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ANNUAL REPORT
OF THE
PRESIDENT
OF THE
INDUSTRIAL COMMISSION
OF NEW SOUTH WALES
FOR
1990

*I have the honour to furnish to the Minister for presentation to Parliament the
Twenty-Fourth Report of the President of the Industrial Commission of New South Wales
made pursuant to s.14A of the Industrial Arbitration Act, 1940, as amended, relating to
the year ended 31 December, 1990.*

ARRANGEMENT

	Page
PART I:	
<u>FUNCTIONING OF THE INDUSTRIAL COMMISSION</u>	
Membership	2
Section 1: Functioning of the Commission in Court Session	
Court Session Business	3
Section 2: Recommendations	3
Section 3: Functioning of the Commission Members sitting alone	
1) Allocation and Delegation of Matters	4
2) Notifications under s.25A of the Industrial Arbitration Act, 1940	4
3) Heads of Tribunal Meetings	5
4) Notifications under ss.7 & 8 of the Employment Protection Act	5
PART II:	
<u>WORKING OF THE INDUSTRIAL ARBITRATION ACT, 1940</u>	
1. Registration of industrial unions of employers (s.6)	5
2. Industrial Agreements (s.11)	5
3. Conciliation Commissioners (s.15)	6
4. Conciliation Committees (s.18)	7

PART I: FUNCTIONING OF THE INDUSTRIAL COMMISSION

Membership:

Members of the Commission during the year were:

President:

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

Members:

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

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

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

The Honourable Michael John Sweeney, appointed 22 February, 1982.

The Honourable Peter McMahon, A.M., appointed 22 February, 1982
(non-judicial member).

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

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

The Honourable Barry Clive Hungerford, appointed 13 July 1989.

The Honourable Mervyn George Mills, appointed 5 December, 1990
(non-judicial member).

Section 1: Functioning of the Commission in Court Session

Court Session Business

Particulars of the business during the year of the Commission in Court Session are given in Table A annexed hereto.

Section 2: Recommendations

Difficulties were encountered during the year because of delay in making new appointments to the Commission after retirements. The Honourable Mr Justice F.V. Watson retired on October 31, 1989, but his successor was not appointed until 5 December 1990. The Honourable Mr Deputy President Varnum resigned on 28 September 1990 and his successor was not appointed until February 4, 1991.

This meant for the first part of the year the Commission was one member below complement and for the second part of the year, two members below complement. There were unavoidable and customary further absences due to short leave, extended leave, sickness and other occasions also reducing the available number of members. In the circumstance at times the work of the Commission fell further behind than was advisable and expedients were employed where preferably they might not have been and at times the burden on some members was excessive.

I recommend that in future vacancies be filled as promptly as may permit and that where retirements are to be anticipated that planning be used to reduce any diminution in the number of members.

Section 3: Functioning of the Commission - Members sitting Alone

1. Allocation and Delegation of Matters to Members

During the year the total of matters allocated or delegated to Members to sit alone was 1,401 (previous year 1,197). Particulars of such matters are shown in annexures Tables B and C.

These tables show that at 31 December 1990 there were theoretically 1,452 matters in the list of members of the Commission sitting alone which have not been completed. With the aid of a new program on the Commission's case tracking computer, the effective number of cases not completed is 936 (previous year 673). A substantial number of these cases were in turn, either not ready for hearing or had been stood over at the request of an applicant or by consent, and many were compulsory conference matters in which some action had been taken but which remained in the list in case further action was needed.

Some seeming inconsistency in these figures may be explained in terms of the Commission's administrative procedures. The Commission does not operate upon a "back log" of cases. Every case filed is physically conveyed to a Member within six days of filing and is usually mentioned in Court shortly after, with a view to fixing dates for hearing if required. Every case is heard as a special fixture. When the number of cases exceeds available resources, as during most of 1990, the effect is to build forward a "front log", ie. in order to arrive at days that are available for hearing, dates have to be set further and further into the future. On some occasions during 1990, this period ahead amounted to several months and therefore these matters are statistically noted as having not been completed.

2. Notifications under s.25A of the Industrial Arbitration Act, 1940

Section 25A of the Industrial Arbitration Act requires an industrial union or an employer which becomes aware of an actual or threatened industrial dispute or of a question which might lead to a strike or lockout to notify the Industrial Registrar thereof. During the year 2,431 notifications under this section were lodged with the Registrar, a decrease of 847 on the notifications lodged in the previous year. Attached to this Report as Appendix A is an analysis prepared by the Registrar of the reasons given for the making of the notifications. This shows that in 347 cases a stoppage was involved.

as Appendix A is an analysis prepared by the Registrar of the reasons given for the making of the notifications. This shows that in 347 cases a stoppage was involved.

3. Heads of Tribunals Meeting

During the year the President attended several conferences of the Heads of Tribunals which met under the Chairmanship of Mr Justice Maddern, President of the Australian Industrial Relations Commission. These conferences were of considerable assistance in keeping myself and Members of the Commission abreast of current and likely developments, particularly in relation to centralised wage fixation and wage fixation principles.

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

Some 381 Notices were lodged under the Employment Protection Act under s.7 of the Act; a further 838 Notices under s.8 of the Act were also lodged during 1990.

PART 2: WORKING OF THE INDUSTRIAL ARBITRATION ACT, 1940

1. Registration of Industrial Unions of Employers (s.6)

There were two registrations in 1990.

2. Industrial Agreements (s.11)

During the year 207 (previous year 171) industrial agreements made pursuant to s.11 of the Act were filed at the office of the Industrial Registrar. Of these, 56 varied existing agreements and 151 were new agreements or replacements of former agreements.

I note that many of these industrial agreements represent most successful industrial arrangements entered into freely between the parties. The form of administration

adopted by the Commission has proved convenient to the signatories and has worked well.

3. Conciliation Commissioners (s.15)

The Conciliation Commissioners in office pursuant to s.15 of the Act during the year were:

Mr Mervyn George Mills, Principal Conciliation Commissioner, appointed 20 May, 1988. Appointed Deputy President of the Industrial Commission of New South Wales 5 December, 1990.

Mr Raymond John Patterson, appointed 12 May, 1980. Appointed Acting Senior Conciliation Commissioner 20 December, 1990.

Mr Peter John Connor, appointed 15 May, 1987.

Mr Reginald George Mawbey, appointed 7 July, 1980

Mr James Leslie McMahon, appointed 22 April, 1983.

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

Mr Allan Cross, appointed 3 February, 1986, died 22 April 1990.

Mr Michael Francis Sheils, appointed 3 February, 1986.

Mr James Neil Redman, appointed 3 February, 1986.

Mr Rodney William Harrison, appointed 6 August, 1987.

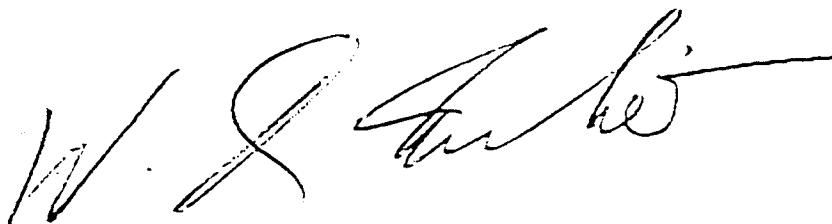
The Conciliation Commissioners are the chairmen of the conciliation committees; the particulars of the business of the committees appear in Appendix B. In addition to their function and chairmen of conciliation committees, the Conciliation Commissioners engage in conciliation by the compulsory conference process and during the year they presided over 1,979 such conferences. This represented an increase of 233 on the

previous year. In my opinion, the Conciliation Commissioners have continued to provide efficient and expeditious assistance towards the resolution of disputes.

Conferences between the Conciliation Commissioners and Members of the Commission was held on three occasions during the year.

4. Conciliation Committees (s.18)

As at 31 December, 1990, there were 435 extant conciliation committees. During the year the Commission established 6 new committees, dissolved 6 and made 4 alterations to assignments of industries and callings. Appendix B contains particulars of applications made to committees during the year.

A handwritten signature in black ink, appearing to read 'W.K. Fisher', with a long horizontal flourish extending to the right.

The Honourable Mr Justice W.K. Fisher, A.O.
President

APPENDIX A

**REASONS GIVEN FOR NOTIFICATIONS MADE PURSUANT TO
SECTION 25A OF THE INDUSTRIAL ARBITRATION ACT
IN YEAR ENDED 31 DECEMBER 1990**

1.	<u>Terms of Employment:</u>	
	a) Wages	
	i) Claim for increase	82
	ii) Claim for allowances	86
	iii) Claim for award rate	61
	iv) Non payment of wages	170
	v) Other	329
	b) Dismissal	
	i) Unspecified	348
	ii) Neglect of duties/misconduct	24
	iii) Absenteeism	6
	iv) Retrenchment	31
	v) Seeking reinstatement	96
	c) Hours etc.	
	i) Overtime	31
	ii) Alteration to rosters	43
	iii) Hours to work	39
	iv) Sick leave entitlement	15
	d) Physical Working Conditions	
	i) Safety	48
	ii) Amenities	25
	e) Matters of Management Control	
	i) Suspension Standing down/demotion	63
	ii) Contract labour	39
	iii) Interpretation or breach of award/agreement	126
	iv) Appointments	98
	v) Transfers	33
	vi) Manning	43
2.	<u>Union Matters</u>	
	i) Employment of non-unionists	7
	ii) Demarcation	22
	iii) Sympathy with other unions	4
3.	<u>Miscellaneous</u>	
	i) Other Matters	539
4.	<u>Total</u>	2,430
5.	<u>Notifications indicating stoppages</u>	347

APPENDIX B

**APPLICATION TO CONCILIATION COMMITTEES
YEAR ENDED 31 DECEMBER 1990**

Description of Matter	Total Matters 1989	Total Matters 1990
1. Applications filed on behalf of:		
a) employees for an order or award (s.20(1))	19	12
b) employers for an order or award (s.20(1))	2	4
c) employees for variations or interpretation of an award (s.20(1))	335	372
d) employers for variations or interpretation of an award (s.20(1))	29	26
e) employees for exemption or variation of an exemption from an award	-	-
f) employers for exemption or variation of an exemption from an award	-	-
2. Applications for approval of leasing of premises for hairdressing (s.88B)	-	-
3. Applications to approve employment of probationary commercial traveller or salesman	-	-
4. Application pursuant to the Clothing Trades (State) Award.	32	12
5. Apprenticeship:		
a) Application for Awards	-	-
b) Applications for Variations	-	-
c) Applications for cancellation/ suspension of indentures	-	-
6. Miscellaneous	1	2
<u>Total Matters</u>	595	428

TABLE A

Business of the Commission in Court Session - Year ended 31 December 1990

Description of Matter	Matters filed in 1990 and allocated or delegated	Matters completed in 1990 (a)	Matters to be completed (b)
1. Appeals from order, award, decision or ruling of a member of the Commission (s.14(8)(b), s.30B(1)(a))	39	45	26
2. Questions of jurisdiction reserved for the consideration of, or directed to be argued before, the Commission in Court Session by a member or referred to it pursuant to s.30C (s.30B(1)(b), s.30C)	-	2	1
3. Matters involving the exercises of any power conferred on the Commission by an act other than the Industrial Arbitration Act or the Apprentices Act, 1969 (s.30B(1)(c))	-	-	1
4. Appeals made pursuant to s.120 of the Industrial Arbitration Act removed by a member to the Commission in Court Session (s.30B(1)(d), s.120)	-	2	2
5. Proceedings instituted pursuant to Part X of the Industrial Arbitration Act (s.30B(1)(e), Part X)	-	-	-
6. Questions as to the cancellation of the registration on an industrial union or association (s.8, s.30B(1)(f), s.91B(4))	1	1	2
7. Appeals from the Industrial Registrar (s.30B(1)(h))	-	-	-
8. Industrial matters referred by the Minister to the Commission in Court Session (s.30B(1)(h))	-	-	2
9. Matters in any proceeding commenced or arising before a member which such member considers ought to be removed to the Commission in Court Session (s.30B(1)(i)):-			
a) Applications for an award or order (s.20, s.30)	7	-	-
b) Applications for variation of an award or order (s.20, s.30)	21	4	17
c) References by Minister (s.35(1)(o))	-	23	26
d) Notifications of question, dispute or difficulty (s.25A)	7	-	-
e) Appeals from order, award or decision of a conciliation committee or a conciliation commissioner (s.24)	4	7	5
f) Applications for commission to exercise powers and functions of a conciliation committee (s.30)	2	-	-
g) References by conciliation commissioner or conciliation committee	2	-	-
h) Summonses by commission on its own initiative (s.31(b))	2	3	3
ha) Applications for an order or award (s.88F)	-	-	-
hb) Applications to determine questions as to demarcation of industrial interests of trade unions or industrial unions (s.36)	1	-	-
i) Applications for inquiry into alleged irregularities in trade union election (ss.111A-111H)	-	-	-
j) Application for order directing that rules of a trade union be altered	-	-	-
k) Applications in Commission's original apprenticeship jurisdiction (Apprentices Act, s.21)	-	-	-
l) Appeals from award, order or decision of apprenticeship committee (Apprentices Act s.24(1))	-	-	-
m) Applications to enforce an agreement for the regulation of any business or industry (s.111)	-	1	-
n) Applications for removal of industrial union from registrar of industrial unions (s.8(9))	1	1	-
o) References by Industrial Registrar (s.58(6))	1	1	-
p) Application for anomalies conference in accordance with State Wage principles	-	-	-
10. Summonses by the Commission on its own initiative (s.57(1))	-	1	3
11. Applications for prescription of ordinary hours other than as prescribed by s.63(1)(a) (s.63(1)(g))	6	8	4
12. References by Industrial Registrar under s.58(6) (s.58(6))	-	-	-
13. Appeals from decision of under secretary (s.76A(7))	-	-	-
14. Appeals from order, award, ruling or decision of Retail Trade Industrial Tribunal under s.38T(2) of the Industrial Arbitration Act, 1940 (s.38T(2))	-	-	-
TOTAL:	94	106	92

Notes: (a) Matters completed include matters commenced in 1990 or earlier which during 1990 were: i) finally adjudicated upon, ii) withdrawn; iii) removed to the Commission in Court Session; or iv) referred to a conciliation commissioner under s.26, or v) removed to the dormant list for non-prosecution.
(b) Matters to be completed include matters filed before 1990

TABLE B

Business of the Commission in the Original Jurisdiction - Members Sitting Alone
Year ended 31 December 1990

Description of Matter	Matters filed in 1990 and allocated or delegated	Matters completed in 1990 (a)	Matters to be completed (b)
1. Applications for an award or order (s.20(1), s.30)	75	61	58
2. Application for variation, interpretation or rescission of or exemption from an award (s.20(1), s.30, s.87)	362	357	361
3. Applications for variation or interpretation of an industrial agreement	69	61	49
4. Summonses by Commission on its own initiative to vary or rescind an award (s.31(b))	-	1	1
a) Summonses by Commission on its own initiative (s.57(1))	-	-	-
b) Conference under s.31(a) (s.31(a))	1	1	-
5. References by Minister (s.35(1)(g))	-	-	-
a) Reference by Minister (s.35B(1)(h))	1	-	3
6. Notifications of question, dispute or difficulty (s.25A)	438	244	533
7. Applications to determine questions as to demarcation of industrial interests of trade unions or industrial unions (s.36)	14	10	18
8. Applications to demark callings (s.37)	-	-	1
9. Applications for order or award declaring contract or arrangement void (s.55F)	165	105	171
a) Regulations of Certain Contracts under s.58FA (s.58FA)	-	-	2
10. Matters relating to establishment and membership of conciliation committees or alteration of industries and callings assigned thereto (s.18)	25	16	14
a) Matters relating to establishment and membership of contract regulation tribunals (s. 91J)	1	-	1
b) Applications for contract determination re class of contracts of carriage (s.91L)	10	1	2
11. Reports and submissions by Industrial Registrar	74	64	30
a) References by Industrial Registrar (s.11)	-	2	-
12. Applications re entitlement to membership of trade union (s.115)	-	2	-
13. Applications for inquiry into alleged irregularities in trade union election (ss.111A-111H)	-	6	3
14. Applications for leave to prosecute, unlawful dismissal (s.95)	2	2	3
15. Applications for order directing trade union to alter rules (s.115)	2	-	3
16. Summonses to enforce trade union rules (s.111)	6	3	3
a) Application to enforce an agreement for the regulation of any business or industry (s.111)	-	-	-
17. Applications for Commission to exercise powers and functions of conciliation committee, industrial registrar or industrial magistrate.	8	-	8
18. Notices of intention to strike (s.99A)	1	-	-
19. Applications for revocation of exemption (Long Service Leave Act s.5)	1	-	-
20. Applications relating to apprenticeship committees (Apprentices Act s.17)	3	-	-
21. Submission of question by apprenticeship committee (Apprentices Act s.18)	4	-	-
a) Applications in Commission's original apprenticeship jurisdiction (Apprentices Act s.21)	-	-	-
22. References of provision of award or question of law by director of apprenticeship (Apprentices Act s.53)	-	-	-
23. Applications for order for payment of wages (s.92)	-	-	-
24. Applications for removal of industrial unions from the register of industrial unions (s.8(9))	-	-	-
25. Submissions by Industrial Registrar (reg.16)	2	2	6
26. Report of the Industrial Registrar pursuant to s.11 of the Employment Protection Act, 1982	56	10	35
27. Applications for an anomalies conference. Principle 6 of the State Wage Case (October, 1983)	8	2	2
28. Prosecution under sections of the Occupational Health and Safety Act, 1983	13	26	12
TOTAL:	1,300	977	1,369

Notes: a) Matters completed include matters commenced in 1990 or earlier which during 1990 were: i) finally adjudicated upon; ii) withdrawn; iii) removed to the Commission in Court Session, or iv) referred to a conciliation commissioner under s.26, or v) removed to the dominant list for non-prosecution.

b) Matters to be completed include matters filed before 1990

TABLE C

Business of the Commission in the Appellate or Supervisory Jurisdiction - Members Sitting Alone
Year ended 31 December 1990

Description of Matter	Matters filed in 1990 and allocated or delegated	Matters completed in 1990 (a)	Matters to be completed (b)
1. Appeals from order, award or decision of a Conciliation Committee or a Conciliation Commissioner (s.24(8))	20	25	20
2. References of matter or question by Chairman of a Conciliation Committee (s.77E(d))	23	8	25
3. References of question, dispute or difficulty by a Conciliation Commissioner or a Conciliation Committee (s.25(4))	25	25	10
4. Appeals from a decision of a special commissioner (s.17A(4))	-	-	-
5. Appeals from order, award or determination of an apprenticeship committee (Apprentices Act, 1969, s.24)	-	-	-
6. Appeals from order of an Industrial or other magistrate:	9	11	4
i) Annual Holidays Act			
ii) Bread Industry Act			
iii) Consumer Protection Act			
iv) Factories, Shops and Industries Act			
v) Industrial Arbitration Act			
vi) Long Service Leave Act			
vii) Motor Dealers Act			
viii) Construction Safety Act			
ix) Occupational Health and Safety Act			
7. Appeals from district court (s.92(3))	-	-	-
8. Appeals from Industrial Registrar (s.129B(2)(c))	2	-	-
9. Submissions by Apprenticeship Committee (s.18(10) Apprentices Act, 1969)	-	-	-
10. Appeals from decision of Under Secretary (s.76A(7) Factories, Ships and Industries Act, 1962)	-	-	-
11. Appeals from Superannuation decision (Part III Division 8)	22	19	19
TOTAL:	101	97	83

Notes: a) Matters completed include matters commenced in 1990 or earlier which during 1990 were: i) finally adjudicated upon; ii) withdrawn; iii) removed to the Commission in Court Session; or iv) referred to a conciliation commissioner under s.26, or v) removed to the dormant list for non-prosecution.

b) Matters to be completed include matters filed before 1990