



Supreme Court
of New South Wales

Issued 30 November 2023

STATEMENT ON BEHALF OF THE SUPREME COURT OF NEW SOUTH WALES

In the course of debate in the Legislative Assembly concerning the *Industrial Relations Amendment Bill*, earlier this week, Hansard records the Minister for Industrial Relations, the Hon Sophie Cotsis MP, making the following observations about the Supreme Court of New South Wales:

Ms SOPHIE COTSIS: I have all due respect for the Supreme Court, but it is not a practical forum for dealing with industrial issues between workers and their employers. It imposes a legalistic, slow and costly process on workers, public sector employers and unions that are seeking resolution to basic questions around compliance with awards and proper payment of wages, allegations of unlawful industrial action and the proper operation of contracts with workers. Generally, proceedings in the Supreme Court take several years and require the cost of briefing senior counsel. Industrial proceedings often seeking outcomes of \$50,000 or less then require a Supreme Court judge's attention, where they often do not have an industrial law background and would otherwise be dealing with high-level commercial, criminal and public law cases. Moving industrial proceedings to the Industrial Court is efficient and practical. That is in response to those opposite who made an issue of that.

With respect to the Minister, there are a number of aspects of this statement relating to the Supreme Court that are not accurate and cannot go uncorrected as a matter of public record.

It is not accurate to say the Supreme Court imposes “legalistic, slow and costly process on workers, public sector employers and unions” nor is it accurate to assert that “generally, proceedings in the Supreme Court take several years and require the cost of briefing senior counsel.” The choice of which counsel are briefed is a matter for the parties, and most of the cases referred to below have not involved senior counsel at all.

Over the last five years, the volume of industrial work in the Supreme Court of New South Wales has averaged 10 hearing days a year. Many matters involve judicial review or administrative law issues which typically take less than a day to be argued and are dealt within a matter of weeks or less: see, for example *Visscher v SafeWork NSW (No.2)* [2022] NSWSC 1253 (judgment delivered on same day as hearing); *Visscher v SafeWork NSW (No 3)* [2023] NSWSC 317 (judgment delivered in 11 days); *Wood v Secretary of the Department of Transport on behalf of the Government of New South Wales* [2021] NSWSC 1248; *Rudge v The Crown in the right of the State of New South Wales acting through the Secretary of the Department of Customer Service*; *Wynn v The Crown in the right of the State of New South Wales acting through the Secretary of the Department of Customer Service* [2020] NSWSC 1422 (7 days).

Many other industrial related matters have been dealt with by a judgment delivered on the same day of hearing or within a matter of days: see, for example, *The application of New South Wales Independent Education Union; in the matter of Industrial Relations Act 1996 (NSW)* [2020] NSWSC 1187; *Secretary, NSW Department of Education v The Australian Education Union New South Wales Teachers Federation (NSWTF) Branch* [2021] NSWSC 1628; *The application of National Union of Workers NSW Branch; in the matter of Industrial Relations Act 1996 (NSW)* [2022] NSWSC 1437; *The application of National Union of Workers NSW Branch; in the matter of Industrial Relations Act 1996 (NSW)* [2022] NSWSC 1437; *Ex parte Institute of Senior Educational Administrators* [2022] NSWSC 1549; *Secretary, Department of Education v The Australian Education Union New South Wales Teachers Federation (NSWTF) Branch (No 2)* [2022] NSWSC 1365; *Re: The Newcastle Master Builders' Association* [2023] NSWSC 868; *Re: Mutual Banking Employers' Association* [2023] NSWSC 1060; *Australian Salaried Medical Officers Federation (NSW) v State of New South Wales (No.2)* [2023] NSWSC 950.

In *Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Industrial Relations Secretary of New South Wales* [2021] NSWCA 64, the New South Wales Court of Appeal dealt with an application to quash decisions made by the Industrial Relations Commission within a month of the application being heard and within 4 months of the application being filed.

As to the suggestion that Supreme Court judges “often do not have an industrial law background”, members of the Court include Justice Michael Walton, formerly President and a judge of the Industrial Relations Commission of New South Wales, Justice Stephen Rothman AM, who had a leading national practice in industrial relations and employment law, and Acting Justice Monika Schmidt AM, who is also a former judge of the Industrial Relations Court and Commission. Matters involving industrial disputes of any complexity are typically dealt with by these judges, with judgments generally being delivered within three to four months or less of multiple day hearings.

In addition, the practices, when still at the Bar, of many other judges of the Supreme Court including judges of appeal, extended to industrial and employment law related matters, both for and against Unions, including appearances in a variety of courts and tribunals from the Industrial Relations Commission of New South Wales through to the High Court of Australia.

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