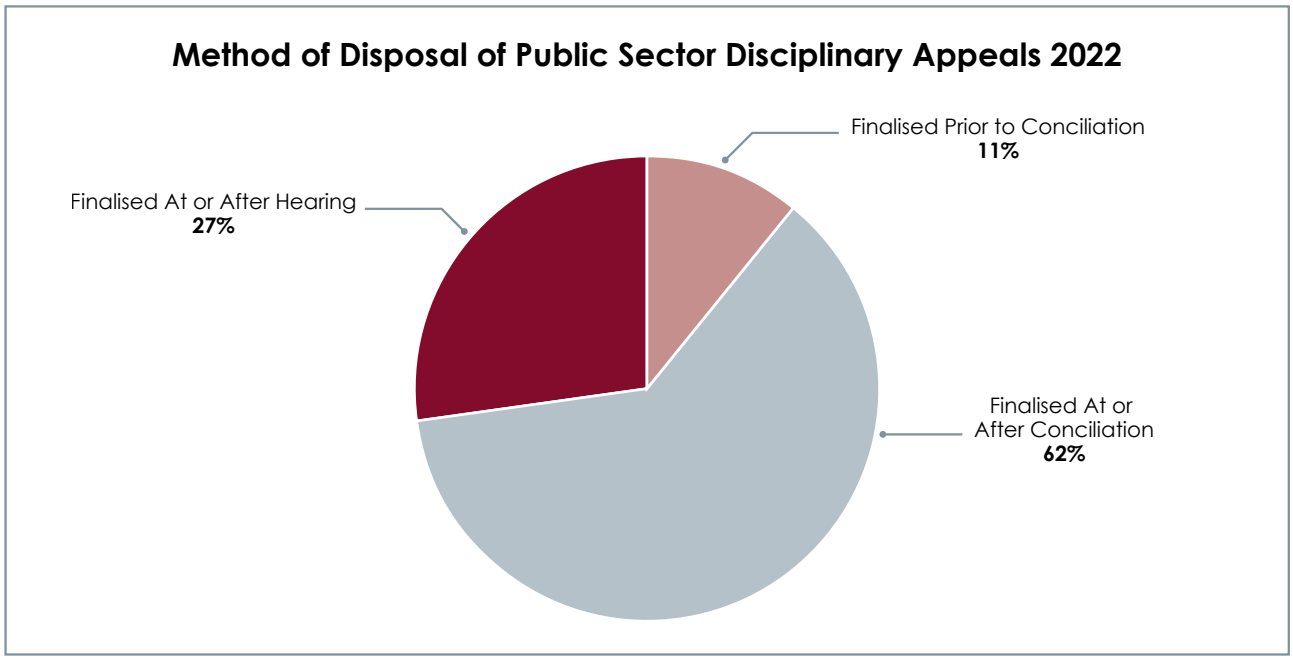
Figure 2.15 Filed and finalised Public Sector Disciplinary Appeal matters



There were 41 public sector disciplinary appeals filed in 2022, constituting 3.78% of all matters filed. The number of public sector disciplinary appeals filed in 2022 increased by 26.83% from 2021, though the number remains lower than the numbers filed in 2019 and 2020.

2. PERFORMANCE *CONT.*

Figure 2.16 Disposal of Public Sector Disciplinary Appeals in 2022



In 2022, 73% of public sector disciplinary appeal matters were resolved prior to a formal hearing, with the majority settling at or after conciliation. This shows the effectiveness and importance of parties engaging with the conciliation process.

Time Standards

Table 2.13 Time taken to finalise Public Sector Disciplinary Appeals after filing

Finalised within	1 month (30% Target)	2 months (60% Target)	3 months (90% Target)	6 months (100% Target)
2018	10.3%	62.9%	70.0%	88.6%
2019	43%	55.1%	68.2%	85.0%
2020	11.1%	33.3%	44.4%	73.3%
2021	14.8%	22.2%	48.14%	66.66%
2022	11.11%	28.89%	44.44%	77.78%

Under the time standards set by the Commission, 90% of matters should be resolved within three months of commencement, and 100% of matters should be resolved within six months of commencement. For matters where this six month benchmark is not met, reasons included: the increasing complexity of these matters; the amount of evidence filed and heard in these matters; the increasing number of hearing days; and parties seeking adjournments.

Police Dismissals and Disciplinary Appeals and Hurt on Duty Applications

Section 173 of the *Police Act* allows the Commissioner of Police to make reviewable and non-reviewable orders arising from a police officer's misconduct or unsatisfactory performance. Under s 174 of the *Police Act*, a police officer may apply to the Commission seeking a review of such orders, known as a disciplinary appeal.

Under s 181D of the *Police Act*, the Commissioner of Police has the power to remove a NSW police officer for loss of confidence in their suitability to continue as a Police Officer, having regard to the officer's competence, integrity, performance, or conduct. Section 181E of the *Police Act* entitles an officer to seek review of such a removal (a "dismissal appeal").

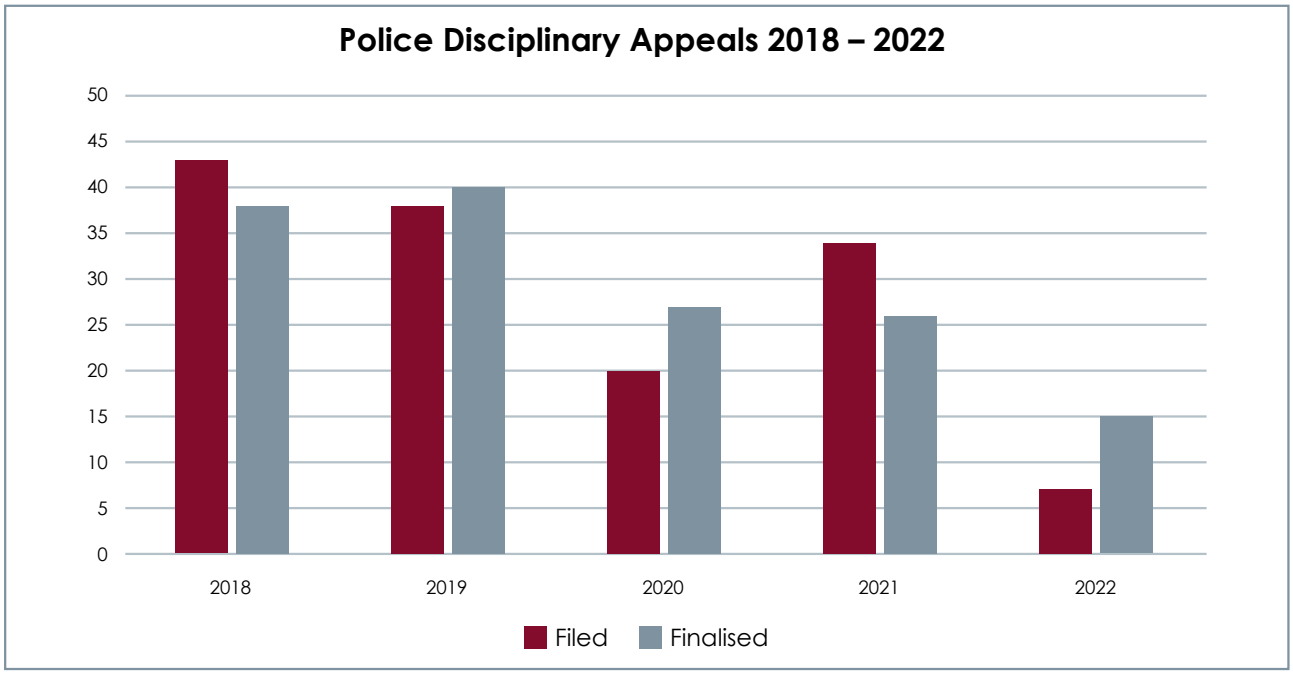
Each matter is initially listed for a conciliation conference in which the Commission will attempt to assist the parties to reach a settlement. If conciliation is unsuccessful, the matter proceeds to an arbitrated hearing where the affected officer must establish that the action taken by the Commissioner of Police was harsh, unreasonable or unjust.

The *Police Act* (ss 179(2), 181 and 181K) requires, unless the Chief Commissioner otherwise directs in the case of disciplinary appeals, that each stage of the process is dealt with by a member of the Commission who is an Australian lawyer.

While police dismissals and disciplinary appeals represent only a small proportion of the Commission's total filings, they take up a larger proportion of the hearing days relative to other matter types.

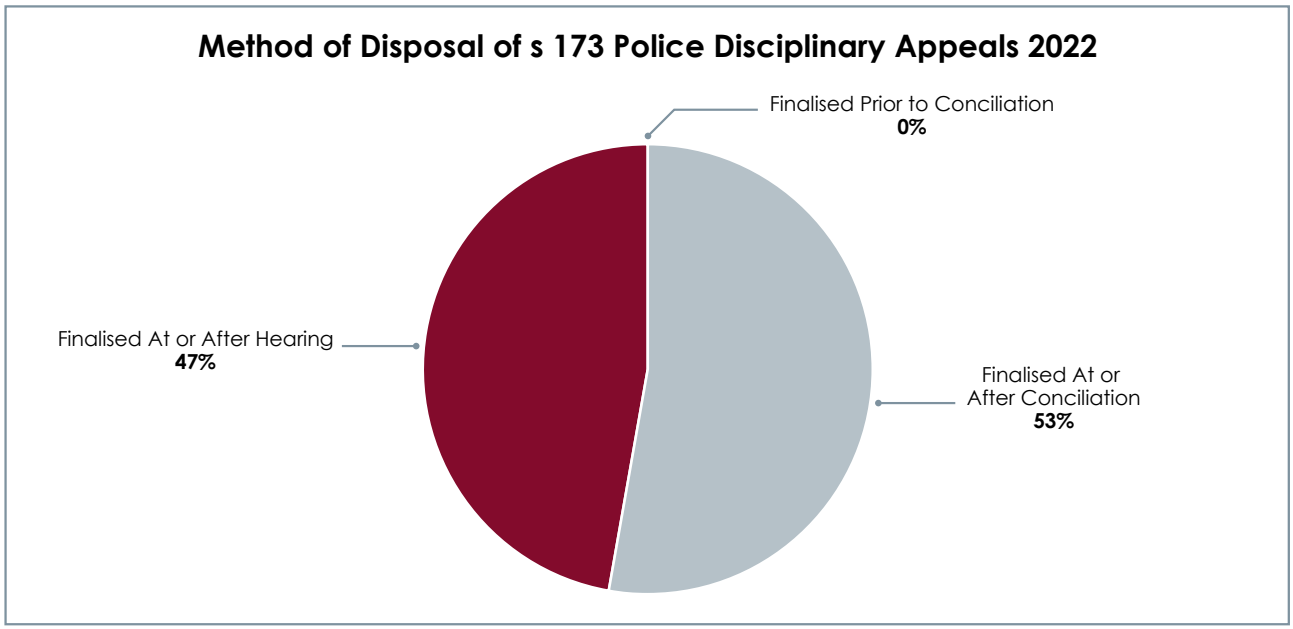
Section 173 Police Disciplinary Appeals

Figure 2.17 Filed and finalised Police Disciplinary Appeal matters



2. PERFORMANCE *CONT.*

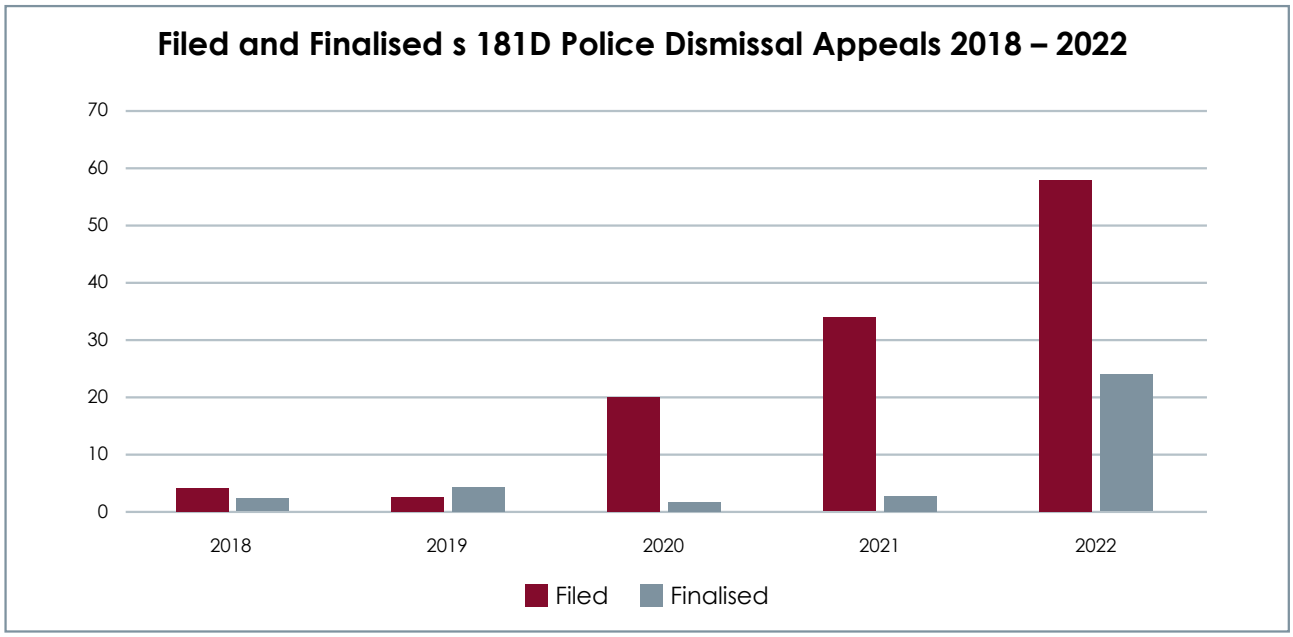
Figure 2.18 Disposal of Police Disciplinary Appeal matters in 2022



53% of police disciplinary appeals were resolved prior to an arbitrated hearing in 2022, none were resolved prior to conciliation, and 47% required arbitration.

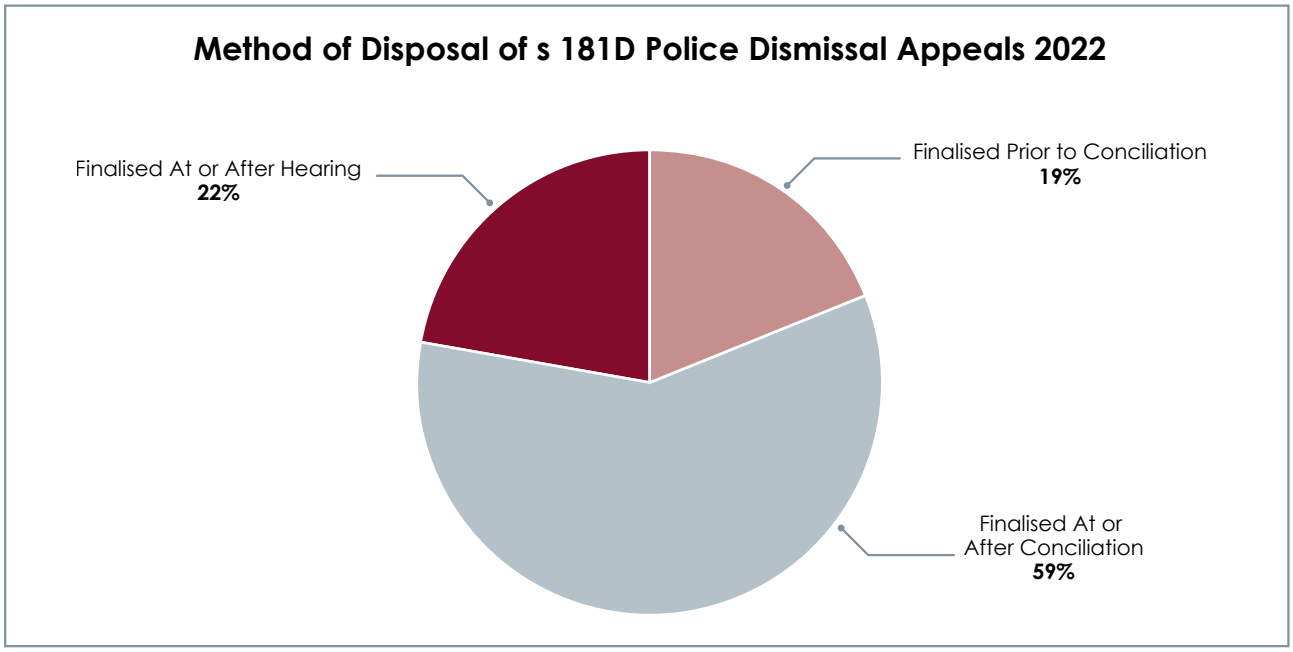
Section 181D Police Dismissal Appeals

Figure 2.19 Filed and finalised Police Dismissal Appeal matters



There were 58 police dismissal appeals filed in 2022, constituting 5.34% of the overall number of filings in the Commission. Police dismissal appeals increased from 2021 and previous years, from 34 in 2021 when it constituted 3.14% of the total matters filed, a 70.58% increase. The increase in applications for review of police dismissal appeals is largely attributable to officers not complying with vaccine mandates implemented by the Commissioner of Police.

Figure 2.20 Disposal of Police Dismissal Appeal matters in 2022



Time Standards

Table 2.14 Time taken to finalise Police Disciplinary and Dismissal Appeals after filing

	2018	2019	2020	2021	2022
S 173 Police Disciplinary Appeals					
Completed within 6 months	83.3%	83.0%	53.3%	75%	33.33%
Completed within 12 months	99.3%	98.1%	73.3%	91.6%	40%
S 181 Police Dismissal Appeals					
Completed within 6 months	90.6%	93.2%	50.0%	66.6%	66.67%
Completed within 12 months	99.8%	98.8%	80%	83.3%	88.89%

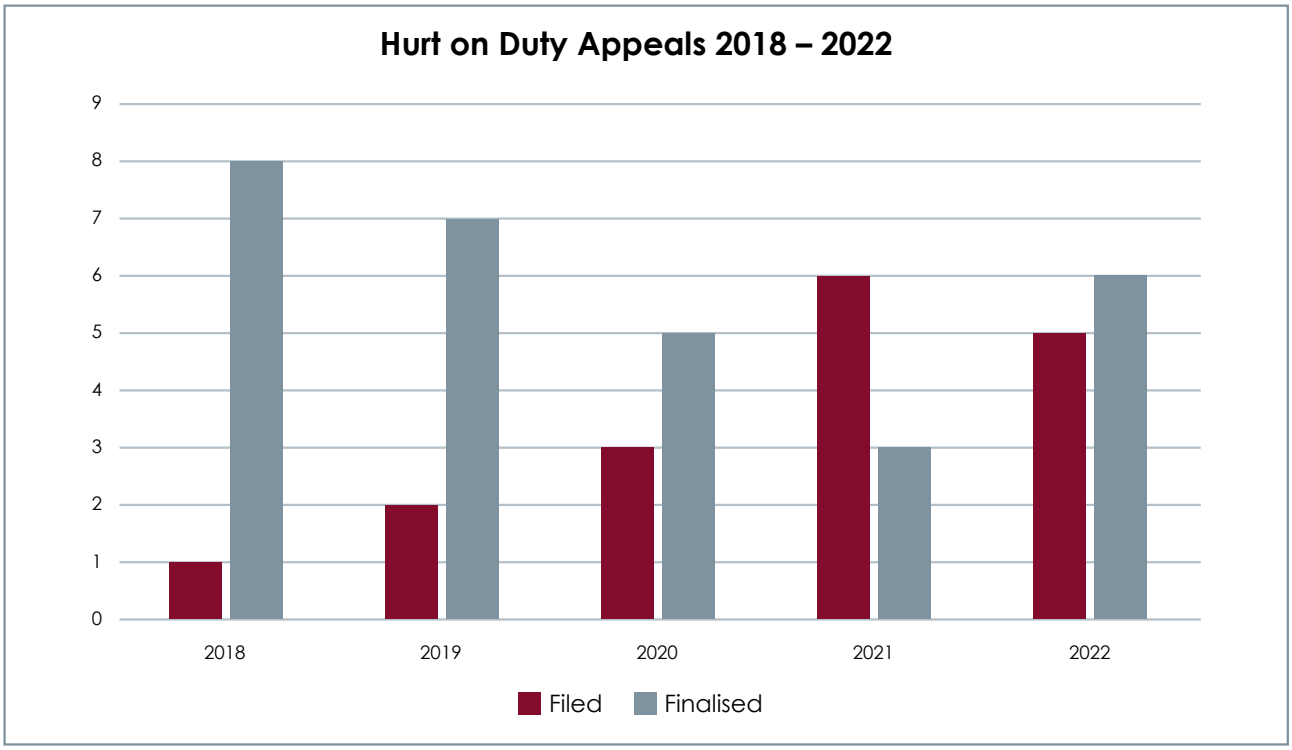
Applications under ss 173 and 181D of the Police Act typically involve large volumes of evidence and are highly contentious, and therefore often take longer to resolve than standard unfair dismissal claims.

2. PERFORMANCE *CONT.*

Police Hurt on Duty Appeals

Under s 186 of the *Police Act*, the Commission is responsible for determining applications made by police officers to appeal against a decision of the NSW Police Commissioner in relation to leave of absence by a police officer as a result of being hurt on duty.

Figure 2.21 Filed and finalised Hurt on Duty appeals



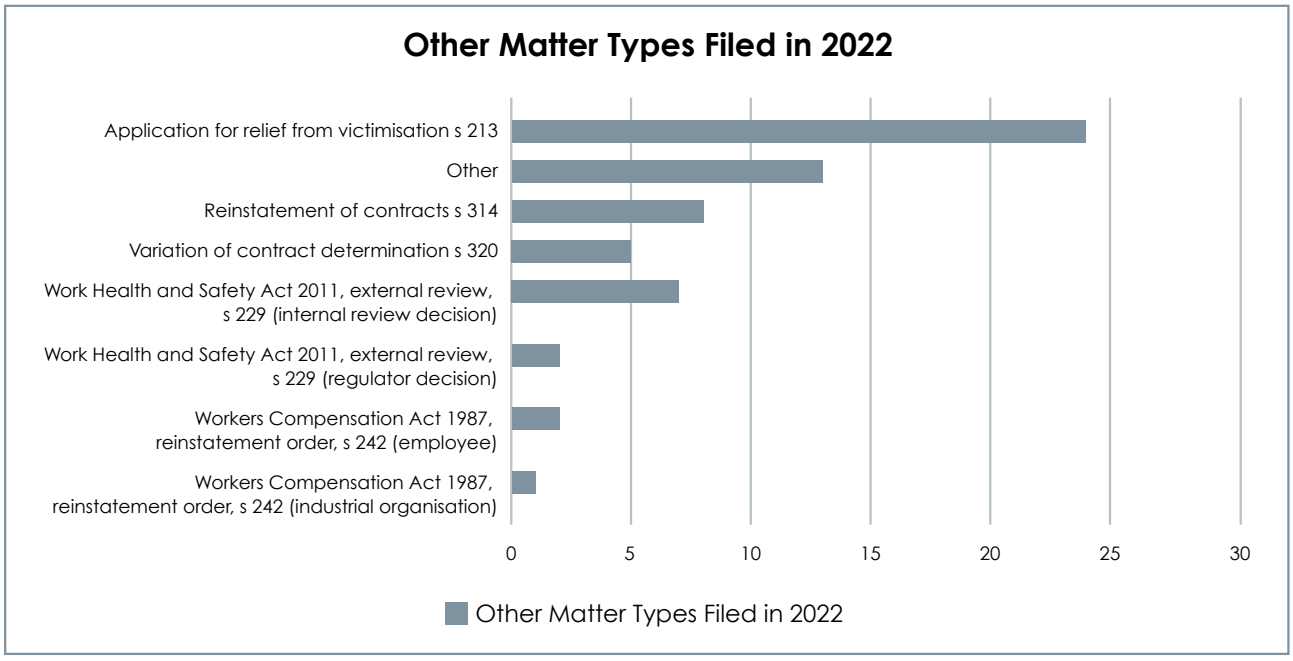
There was a slight decrease in the number of hurt on duty appeals filed in 2022 (from 6 in 2021 to 5 in 2022), but an increase in the number of hurt on duty appeals finalised (from 3 to 6). These matters are often adjourned for significant periods awaiting the determination of matters in other jurisdictions and this impacts the time to completion of the Commission's matter.

Other Matters

The Commission deals with a range of matters that do not fall under the above categories, including:

- Contract Carrier matters under Ch 6 of the Act including the making of contract determinations (s 316 of the Act), reinstatement of contracts (s 314 of the Act) and variation of contract determinations (s 320 of the Act);
- application for relief from victimisation (s 213 of the Act);
- applications in respect of Industrial Committees (s 200(3) of the Act);
- Stand down orders (s 126 of the Act);
- right of entry disputes (s 142 of the WHS Act);
- external reviews of decisions of Safework NSW (s 229 of the WHS Act); and
- reinstatement of injured workers (s 242 of the Workers Compensation Act).

Figure 2.22 Other matter types filed in 2022



Industrial Organisations

Under the Act, the Regulations and the Work Health and Safety Act ("WHS Act"), the Commission has specific responsibilities relating to industrial organisations.

These responsibilities include the provision of WHS permits pursuant to Pt 7 of the WHS Act and right of entry permits in accordance with Ch 5 of the Act. Other responsibilities include processing applications regarding elections of office holders and approving rule changes for registered industrial organisations. These functions generally are carried out by Registry staff under the direction of the Industrial Registrar.

Table 2.15 Matters filed in 2022 concerning industrial organisations

	2018	2019	2020	2021	2022
Work Health and Safety Permits	150	282	200	207	227
Right of Entry Permits	72	106	31	68	81
Special Wage Permits	25	34	36	33	20
Conscientious Objection Certificates	0	0	0	0	0
Rule Changes to Registered Organisations	10	9	9	14	6
Election Requests for Registered Organisations	10	14	12	15	13
Others	1	2	1	5	0
Total Filed for the Year	**268**	**447**	**289**	**342**	**347**

These applications are not included in the data of filings set out above in Table 2.1.

3. LEGISLATIVE CHANGES AND SIGNIFICANT CASES

Legislative Changes

Industrial Relations (Public Sector Conditions of Employment) Amendment Regulation 2022

The Industrial Relations (Public Sector Conditions of Employment) Amendment Regulation 2022 implemented a temporary Public Sector Wages Policy for the 2022-2023 and 2023-2024 financial years for NSW government sector employees covered by the Act. The varied Public Sector Wages Policy allowed for increases in remuneration to 3% per annum for the financial year 2022-2023, and raised the ceiling to 3.5% per annum for the financial year 2023-2024 where the employer supported the introduction of one or more productivity reforms during the financial years 2022-2023 or 2023-2024, and allows for a greater increase in remuneration and other conditions of employment where the employer agrees to the increase and any related reforms.

Industrial Relations Commission Rules 2022

On 2 December 2022, the Rule Committee made the Industrial Relations Commission Rules 2022. The new Rules reflect changes in the Commission's jurisdiction since 2009, and particularly since the significant changes to the Commission's jurisdiction in 2016.

COVID-19 Legislation and Orders

By the end of 2022, The New South Wales Government had lifted all masking and isolation requirements relating to COVID-19. With the repeal of Public Health (COVID-19 Care Services) Order (No 3) 2022, there were no NSW Government mandated vaccine policies still in effect.

Public Health (COVID-19 Vaccination of Health Care Workers) Order 2022

Public Health (COVID-19 Vaccination of Health Care Workers) Order 2022, which commenced on 21 March 2022 and required both stage 1 and stage 2 health care workers to be vaccinated, expired on 19 June 2022.

Public Health (COVID-19 Vaccination of Education and Care Workers) Order 2022

Public Health (COVID-19 Vaccination of Education and Care Workers) Order 2022, which commenced on 11 March 2022 and required education and care workers, including adult residents at family day care residences, to be vaccinated, expired on 13 May 2022.

Public Health (COVID-19 Care Services) Order (No 3) 2022

The Public Health (COVID-19 Care Services) Order (No 3) 2022 which commenced on 5 September 2022 and required aged care and disability service workers to be vaccinated for certain types of work and for entry to aged care facilities, ended on 30 November 2022.

3. LEGISLATIVE CHANGES AND SIGNIFICANT CASES *CONT.*

Public Health Repeal Order 2022

Public Health Repeal Order 2022 repealed the Public Health Orders relating to masking generally and the requirement to self-isolate after testing positive for COVID-19. The repeal of those requirements took effect as of 14 October 2022.

Significant Cases

NSW Commissioner of Police v Cottle [2022] HCA 7

Trevor Cottle was a non-executive police officer with the NSW Police Force. In December 2016, Mr Cottle was informed that the Police Commissioner had decided that Mr Cottle was to be retired pursuant to s 72A of the *Police Act 1990* (NSW) ("*Police Act*"), which allowed non-executive police officers to be discharged on medical grounds where those grounds prevented the officer from discharging their duties.

Commissioner Murphy in *Cottle v Commissioner of Police* [2017] NSWIRComm 1055 accepted that a police officer who was retired on medical grounds could not make an unfair dismissal claim. On appeal from Commissioner Murphy, a Full Bench of the Commission (Kite CC, Constant C and Sloan C) found that the unfair dismissal provisions of the Police Act were available to the medically retired officer: *Cottle v Commissioner of Police* [2018] NSWIRComm 1080.

In November 2019, her Honour Acting Justice Simpson, of the Supreme Court in *NSW Commissioner of Police v Cottle* [2019] NSWSC 1588 determined that the Full Bench's decision was infected with jurisdictional error and that the High Court's reasoning in *Commissioner of Police for New South Wales v Eaton* (2013) 252 CLR 1 in respect of a probationary constable bound her to conclude that a medically discharged police officer could not access the unfair dismissal provisions under the Act.

In 2020, the Court of Appeal (Bell P, Basten JA and Payne JA) decided that the Full Bench did not err and that the Commission has jurisdiction to hear an application for unfair dismissal by a police officer: *Cottle v NSW Commissioner of Police; Police Association of New South Wales v Commissioner of Police (NSW Police Force)* [2020] NSWCA 159.

On 16 March 2022, the question was finally resolved by the High Court. The High Court dismissed with costs the appeal by the Commissioner of the NSW Police Force. The plurality (Kiefel CJ, Keane, Gordon and Steward JJ) held that the Commission did have jurisdiction to hear and determine Mr Cottle's application pursuant to s 84(1) of the IR Act.

The High Court held that the power in s 72A of the *Police Act* was not inconsistent with the unfair dismissal regime of the IR Act and if the legislature had intended to shield decisions made under s72A they would have done so expressly as they had done in ss 40, 50 and 51 regarding the termination of senior executives. The power to review the dismissal of non-executive police officers was held to be similar to those enjoyed by other public servants.

Secretary of the Ministry of Health v Australian Paramedics Association [2022] NSWSC 1431

In October 2022, his Honour Justice Walton, of the Supreme Court, rejected a motion for an order of *certiorari* to quash a recommendation made by the Commission in arbitration proceedings. The original dispute before the Commission revolved around the payment of an "on-call" allowance to specific employees. The payment amounted to $5000 per year for 13 employees. The Secretary argued that there was no contractual basis for this payment.

In arbitration, Commissioner Sloan made a recommendation that the Secretary continue to pay the allowance. The recommendation was made on the basis that s 116A of the *Health Services Act* ("HS Act"), which empowered the Secretary to fix terms of employment "in so far as they are not fixed by or under any other law", included terms and conditions fixed by reference to the common law principle of usage. Based on those conclusions the Commissioner made a recommendation for the continuation of the allowance.

The Secretary filed an application for leave to appeal which was refused by the Full Bench of the Commission (Constant CC, Murphy C and Webster C) on the grounds that the sum in question was not substantial in consideration of the Secretary's overall spending and that the decision was a recommendation, and thus had no binding effect and was unenforceable.

The Secretary sought judicial review of the decision of Commissioner Sloan, holding that a term granting the on-call allowance could be read into the contract on the basis of custom or usage and the refusal of the Full Bench to grant leave to appeal the primary decision. The grounds on which the Secretary relied included that Commissioner Sloan misconstrued s 116A of the HS Act and failed to afford procedural fairness.

Justice Walton found that the Commission is required to accord procedural fairness in its decisions. He expressed some doubts whether an arbitration recommendation could constitute a decision but did not feel the need to answer the question as it was not raised by the parties, and he proceeded on the assumption that Commissioner Sloan's decision could be the subject of an appeal. His Honour concluded that there were no issues regarding procedural fairness.

His Honour determined it was unnecessary to give a concluded view on whether the alleged errors of law were made out, though he raised doubts regarding the correctness of Commissioner Sloan's decision. He held that were there an error of law by Commissioner Sloan it was an error within jurisdiction, and that the Commission had the power to "interpret and determine the operation and effect of relevant laws and instruments".

His Honour held that a recommendation by the Commission was not sufficient to give rise to certiorari. He noted that "the only possible consequence of a recommendation is to suggest a course with the moral authority of the Commission and a culture of compliance". As the recommendation did not have any legal effect, *certiorari* could not lie.

Visscher v SafeWork NSW (No 3) [2023] NSWSC 317

Mr Visscher is an owner-builder. Following a complaint by an unidentified third party, SafeWork NSW attended Mr Visscher's building site and issued Mr Visscher with a prohibition notice. The prohibition notice prevented Mr Visscher from conducting any further work on the site until he had taken remedial action.

3. SIGNIFICANT CASES AND LEGISLATIVE CHANGES *CONT.*

Mr Visscher applied to the Commission for an external review of the decision to issue him with the prohibition notice. In the course of those proceedings, Mr Visscher issued a notice to produce to SafeWork seeking access to the documents comprising the original complaint it had received. A number of the documents produced by SafeWork contained redactions, which concealed information it claimed was protected from disclosure by public interest immunity ("PII"). In an interlocutory decision, Commissioner Murphy ordered SafeWork to produce documents with several of those redactions removed. SafeWork appealed that decision. Mr Visscher cross-appealed, contending that none of the redactions ought to have been permitted to remain.

In the course of the appeal, Mr Visscher contended that as an owner-builder he was not a "person conducting a business or undertaking" ("PCBU") within the meaning of the *Work Health and Safety Act 2011* (NSW) ("WHS Act") and that, consequently, SafeWork had no power to enter his property or to issue him with the prohibition notice. It followed, in his submission, that the Commission had no jurisdiction.

The Full Bench (Constant CC, Sloan C and Webster C) in SafeWork NSW v Visscher (No 3); and Visscher v SafeWork NSW (No 2) [2021] NSWIRComm 1099 concluded that the question was not whether Mr Visscher was a PCBU, but rather whether his site was a "workplace" within the meaning of the WHS Act. This centred on whether Mr Visscher was engaged in an "undertaking". Having considered in detail the provisions and purpose of the WHS Act, the Full Bench concluded that the site was a workplace and that SafeWork had the power to issue the prohibition notice (although whether it should have done so was a matter to be determined in the substantive proceedings). The Full Bench determined that it had jurisdiction to hear and determine the matter.

Mr Visscher commenced proceedings in the Supreme Court seeking judicial review of the Commission's decision seeking orders including:

1. that the Full Bench decision that the Commission had jurisdiction to hear and determine the matter be quashed; that the disputed notice was void *ab initio*; that the Commission proceedings were a nullity; that he was not a PCBU within the meaning of the WHS Act; and an order that the Full Bench determine the matter according to law;
2. that the decision in relation to redaction of the photos be quashed; that the documents produced were not protected by PII and that the Commissioner of NSW Police investigate alleged breaches of the *Crimes Act 1900*; and
3. that the dismissal of his cross-appeal be quashed and a declaration that the unredacted documents be produced.

Her Honour Acting Justice Schmidt handed down the decision in the judicial review, *Visscher v SafeWork NSW (No 3)* [2023] NSWSC 317, on 31 March 2023. Although this was after the reporting period, it is appropriate to note that Justice Schmidt was satisfied that the Commission had jurisdiction to deal with Mr Visscher's review application, the PII claim, the appeal and cross-appeal. Her Honour noted that if Mr Visscher had succeeded in his claim that the Commission had no jurisdiction to hear the matters before it, then no orders could have been made granting access to the unredacted documents produced. Her Honour refused the orders sought by Mr Visscher.

Local Government Engineers' Association of New South Wales v MidCoast Council (No 2) [2022] NSWIRComm 1069

A dispute was notified to the Commission under s 130 of the IR Act, which centred on the interpretation of a provision of an enterprise agreement relating to employees' superannuation entitlements. An interlocutory question was raised as to the Commission's powers in arbitration under s 136 of the IR Act. The Local Government Engineers' Association of New South Wales (LGEA) sought that the Commission make an order pursuant to s 136(1)(d) of the IR Act, compelling the Council to apply the provision in a manner consistent with its construction of the enterprise agreement or, in the alternative, a direction to the same effect pursuant to s 136(1)(a).

Commissioner Muir determined that neither form of relief was available to the LGEA. He found that an order must be one that the Commission is "authorised to make" and that no such authority had been demonstrated. The Commissioner observed that s 136(1)(b) confers a power to make an award. The order sought would set terms and conditions of employment, which would meet the definition of an "award" in the IR Act. The Commissioner concluded that the power to make an order under s 136(1)(d) did not extend to an order setting terms and conditions of employment. Commissioner Muir similarly found that the power to give a direction under s 136(1)(a) did not extend to one which would set terms and conditions of employment.

On appeal, the Full Bench (Murphy C, Sloan C and Webster C) upheld Commissioner Muir's decision. The Full Bench found that on a proper construction of the Act, a distinction must be drawn between "order", "direction" and "award". Otherwise, by couching its relief in the form of a "direction" it could obviate the need to satisfy the conditions precedent which would apply to the making of an order or award. Specifically on the question of the order sought by the LGEA, the Full Bench found that the enterprise agreement did not "authorise" the Commission to make the order within the meaning of s 136(1)(d). This was for two reasons: the power must be derived from statute, and the parties could not, through an enterprise agreement, confer jurisdiction on the Commission which the legislature had not. As to the direction sought by the LGEA, the Full Bench reviewed relevant authority before concluding that the power to give directions did not extend to one which would set terms and conditions of employment.

Williams v Secretary, Department of Education [2022] NSWIRComm 1007

The Full Bench (Constant CC, Sloan C and Webster C) considered a question referred to it by Commissioner Webster pursuant to s 193(1) of the Act. The question referred concerned the interaction between the provisions of the Act dealing with public sector disciplinary appeals and s 47(2) of the *Child Protection (Working with Children) Act 2012* ("CPWWC Act"). The question considered by the Full Bench was:

> "Does s 47 of the *Child Protection (Working with Children) Act 2012* (NSW) Act (the CPWWC Act) where the appellant:
>
> (i) is required to have a Working with Children Check to be employed under s 9 of the CPWWC Act;
>
> (ii) does not have a Working with Children Check; and
>
> (iii) was dismissed or directed to resign by the respondent,

preclude the Commission from:

a. allowing the appeal of the decision to dismiss or direction to resign; and/or

b. quashing the decision to terminate and remitting the matter back to the respondent with such directions (if any) as to which stage of the disciplinary process in relation to the matter may be recommenced by the respondent?"

Section 47(2) of the CPWWC Act is in the following terms:

"**47 Relationship with other Acts and laws**

....

(2) The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order the re-instatement or re-employment of a person or worker contrary to a prohibition on employment imposed by this Act, or to order the payment of damages or compensation for any removal from employment of a person from employment prohibited under this Act."

It was agreed that the appellant did not have a Working with Children Check and had not applied for one and, without a Working with Children Check, she was unable to work in child-related work pursuant to ss 8 and 9 of the CPWWC Act.

The Full Bench agreed with the reasoning of the Full Bench of the Fair Work Commission in *O'Connell v Catholic Education Office, Archdiocese of Sydney T/A Catholic Education Office, Sydney* [2016] FWCFB 1752 that ss 8 and 9 only prohibit an employee without a Working with Children Check (and who has not applied for one) from being "made use of or utilised" in child-related work as defined by the CPWWC Act.

After noting the principles espoused in *Marroun v State Transit Authority* [2017] NSWCA 273 and considering the parties' arguments, the Full Bench concluded that the effect of allowing an appeal in public sector disciplinary proceedings is not to reinstate or re-employ the appellant contrary to ss 8 or 9 of the CPWWC Act. At [51] and [52] the Full Bench stated:

"Although the effect of upholding the appeal will have the practical consequence that the employment relationship between the appellant and the respondent will be restored, we disagree that this is an order for reinstatement or re-employment contrary to a prohibition on employment under the CPWWC Act. We also do not accept that the effect of upholding the appeal is to appoint the appellant to a different position.

.....

The function of the Commission in a public sector disciplinary appeal is administrative in nature, requiring the Commission to stand in the shoes of the decision-maker and decide if the allegations are made out, and if they are, if the punishment was appropriate. By upholding an appeal, the Commission may quash the respondent's decision, but it is not ordering the appellant be "made use of or utilised" in child-related work. Indeed, should the appeal be upheld and the appellant's circumstances do not change, the respondent will continue to be prohibited from requiring the appellant to undertake child-related work. The relevant provisions of the CPWWC Act, the *Teachers Service Act* and the *Teachers Accreditation Act* which expressly envisage the circumstances of a teacher being employed in the Teaching Service without a Working with Children Check and accreditation to teach, will apply."

The Full Bench concluded that subs 47(2) of the CPWWC Act does not preclude the Commission from allowing the appeal and/or quashing the decision to terminate the appellant and remitting the matter back to the respondent.

Secretary of the Ministry of Health v New South Wales Nurses and Midwives' Association [2022] NSWSC 1178

In February and March 2022, the New South Wales Nurses and Midwives' Association ("Association") engaged in industrial action in breach of orders made by Commissioner Murphy that the Association refrain from organising and taking industrial action.

The Secretary of the Ministry of Health (Secretary) brought proceedings in the Supreme Court against the Association for contravention of dispute orders under s 139 of the Act. The matter was heard by his Honour Justice Walton in July 2022.

A question before the Court was whether the orders made by the Commission in February and March were invalid because the Commissioner who made the orders failed to provide reasons.

Justice Walton held that the challenge to the validity of the dispute orders could appropriately be categorised as collateral attacks as the purpose of the proceedings was not the validity of the orders. His Honour noted that the Supreme Court has a discretion not to hear and determine collateral attacks. His Honour determined that the nature of the matter, which raised important questions regarding the practices of the Commission, and the severity of potential penalties the Association could incur, weighed against exercising that discretion and he determined that he was able to consider the validity of the orders.

Justice Walton determined that when making dispute orders, the Commission is under an obligation to provide reasons for its decisions. While there is no express statutory obligation for the Commission to provide reasons, reasons must be provided to make effective the right to appeal contained in ss 187 and 188 of the Act, as well as from the obligations to act judicially and accord parties procedural fairness. Acknowledging the often urgent nature of dispute proceedings, his Honour found that brief, succinct reasons would be sufficient, but those reasons had to address the substantive issues raised by the parties.

Justice Walton held that a failure to provide reasons constituted an error of law, but not necessarily jurisdictional error; and without something more than the failure to provide reasons, the error was one within jurisdiction.

Justice Walton held that Commissioner Murphy, in making the February orders, failed to consider two substantial and well-articulated arguments submitted by the Association that had potential to alter the outcome of the decision, being that the Secretary delayed in notifying the dispute and that the potential harm of the strike was substantially less than that submitted by the Secretary. His Honour held that where a decision-maker fails to make reference to a particular matter, it can be inferred that they did not have regard to that matter. By not giving reasons and constructively not considering the Association's substantial arguments, the Commissioner failed to exercise his jurisdiction, invalidating the First Orders.

3. SIGNIFICANT CASES AND LEGISLATIVE CHANGES *CONT.*

Justice Walton found that the arguments put forward by the Association about the March orders were not substantial in the relevant sense, and thus the failure to give reasons was an error within jurisdiction. His Honour stated that for an argument to be substantial it must be clearly material or of undoubted relevance and have the potential to change the final outcome. In considering the three arguments advanced by the Association, his Honour determined that even if the arguments had been clearly articulated and fully considered by Commissioner Murphy it was highly unlikely those arguments could have affected the final outcome.

Justice Walton found that as the February orders were invalid, the Association could only be penalised for the breach of the March orders. By continuing to promote the strike the Association engaged in a single course of conduct that occurred over seven days. In determining the appropriate penalty, his Honour noted the good "industrial character" of the Association and that it took steps to notify the Secretary early on and to minimise the impact of the strike on patients. Despite those mitigating factors, his Honour noted that the importance of general deterrence weighed heavily on his determination and that, despite the efforts of the Association, there were substantial disruptions and risks to patients. Furthermore, the Association's defiance was "brazen and serious" and that it was willing to continue to take action despite orders to the contrary. Weighing those factors, his Honour determined the relevant contravention should attract a penalty of $25,000 of a potential maximum penalty of $40,000.

4. ENGAGEMENT, EDUCATION AND PROJECTS

L to R: Former Acting Chief Commissioner Inaam Tabbaa AM FRSN, The Hon. Justice Roger Boland (Previous President, now retired), The Hon. Justice Michael Walton (Previous President, now Judge of the Supreme Court), Chief Commissioner Nichola Constant (current head of the Commission), The Hon. Justice Lance Wright KC (Previous President, now retired), Former Chief Commissioner Peter Kite SC, Elizabeth Robinson (Industrial Registrar).

120th Anniversary

The Industrial Relations Commission of New South Wales marked 120 years of providing independent arbitration, conciliation and dispute resolution. As the practical and legal successor of the original Court of Arbitration founded in 1902 and of the Industrial Commission established in 1926, the Industrial Relations Commission is the longest continuously operating industrial tribunal in the world.

The occasion was marked by a ceremonial sitting of the Commission at Parramatta on 18 July 2022. Distinguished figures in the industrial relations and legal communities were welcomed to Dharug country by Auntie Kerrie Kenton which included the following:

> *This place is a meeting place and a place of trade, place of celebrations, so if you could all just take a moment to remember and imagine this beautiful landscape under the southern stars where fires lit the night and corroborees unfolded, a laughter echoing in the night air, sounds of singing and of feet dancing on the ground and the smell of food cooking on the fires for all to share. Some 60,000 years of history right here in Burramatta.*

These attendees included the former heads of the Commission seated on the Bench with the Chief Commissioner, the Hon Justice Michael Walton, the Hon Lance Wright KC, the Hon Roger Boland, former Chief Commissioner Peter Kite SC and former Acting Chief Commissioner Inaam Tabbaa AM. Also in attendance was the Minister for Finance and Minister for Employee Relations, the Hon Damien Tudehope MLC, the Hon Justice Lea Armstrong, President of the NSW Civil and Administrative Tribunal, Vice President Hatcher of the Fair Work Commission, as his Honour then was, Una Doyle, Chief Executive of the Judicial Commission, Gabrielle Bashir SC, President of the NSW Bar Association, Joanne van der Plaat, President of the Law Society of NSW, many other former judicial and non-judicial members of the Commission, and representatives of industrial organisations. The event was also live streamed to allow anyone to view the ceremony.

4. ENGAGEMENT, EDUCATION AND PROJECTS *CONT.*

Former President Justice Wright KC gave a speech on the importance of the Commission in the development of labour relations and law, not only in New South Wales but across Australia. Contrasting the Commission with other industrial jurisdictions, he praised the Commission as successfully playing a key role in ingraining ideas of equity and a "fair go all round" in Australian industrial relations. Mr Wright KC made the following observations:

> *The Commission in recent times has been important in making several landmark decisions which entrench basis standards for the working people of New South Wales, including the Equal Remuneration Principles case, a number of equal pay cases, the Secure Employment Test case which conferred protection to workers in precarious and casual employment and the setting of improved parental leave provisions and industrial awards. The New South Wales Commission's decisions have frequently shaped those of other jurisdictions since that time.*

The Minister also gave a speech noting the history of the Commission including recent challenges for the Commission and changes to its jurisdiction. The Minister noted:

> *… events like this are important … because they are part of the rich tapestry of the judicial system in this country and what really makes democracy work for this country. … this is the oldest [industrial relations] jurisdiction … and it holds democracy together because without Commissions and systems like this, in many respects the fabric of the society which we live in would not be what it is today.*
>
> *… the Court was ahead of its time in many ways. Firstly, and notably, it preceded the Commonwealth counterpart by two years. Secondly, and I say this, it was in many respects a bit unknown but the Sawmillers' case of 1905, Justice Heydon set a wage that was to allow workers to have a human life with some degree of comfort, to marry, to raise a family, again two years ahead of the more famous Harvester case which everyone knows but not often acknowledging the context that the Harvester case existed in, in respect of the Sawmillers' case which was decided by this body.*

The Commission is grateful to the Industrial Relations Society of NSW for supporting the Commission in holding and arranging the ceremonial sitting.

Other Engagement and Education

On 6 May 2022, Chief Commissioner Constant spoke at the NSW Local Government conference and provided a status update about the Commission's work during, and post-COVID.

On 13 May 2022, Commissioner Webster spoke at the Industrial Relations Society of New South Wales annual conference at Bowral. The presentation covered: the Commission's response to the pandemic; parties appearing remotely; and the Commission's obligations to self-represented litigants and the consequences of these.

On 14 October 2022, Chief Commissioner Constant and Commissioner Sloan spoke at the Industrial Relations Society of New South Wales, Newcastle Branch annual conference at Magenta Shores. The conference theme was the 'Dignity of Work'. Focusing on the concept that dignity and respect in the workplace is a two-way street, the Commissioners shared their observations as to lessons to be learned from recent matters before the Commission.

On 16 and 30 November 2022, for the first time in three years, the Commission held the Introduction to the Commission course at the Commission's premises at Parramatta. The course was well attended by new practitioners, and other persons working in industrial relations, including employees of the Crown and various industrial organisations. The Commissioners shared best practices in the Commission and their own personal experiences with the Commission, before, and after, becoming Commissioners.

On 22 March 2022 and 20 September 2022, the Commission hosted the six-monthly meeting of Commission users on-line. Users were encouraged to raise issues impacting the Commission's service delivery in this forum.

Projects of the Commission

Various projects were completed and in development throughout 2022. These projects include the launch of on-line filing, an upgrade to the Commission premises at Parramatta, and commencement of a project to enable online applications for, and issuance of, Work Health and Safety and right of entry permits.

On-line filing

The Commission's ten most commonly used forms may now be filed online through the NSW Online Registry, a portal for the filing of applications and related documents in NSW Courts and Tribunals.

The forms available for online filing are:

- Unfair Dismissal Applications and Employer's Responses;
- Public Sector Disciplinary Appeals and Employer's Responses;
- Notification of Industrial Disputes;
- Notices of Appearance;
- Notices of Discontinuance; and
- four forms relating to the appointment of solicitors or their ceasing to act.

Premises and Facilities Upgrade

Renovations were underway in late 2022 to build a new chambers for the sixth Commissioner and to upgrade the AVL facilities in the Commission's large meeting room so that the meeting room can function as an overflow hearing room when the five hearing rooms are in use.

Work Health and Safety and Right of Entry Permits

The Commission is working to develop a new online right of entry and Work Health and Safety permits system. It is anticipated the new permits system will be available during 2023.

5. APPENDICES

APPENDIX 1

TIME STANDARDS reviewed in 2022 – Industrial Relations Commission

Nature of Matter	Provide to Chief Commissioner or Delegate	Legislative Provision	Allocation	List for Conciliation/ Directions
Industrial Disputes	<2 hours from receipt of notification	IR Act ss 130, 332	1 – 24 hours	2 hrs – 7 days
Awards & Contract Determinations	24-48 hours from receipt of application	IR Act ss 10, 17, 311	24 – 72 hours	14 – 28 days
Police Review of Removal Orders	1 – 8 hours from receipt of application	Police Act s 181D	<24 hours	14 – 28 days
Police Hurt on Duty Disciplinary Appeals (PN 24)	1 – 8 hours from receipt of application	Ss 173, 183A and 186	<24 hours	14 – 28 days
Unfair Dismissals	1 – 8 hours from receipt of application	IR Act s 84	24 – 48 hours	14 – 28 days
Public Sector Disciplinary Appeals (PN 23)	1 – 8 hours from receipt of application	IR Act s 100A	24 – 48 hours	14 – 28 days
Police Admin Officers' Appeals	1 – 8 hours from receipt of application	Police Act s 185	24 – 48 hours	14 – 28 days
Entertainment Industry Disputes	2 hours from receipt of notification	Entertainment Industry Act s 20	1 – 24 hours	2 hours – 7 days
Injured Worker Applications	1 – 8 hours from receipt of application	Workers Compensation Act s 242	24 – 48 hours	14 – 28 days
Appeals	24 – 48 hours	IR Act s 187	<72 hours	Directions; 7 – 14 days
Victimisation Applications	1 – 8 hours from receipt of notification	IR Act s 213	24 – 48 hours	14 – 28 days
Urgent Applications	<2 hours	IRC Rules r 3.3 (where Notice of Motion and Affidavit required)	<2 hours	2 hours – 7 days
Applications for External Review	1 – 8 hours from receipt of application	Work Health and Safety Act s 229	24 – 48 hours	14 – 28 days
Referral of election inquiry about an election in an industrial organisation	1 – 24 hours from referral	IR Act s 254	24 – 48 hours	Directions; 7 – 14 days

Time from Lodgment to Finalisation	Time Standard	Achieved in 2020	Achieved in 2021	Achieved in 2022
Applications for leave to appeal and appeal				
Within 6 months	50%	75.0%	28%	30%
Within 12 months	90%	93.8%	78%	60%
Within 18 months	100%	100%	100%	100%
Award applications (including major industrial cases)				
Within 2 months	50%	32.4%	57.19%	67.69%
Within 3 months	70%	35.1%	65.15%	70%
Within 6 months	80%	36.5%	83.71%	76.92%
Within 12 months	100%	97.3%	95.83%	89.23%
Enterprise Agreements				
Within 1 month	75%	100%	75%	80%
Within 2 months	85%	100%	100%	80%
Within 3 months	100%	100%	100%	90%
Industrial Disputes				
Within 2 months	50%	44.3%	43.42%	37.5%
Within 3 months	70%	60.4%	58.88%	54.36%
Within 6 months	90%	80.8%	86.51%	81.10%
Within 9 months	100%	90.1%	93.75%	89.82%
Public Sector Disciplinary Appeals				
Within 1 month	30%	11.1%	15.09%	13.04%
Within 2 months	60%	33.3%	35.84%	28.26%
Within 3 months	90%	44.4%	50.94%	43.48%
Within 6 months	100%	73.3%	67.92%	76.09%

5. APPENDICES *CONT.*

Time from Commencement to Finalisation	Time Standard	Achieved in 2020	Achieved in 2021	Achieved in 2022
Unfair Dismissals				
Within 2 months	50%	27.4%	32.4%	22.08%
Within 3 months	70%	50.2%	57.2%	37.70%
Within 6 months	90%	78.5%	85.2%	81.88%
Within 9 months	100%	91.3%	92.4%	95.83%

Time from filing to first listing	Time Standard	Achieved in 2020	Achieved in 2021	Achieved in 2022
Industrial Disputes				
Within 72 hours	50%	31.25%	25.61%	35.69%
Within 5 days	70%	44.6%	41.46%	48.55%
Within 10 days	100%	67.5%	76.52%	72.35%

APPENDIX 2

List of Registered Industrial Organisations

Aged and Community Services Australia
Association of Quality Child Care Centres of NSW Inc
Australian Education Union New South Wales Teachers Federation Branch
Australian Federation of Employers and Industries
Australian Hotels Association (NSW)
Australian Institute of Marine and Power Engineers New South Wales District
Australian Maritime Officers' Union of New South Wales
Australian Medical Association (NSW) Limited
Australian Nursing and Midwifery Federation New South Wales Branch
Australian Paramedics Association (NSW)
Australian Private Hospitals Association
Australian Retailers Association
Australian Road Transport Industrial Organization, New South Wales Branch
Australian Salaried Medical Officers' Federation (New South Wales)
Australian Services Union of N.S.W.
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch
Bus and Coach Industrial Association of New South Wales
Clay Brick & Paver Association of New South Wales
Construction, Forestry, Mining and Energy Union (New South Wales Branch)
Electrical Trades Union of Australia, New South Wales Branch
Finance Sector Union of Australia, New South Wales Branch
Fire Brigade Employees' Union of New South Wales
Health Services Union NSW
Independent Education Union of Australia NSW/ACT Branch
Institute of Senior Educational Administrators of New South Wales
Local Government NSW
Media, Entertainment and Arts Alliance New South Wales
Motor Traders' Association of New South Wales
Mutual Banking Employers' Association
New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union

5. APPENDICES *CONT.*

New South Wales Nurses and Midwives' Association
New South Wales Taxi Council Limited
Newcastle Master Builders' Association
Newcastle Trades Hall Council
NSW Business Chamber Limited
NSW Farmers' (Industrial) Association
NTEU New South Wales
Nursery & Garden Industry NSW & ACT Limited
Police Association of New South Wales
Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales
Rail, Tram and Bus Union of New South Wales.
Roofing Industry Association of NSW Incorporated
Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern, New South Wales
Shop, Distributive and Allied Employees' Association, New South Wales
TAB Agents' Association of New South Wales
The Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch)
The Association of Wall & Ceiling Industries of New South Wales
The Australasian Meat Industry Employees' Union, New South Wales Branch
The Australasian Meat Industry Employees' Union, Newcastle and Northern Branch
The Australian Industry Group New South Wales Branch
The Australian Workers' Union, New South Wales
The Broken Hill Town Employees' Union
The Caravan Camping and Touring Industry and Manufactured Housing Industry Association of NSW Limited
The Development and Environmental Professionals' Association
The Electrical Contractors' Association of New South Wales
The Funeral Directors' Association of New South Wales Limited
The Local Government Engineers' Association of New South Wales
The Master Builders' Association of New South Wales
The Master Fish Merchants' Association of Australia
The Master Plumbers & Mechanical Contractors Association of New South Wales

The New South Wales Chamber of Fruit and Vegetable Industries Incorporated
The New South Wales Pharmacy Guild
The New South Wales Plumbers and Gasfitters Employees' Union
The Newsagents' Association of NSW and ACT Ltd.
The Racing Guild of New South Wales
The Registered Clubs Association of New South Wales
The Seamens' Union of Australia, New South Wales Branch
Timber Trade Industrial Association
Transport Workers' Union of New South Wales
Unions NSW
United Workers' Union, New South Wales Branch
Waste Contractors and Recyclers Association of N.S.W.

APPENDIX 3

The Chief Commissioner of the Industrial Relations Commission of New South Wales

The position of Chief Commissioner of the Industrial Relations Commission was created with the assent of the *Industrial Relations (Industrial Court) Amendment Act 2016* on 8 December 2016.

Name	Held Office		Remarks
	From	To	
Tabbaa, Inaam AM FRSN	8 December 2016	30 March 2017	Acting Chief Commissioner until the appointment of Peter Kite SC. Retired from the Commission on 20 April 2017.
Kite SC, Peter	3 April 2017	4 December 2019	Retired on 20 December 2019.
Constant, Nichola	2 March 2020	Present	Acted as Chief Commissioner from 22 November 2019.

APPENDIX 4

The Presidents of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Cohen, Henry Emanuel	1 April 1902	3 July 1905	Died 5 January 1912.
Heydon, Charles Gilbert	4 April 1905	December 1918	Died 6 March 1932.
Edmunds, Walter	August 1920	6 January 1926	From February 1919 to August 1920 held appointment as Acting President and President of Board of Trade. Died 15 August 1932.
Beeby, George Stephenson	August 1920	July 1926	President, Board of Trades. Died 18 July 1942.
Piddington, Albert Bathurst	July 1926	19 May 1932	Died 5 June 1945.
Browne, Joseph Alexander	20 June 1932	30 June 1942	Died 12 November 1946.
Taylor, Stanley Cassin	28 December 1942	31 August 1966	Died 9 August 1982.
Beattie, Alexander Craig	1 September 1966	31 October 1981	Died 20 September 1999.
Fisher, William Kenneth	18 November 1981	11 April 1998	Died 10 March 2010.
Wright, Frederick Lance	22 April 1998	22 February 2008	Retired.
Boland, Roger Patrick	9 April 2008	31 January 2014	Retired and continued as Acting Judge until January 2015.
Walton, Michael John	3 February 2014	7 December 2016	Appointed Justice of the Supreme Court of NSW on 8 December 2016.

APPENDIX 5

The Vice-Presidents of the Industrial Relations Commission of New South Wales

The position of Vice-President of the Industrial Relations Commission was created with the assent of the *Industrial Arbitration (Industrial Tribunals) Amendment Act 1986* on 23 December 1986.

The position was created:

> "to achieve a more cohesive single structure. In future, responsibility for assignment of conciliation commissioners to chair conciliation committees and the allocation of disputes to them will reside in a judicial member of the Industrial Commission who will be appointed as Vice-President of the Industrial Commission. This will assist in the achievement of a closer relationship between the separate structures of the Industrial Commission and conciliation commissioners and will allow a more uniform approach to industrial relations issues."

Hansard, Second Reading Speech, Legislative Council, 21 November 1986 per The Hon. J R Hallam at p 7104

Name	Held Office		Remarks
	From	To	
Cahill, John Joseph	19 February 1987	10 December 1998	Died 21 August 2006.
Walton, Michael John	18 December 1998	31 January 2014	Appointed as President 3 February 2014. Appointed Justice of the Supreme Court of NSW on 8 December 2016.

APPENDIX 6

Industrial Registrars of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Addison, George Campbell	1 April 1902	1912	Returned to the Bar. Appointed Chief Industrial Magistrate 1917.
Holme, John Barton	1912	9 February 1914	Appointed first Undersecretary, Department of Labour and Industry 10 February 1914.
Payne, Edward John	1914	1918	Retired from the public service in 1913 as Chairman, Public Service Board.
Kitching, Frederick William	12 July 1918	30 June 1924	Appointed Undersecretary, Office of the Minister for Labour and Industry 1 July 1924.
Webb, Alan Mayo	1 September 1924	19 June 1932	Appointed Judge of the Industrial Commission 20 June 1932.
Wurth, Wallace Charles	1932	1936	Appointment to Public Service Board; Appointed Chairman of the Public Service Board in 1939.
Ebsworth, Samuel Wilfred	1936	1947	Retired.
Kelleher, John Albert	1947	13 May 1955	Appointed Undersecretary and Industrial Registrar, Department of Labour and Industry and Social Welfare 1949. Appointed Judge of Industrial Commission 16 May 1955.
Kearney, John Albert	1955	1962	Appointed Undersecretary, Department of Labour and Industry.
Whitfield, John Edward	1962	1968	Appointed Executive Assistant (legal) Department of Labour and Industry; Later appointed as Deputy Undersecretary Department of Labour and Industry.

5. APPENDICES *CONT.*

Name	Held Office		Remarks
	From	To	
Fetherston, Kevin Roy	3 June 1968	1977	Appointed Executive Assistant (Legal) Department of Labour and Industry; later appointed as Deputy Undersecretary, Department of Labour and Industry.
Coleman, Maurice Charles Edwin	29 April 1977	1984	Retired.
Buckley, Anthony Kevin	23 January 1984	30 March 1992	Appointed as Commissioner, Industrial Relations Commission 31 March 1992.
Walsh, Barry	19 February 1992	15 July 1994	Appointed as Commissioner, Water Conservation and Irrigation Commission.
Szczygielski, Cathy	18 July 1994	4 November 1994	Returned to position of Deputy Registrar, Industrial Court.
Williams, Louise	7 November 1994	16 August 1996	Returned to position of Deputy Registrar, Land & Environment Court.
Robertson, Gregory Keith	31 March 1992	26 October 1999	To private practice.
McGrath, Timothy Edward	27 October 1999	9 August 2002	Appointed Assistant Director General, Courts and Tribunal Services, Attorney General's Department 12 August 2002.
Grimson, George Michael	22 August 2002	18 December 2014	Retired.
Hourigan, Lesley	19 December 2014	13 March 2015	Returned to position of Deputy Registrar Industrial Court.
Wiseman, James	16 March 2015	October 2016	Returned to Local Court.
Morgan, Melinda	31 October 2016	October 2021	Appointed Superior Courts Coordinator – Digital Reform Project.
Hoskinson, Irina	October 2021	February 2022	Acting Industrial Registrar returned to the Bar.
Robinson, Elizabeth	February 2022	Present	

APPENDIX 7

Brief History of the Industrial Relations Commission of New South Wales

The Court of Arbitration, established by the *Industrial Arbitration Act 1901*, was a court of record constituted by a President (a Supreme Court judge) and two members representing employers and employees respectively. The Court came about as a result of the failure of employers and unions to use a system of voluntary arbitration. The Court had jurisdiction to hear and determine any industrial dispute or matter referred to it by an industrial union or the Registrar, prescribe a minimum wage and make orders or awards pursuant to such hearing or determination.

The Industrial Court, established by the *Industrial Disputes Act 1908*, was constituted by a Supreme Court or District Court judge appointed for a period of seven years. The Court did not require the existence of a dispute to ground its jurisdiction and had power to arbitrate on conditions of employment and could hear prosecutions. The Act also established a system of Industrial Boards consisting of representatives of employers and employees and a Chairman. The Industrial Court heard appeals from the Industrial Boards.

The Court of Industrial Arbitration was established by the *Industrial Arbitration Act 1912*. It was constituted by up to three judges with the status of judges of the District Court. The Court was vested with all the powers conferred on all industrial tribunals. The Act empowered the Minister to establish Conciliation Committees with powers of conciliation but not arbitration. Conciliation Committees fell into disuse after about 12 months and a Special Commissioner (later known as the Industrial Commissioner) was appointed on 1 July 1912.

A Royal Commission on Industrial Arbitration in 1913 led to some major changes under the *Industrial Arbitration (Amendment) Act 1916*, which resulted in an increase in the membership of the Court and the transfer of powers of the Industrial Boards to the Court.

The Board of Trade was established by the *Industrial Arbitration (Amendment) Act 1918*. It functioned concurrently with the Court of Industrial Arbitration and was constituted by a President (a judge of the Court), a Vice-President and representatives of employers and employees. The Board's functions were to conduct a public inquiry into the cost of living and declare an adult male and female living wage each year for industry generally and for employees engaged in rural occupations. In addition, it was to investigate and report on conditions in industry and the welfare of workers. The Board was, in practice, particularly concerned with matters relating to apprenticeships.

The *Industrial Arbitration (Amendment) Act 1926* abolished the Court of Industrial Arbitration and the Board of Trade and set up an Industrial Commission constituted by a Commissioner and a Deputy Commissioner. The Commissioner or Deputy Commissioner sat with employer and employee representatives selected from a panel.

On any reference or application to it the Commission could make awards fixing rates of pay and working conditions, determine the standard hours to be worked in industries within its jurisdiction and had power to determine any "industrial matter". The Commission had authority to adjudicate in cases of illegal strikes, lockouts or unlawful dismissals and could summon persons to a compulsory conference and hear appeals from determinations of the subsidiary industrial tribunals. The former Boards, which had not exercised jurisdiction since 1918, continued in existence but as Conciliation Committees with exclusive new jurisdiction in arbitration proceedings.

5. APPENDICES *CONT.*

A number of controversial decisions by the Industrial Commission led to the proclamation of the *Industrial Arbitration (Amendment) Act 1927*, which altered the position of Industrial Commissioner (but not Deputy Industrial Commissioner) and the constitution of the Commission to that of three members with the status of Supreme Court judges. The Committees were still the tribunals of first instance and their decisions were to be the majority of members other than the chairman, whose decision could be accepted by agreement if the members were equally divided. Otherwise, the chairman had no vote and no part in the decision. Where a matter remained unresolved in Committee it passed to the Commission for determination.

The *Industrial Arbitration (Amendment) Act 1932* placed the emphasis on conciliation. The offices of Deputy Industrial Commissioner and Chairman of Conciliation Committees were abolished and a Conciliation Commissioner was appointed to fill the latter position. This Act also provided for the appointment of an Apprenticeship Commissioner and for the establishment of Apprenticeship Councils. The Conciliation Commissioner could call compulsory conferences in industrial disputes to try to bring about an agreement between the parties. Any such agreement, when reduced to writing, took effect as an award but was subject to appeal to the Industrial Commission. The Conciliation Commissioner or a Conciliation Committee could not call witnesses or take evidence except as directed by the Industrial Commission. Unresolved matters were referred to the Commission.

The membership of the Commission was increased to four by the *Industrial Arbitration Act 1936*, and certain provisions regarding appeals were altered under this Act. The *Industrial Arbitration (Amendment) Living Wage Act 1937* repealed the Commission's power of determining a wage and provided for the adoption of a basic wage and fixed loadings determined by the Commonwealth Court of Conciliation and Arbitration.

In 1938 the number of members of the Commission was increased to no less than five and no more than six and the Act, the *Industrial Arbitration and Workers Compensation (Amendment) Act 1938*, introduced provisions regarding investigation of rents and certain price fixing. The Act was again amended in 1939 mainly to address the fixing of maximum prices.

The *Industrial Arbitration Act 1940* consolidated all previous Acts and refined and rationalised the procedures and operation of the Industrial Commission. The *Industrial Arbitration Act 1940* provided for the establishment of an Industrial Commission, Conciliation Committees, Conciliation Commissioners, Special Commissioners, Industrial Magistrates Courts and the Industrial Registrar.

The *Industrial Arbitration (Amendment) Act 1943* empowered the Chairman, with the agreement of the members or by special authorisation of the Industrial Commission, to decide matters where there was division. The number of Commissioners who might be appointed was also increased to five.

The *Industrial Arbitration (Amendment) Act 1948* allowed the Commissioners to decide matters upon which the members were equally divided as well as make an award where the disputing parties had been called into a compulsory conference.

In 1955, the maximum number of members of the Industrial Commission was increased to 12 and the next raft of significant changes came with the *Industrial Arbitration (Amendment) Act 1959*. These changes included defining the wage fixing powers of Industrial Committees and appeal provisions were also reformed.

In 1979, the *Industrial Arbitration Act 1940* was again amended to make provision for the establishment of Contract Regulation Tribunals. This gave the Commission jurisdiction over contracts for the bailment of taxi cabs and private hire cars and over contracts for the transportation by motor lorries of loads other than passengers.

In 1981, and again in 1989, the Commission's powers in relation to dealing with apprentices were clarified. The *Industrial and Commercial Training Act 1989* treated apprentices as other employees for all industrial purposes.

By 1989, the Industrial Commission consisted of not more than 12 members, including the President and the Vice-President. The *Industrial Arbitration Act 1940* also provided for the appointment of "non-judicial" members who did not have to be legally qualified as well as "judicial" members. There were certain jurisdictional limitations for "non-judicial" appointees.

In 1988, the Government commissioned a comprehensive review of the State's industrial laws and procedures. The subsequent report, the Niland Report, had far reaching recommendations and became the basis for the *Industrial Relations Act 1991*. The former Commission was abolished and replaced by the Industrial Relations Commission and a separate Industrial Court. Two of the key features of the report were the introduction of enterprise bargaining outside the formal industrial relations system with agreements specifically tailored to individual workplaces or businesses and the provisions relating to unfair dismissal. Individuals could access the Commission if they believed they had been unfairly dismissed. Their remedy was reinstatement and/or compensation.

Unlike the federal approach, the States had not separated judicial and administrative functions in relation to the Commission's powers. The 1991 Act, for the first time, sought to adopt the federal approach and established the Industrial Relations Commission and the Industrial Relations Court (although the Judges remained members of the Commission at all times).

On 2 September 1996, the *Industrial Relations Act 1996* came into force. It repealed and replaced the 1991 Act and is an example of plain English statute law. Chapter 4 of this Act established a new Industrial Relations Commission. The 1996 Act restored the traditional arrangement by merging these two bodies. When the Commission was dealing with judicial matters it was called the Industrial Relations Commission of New South Wales in Court Session and was a superior court of record of equivalent status to the Supreme Court.

On 9 December 2005 the *Industrial Relations Amendment Act 2005* was proclaimed to commence. This Act enabled the Industrial Relations Commission of New South Wales in Court Session to be called the Industrial Court of New South Wales.

On 1 January 2010 the *Industrial Relations (Commonwealth Powers) Act 2009* was proclaimed to commence. This Act referred certain matters relating to industrial relations to the Commonwealth for the purpose of s 51(xxxvii) of the Australian Constitution and amended the *Industrial Relations Act 1996*. The effect of this Act was to transfer the residue of the private sector to the national industrial relations system and it made clear that the Industrial Relations Commission retained jurisdiction in relation to State public sector employees and Local Government employees. Additionally, s 146B of the *Industrial Relations Act 1996* was inserted to make clear that members of the Industrial Relations Commission of New South Wales could continue to be nominated as dispute resolution providers in federal enterprise agreements.

5. APPENDICES *CONT.*

On 17 June 2011, the *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011* commenced. This Act required the Industrial Relations Commission to give effect to aspects of government policy declared by the regulations relating to public sector conditions of employment (s 146C).

On 1 January 2012, the *Work Health and Safety Act 2011* commenced. This Act removed the jurisdiction of the Industrial Court to deal with work, health and safety prosecutions involving death or serious injury occurring in workplaces across the State. This jurisdiction was transferred to the District Court. The Industrial Court retained jurisdiction to deal with matters filed prior to 31 December 2011 under the Occupational Health and Safety legislation prior to its repeal. The Court also retained jurisdiction in relation to minor breaches of the work, health and safety legislation.

On 20 December 2013, the *Industrial Relations Amendment (Industrial Court) Act 2013* commenced and amended the *Industrial Relations Act 1996*. The major changes were that the Industrial Court may only be constituted by a single judicial member and not by a Full Bench of judicial members; a judge of the Supreme Court may act as a judge of the Industrial Court; the jurisdiction of a Full Bench of the Industrial Court to deal with cancellation of industrial organisations was transferred to the Industrial Relations Commission and provided that a Full Bench of the Commission for that purpose was to be constituted by a judge of the Industrial Court and two members who are Australian lawyers; the jurisdiction of a Full Bench of the Industrial Court to deal with contempt was transferred to a single judge of the Court; the jurisdiction of a Full Bench of the Industrial Court to hear appeals from the Local Court and appeals on a question of law in relation to a public sector promotional or disciplinary appeal was transferred to a single judge of the Industrial Court; the jurisdiction of a Full Bench of the Industrial Court to hear appeals from a judge of the Industrial Court was transferred to the Supreme Court.

Amendments to other Acts around this time provided for: appeals from the Industrial Court to the Court of Criminal Appeal; for certain matters under the *Police Act 1990* to be dealt with by Commission members who are Australian Lawyers; and for a judicial member of the Commission to act as a judge of the Supreme Court.

On 19 October 2016, the *Industrial Relations Amendment (Industrial Court) Act 2016* commenced. This Act made further changes to the Industrial Relations Act 1996 allocating functions previously undertaken by judicial members of the Commission to the Supreme Court or to the Commission. Any references to the Industrial Court remaining in the *Industrial Relations Act 1996*, were to the Supreme Court. Accordingly, the role of President as Head of the Industrial Relations Commission was removed and in most respects these functions, including as Head of Jurisdiction, were to be undertaken by the newly created role of Chief Commissioner.

APPENDIX 8

Glossary

Applicant	The party who lodged an application with the Commission
Arbitration	A process by which the Commission determines a dispute by imposing a binding settlement on the parties. The Commission may resolve a range of matters by arbitration, including unfair dismissal claims and industrial disputes, generally following attempted conciliation.
Award	An award is a ruling by the Commission which sets fair and reasonable conditions of employment for employees in that sector / profession. The Commission is required to review awards at least once every three years and may vary the terms of or rescind the award.
Carrier	An individual, partnership or body corporate which supplies services under a contract of carriage.
Certificate of Attempted Conciliation	A certificate issued by the Commission in circumstances where conciliation has failed to resolve a dispute between the parties and is a prerequisite to arbitration in certain instances, such as unfair dismissal and industrial disputes.
Conciliation	An informal means of dispute resolution in the Commission. Conciliation is a prerequisite for arbitration in many types of matters before the Commission and the Commission has the authority to compel the attendance of persons at conciliation.
Constitutional Corporation	A corporation to which paragraph 51 (xx) of the Commonwealth Constitution applies.
Contract of Bailment	A contract under which a taxi is bailed to a person to enable the person to ply for hire or a hire vehicle that is bailed to a person to transport passengers. The Commission may make determinations regarding the conditions of employment and remuneration for bailors.
Contract of Carriage	A contract for the transportation of goods by means of a motor vehicle or bicycle in the course of a business transporting goods of that kind by motor vehicle or bicycle. The Commission may make determinations regarding remuneration and any related conditions under the contract.
Contract of Carriage Tribunal	The Contract of Carriage Tribunal is comprised of a Commissioner sitting alone or Commissioner and two part-time members nominated by the member of the Commission, one from each of the arbitration panels.
Dispute Order	Orders made by the Commission to resolve an industrial dispute, including orders to cease or refrain from taking action, cease a secondary boycott, and to reinstate or not dismiss employees involved in the dispute.
Enterprise Agreement	A legally enforceable agreement that sets out the conditions of employment between a group of employees and / or the Industrial Organisation representing those employees and their employer.
Entertainment Industry Dispute (s 20)	A dispute arising between a performer (see term below) and an entertainment industry representative or hirer. The Commission is empowered to make such orders it considers to be fair and reasonable in the circumstances.

Full Bench	A Full Bench of the Commission constituted by at least three Commissioners allocated by the Chief Commissioner for the purposes of a proceeding. The Full Bench hears appeals and other matters as specified in the *Industrial Relations Act 1996*.
Industrial Action	A strike by employees or a lock-out by an employer affecting the performance of work in connection with an industrial dispute. Any party to an industrial dispute may apply to the Commission for assistance in resolving the dispute.
Industrial Agent	A person other than a legal practitioner or employee or officer of an industrial organisation who represents a party in proceedings before the Commission.
Industrial Committee	A Committee established by the Commission to the whole or any part of a particular industry. An Industrial Committee may exercise the power of the Commission in relation to that industry or part thereof. Industrial Committees continue for three years unless they are dissolved sooner.
Industrial Dispute	A dispute about an industrial matter. Industrial disputes brought before the Commission must go through mandatory conciliation before proceeding to arbitration. Allowances are made for urgent filing of industrial disputes allowing them to be heard as quickly as possible and resolve matters with as little impact on the public as possible.
Industrial Instrument	An award, enterprise agreement, public sector industrial agreement, former industrial agreement, contract determination, or contract agreement.
Industrial Matter	Matters or things affecting or relating to work done or to be done in any industry, or the privileges, rights, duties or obligations of employers and employees in any industry.
Industrial Organisation	An organisation of employees or an organisation of employers registered under Chapter 5 of the Industrial Relations Act. Rules regarding Industrial Organisations in Chapter 5 Part 4 of the Industrial Relations Act.
Industrial Registrar	The individual in charge of the administration of the Industrial Relations Commission Registry. The Industrial Registrar has power to make orders and decisions regarding certain matters.
National Decision	A decision of the Minimum Wage Panel or a Full Bench of Fair Work Australia that generally affects, or is likely to generally affect, the conditions of employment of employees in New South Wales who are subject to the jurisdiction of that panel.
Notifier	A party that notifies the Commission of an industrial dispute for the purpose of seeking the Commission's assistance in resolving the dispute.
Outworker	Workers in the clothing trade who work from home, a residential garage, or other place not usually considered a business, engaged in sewing, cutting or finishing work. Outworkers are deemed to be employees of the trader or factory owner who hires them.
Party	An applicant, notifier, or respondent to a proceeding before the Commission.
Performer	Any actor, singer, dancer, acrobat, model, musician or other performer of any kind who enters an entertainment industry agreement with a performer representative.
Police Disciplinary Appeal	Under Pt 9, Div 1A of the Police Act 1990, officers of the NSW Police Force may apply to the Commission for the review of certain decisions on the ground that the decision wass harsh, unreasonable or unjust.

Police Dismissal Appeal	Under Pt 9, Div 1C of the Police Act 1990, an officer of the NSW Police Force may seek a review of their dismissal on the grounds the dismissal was harsh, unreasonable or unjust. Probationary officers and senior officers are excluded from the Commission's review jurisdiction.
Public Sector Disciplinary Appeal	Under s 97 of the Act, certain public sector employees outlined in s 91, may appeal certain disciplinary actions taken against them to the Commission.
Registration	The process by which unions and employer associations formally register as industrial organisations.
Respondent	A party to a matter responding to an application commenced by an applicant.
Right of Entry	The legal right of an authorised industrial officer to enter business premises under certain circumstances for the purpose of holding discussions with employees or to investigate breaches of industrial relations legislation or any industrial instrument that applies.
Right of Entry Permit	A permit issued by the Commission to an authorised industrial officer under the Industrial Relations Act.
Special Wage Permit	Permit authorising an employee to work for an employer for a rate of pay less than that set by an industrial instrument, where due to some impairment, the employee believes he or she is unable to earn the minimum rate.
Summons	The means by which parties are compelled to produce documents, attend to give evidence, or both before the Commission. Summonses have the same effect and consequences for non-compliance as subpoenas under the Uniform Civil Procedure Rules NSW. Unrepresented litigants must seek leave of the Commission before issuing summonses.
State Peak Council	An association of industries generally established for the purpose of acting on behalf of all members when lobbying the government or promoting the interests of its constituent members. The State peak council for NSW is Unions NSW.
Victimisation	Discrimination against an employee or potential employee by an employer or industrial organisation due to the fact the person does or does not belong to an industrial organisation, refused to engage in industrial action, acted as a whistle-blower, engaged in political activity etc.
Wage Fixing Principles	Those principles, reviewed and updated from time to time by the Commission, which assist the Commission in determining applications for variations of remuneration and conditions of employment.