



Personal Injury
Commission



Annual Review
2023-2024

Acknowledgement of Country

The Personal Injury Commission acknowledges, respects and values Aboriginal peoples as the Traditional Custodians of the lands on which we live, walk and work. We pay our respects to Elders past and present. We recognise and remain committed to honouring Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships, and continuing connection to their lands, waters and seas. We acknowledge their history here on these lands and their rich contribution to our society.

We also acknowledge Aboriginal and Torres Strait Islander employees who are an integral part of our diverse workforce, and recognise the knowledge embedded forever in their custodianship of Country and cultures.



Personal Injury Commission

Office of the President

The Hon Jihad Dib, MP
Minister for Customer Service and Digital Government,
Minister for Emergency Services, and
Minister for Youth Justice
52 Martin Place
SYDNEY NSW 2000

Dear Minister

I am pleased to submit the 2024 Annual Review for the Personal Injury Commission of New South Wales.

This review covers the reporting period from 1 July 2023 through to 30 June 2024.

The review has been prepared in accordance with s 66 of the *Personal Injury Commission Act 2020* (NSW).

Following the tabling of the review in the Parliament, it will be made available for public access on the Commission's website at www.pi.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, reading "Gerard Phillips".

His Hon Judge G Phillips
President

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1. The reporting year in review

President's report



Judge Gerard Phillips, President

In accordance with section 66 of the *Personal Injury Commission Act 2020* (Act) I present the Personal Injury Commission's (Commission) 2023–24 Annual Review. This Review covers the reporting period from 1 July 2023 to 30 June 2024 as required by the Act.

During the reporting period, the first statutory review required by section 68 of the Act¹ was completed by the State Insurance Regulatory Authority (SIRA) and tabled in the New South Wales Parliament. Pleasingly the statutory review found that the objects of the Act remained generally appropriate to meet the policy objectives of the Act, making only a single recommendation relating to the Commission in respect of the dispute model conducted under the motor accidents legislation. This dispute model, by comparison to that operating in the Workers Compensation Division, is slower and more costly. It also lacks early alternative dispute resolution measures when an application is filed. The model is also heavily dependent on expert medical determination by a Commission medical assessor even in very modestly valued claims. This recommendation and possible legislative responses to it are under active consideration at the time I was writing this report. A second recommendation was made with respect to the Independent Review Office, which has no application to the Commission. The statutory review also made three suggestions for enhancements to our operations. The Commission's actions taken in response to these suggestions can be found at Chapter 4 of this Review.

A growing workload

In the 2023–24 reporting year, the Commission accepted 16,585 applications of all types, finalising 18,366. We also published 1,463 decisions of all types. This heavy workload was serviced with basically the same resources the Commission has had since establishment. I am very grateful to our decision-makers, both legal and medical, for their sterling efforts in dealing with this workload.

¹ *Report on the outcome of the two-year Statutory Review of the Personal Injury Commission Act 2020*, State Insurance Regulatory Authority, 2023.

This reporting year saw a marked increase in filings of disputes in the Workers Compensation Division. By late 2023, scheme participants were positing views that this level of filings was the 'new normal'. In the year prior to the pandemic, first instance filings numbered on average about 136 per week. The past 12 months' average has been 185 filings per week. On any view this is a significant increase to the Commission's workload and has led to a concomitant increase in appeal filings. Additionally, filings of work injury damages matters increased by 22% in the reporting period.

In the Motor Accidents Division, dispute filings are steady as the 2017 scheme matures. Further, in motor accidents medical assessment matters, the COVID-induced backlog of first instance assessments (4,658 matters) has all but been eliminated, with less than 40 remaining. What this has meant, though, is that a large number of applications for review panels from those first instance assessments have been filed. Motor accident medical review panels (MRPs) are very time intensive for our decision-makers, involving two medical assessors, a member and a re-examination of the injured claimant. Our MRPs involving psychiatry in particular are experiencing a heavy workload and delays are unfortunately a fact of this aspect of our operations. The recommended change to this dispute model suggested by the statutory review of the Act would be a significant reform in more efficiently dealing with these motor accident medical assessment applications.

In response to this growing workload the Commission has implemented several strategies. We have been actively increasing our medical assessor cohort, especially in the field of psychiatry. Indeed, psychiatrists currently constitute a quarter of our medical assessor number, and this reflects the growing prevalence of mental illness in the community and claims involving psychiatric injury. Given this prevalence, this number, by tragic necessity, must increase. The Commission continues to recruit medical assessors across the range of specialties with a particular focus on our high use areas. We have recruited six new sessional members in the Workers Compensation Division and in early 2024-25 have recruited a full-time member in each division, as well as another Acting Deputy President to assist with the spike in the numbers of appeals being filed.

Pathway

The Commission has completed the second phase of its digital transformation project known as 'Pathway' with all tribunal users now operating on the one platform. Pathway was initially deployed for motor accidents in 2023, and for workers compensation over the King's Birthday weekend in 2024. This has been a complex project requiring collaboration across all areas of our operations. It provides the Commission with a state-of-the-art digital platform which will transform our operations. Pathway replaces four legacy IT platforms with a single system across all our operations. It is easy to use, has better cyber security and will deliver time and cost efficiencies for decision-makers and users alike.

The 500-page limit

The Personal Injury Commission Rule Committee has finalised what is colloquially known as the '500-page rule'. This rule will strictly limit supporting documents filed in certain initiating applications and replies to a maximum of 500 pages. Decision-makers will be able to admit further documents provided they can be shown to relate to the real issues in dispute. There is no limitation on documents that are required to do justice in the case. The aim of the rule is to eliminate material that is unrelated to the dispute and to cease the practice where multiple copies of the same document are filed in proceedings. This will better enable the parties to focus on the real issues in each dispute rather than being burdened with large swathes of material that is never referred to. This rule is also an aspect of our approach to cyber security, that is only holding information that we need and no more. This rule will commence in late 2024 or early 2025 once the Commission has developed the IT processes to facilitate the efficient functioning of the new rule.

We undertook broad consultation on this proposal with the Commission's stakeholders and provided that information to the Rule Committee before deliberations were completed. I have also undertaken numerous meetings with stakeholders on the precise rule and how it will be operationalised in practice. I have been really pleased with the broad support this rule has across our stakeholders and look forward to working with them in its implementation.

1. The reporting year in review (continued)

Our fervent hope is that by pulling these various levers, the Commission will be able to deal with our workload and keep the disposal periods for applications either within or close to our desired key performance indicators.

Later in this Annual Review, there is a splendid article by Senior Member Williams and his thoughts on the 500-page rule.

Unfortunately, not a year goes by without the Commission and the community that works here having to note the passing of people who have played a big role in the jurisdiction. In 2023 we had the sad occurrence of the deaths of two serving Commission members, Mr Philip Young and Mr Stephen Churches. Both were prominent and long-time practitioners in the Newcastle – Hunter region before they became Commission members. As members they applied their skills from long experience in legal practice to the benefit of the community. Both were taken too soon and are much missed by their Commission colleagues and the legal profession they served so well. Their obituaries later in this Review eloquently describe their significant contributions.

The year also saw the passing of one of the doyens of workers compensation law and practice, Michael Concannon of Carroll & O’Dea. Mike started practice in this field in the early 1960s, cutting his teeth working for Australian Workers Union members, especially in the shearing industry and on the Snowy Mountains Scheme. His long-time partner Howard Harrison and son Tim, also a partner at Carroll O’Dea, have penned a delightful reminiscence of Mike’s life which I am very pleased to reproduce in these pages.

In conclusion I look back on the year with great satisfaction. We have delivered a complex IT project on budget without interrupting day to day operations. This is a mighty achievement completed by our dedicated staff and wonderful supplier, SBC IT. We continue to contend with a punishing workload while undertaking ongoing enhancements of our operations. We remain dedicated to our strategic plan of delivering a modern, digital tribunal which serves the people of this great state and minimises the trauma of the dispute process. We are well on the path of realising this goal.

I thank the Commission’s Executive Leadership Team comprising Marianne Christmann, Principal Registrar, and the two Division Heads, Marie Johns and Glenn Capel, for their hard work and leadership during the year. We are also blessed with a skilled group of over 220 decision-makers, legal and medical, who are our ‘shop front’ in that it is they who hear and finalise every application with both skill and compassion. To the staff who are growing in stature every day I owe a great debt. After two years of remote working, they have come back and worked on a number of projects which have been delivered. They turn up every day to work for their fellow citizens and they are a great group to work with. Finally, to my own group in the Presidential Unit, they have managed 83 appeals; we have an historically low number of appeals in the Court of Appeal, and this is to their credit. I also thank my associate, Rosemary Sagvand, for keeping me on the right track during a very busy year.

I commend a reading of the Annual Review to all who are interested in workers compensation and motor accidents law and practice.

Judge Gerard Phillips
President

Principal Registrar's report



Marianne Christmann,
Principal Registrar

The Personal Injury Commission is now in its fourth year of operations cementing itself as an established and respected tribunal. I remain immensely proud of all our people – members, mediators, merit reviewers, medical assessors and staff – who are passionate about delivering justice for injured workers and claimants, employers and insurers in NSW.

Our people worked tirelessly to manage increased filings and high workloads and resolve personal injury disputes in a fair, cost-effective and timely manner. We took active steps to enhance our dispute resolution services, deliver key milestones from our Strategic Plan and continuously improve our business-as-usual operations.

The reporting year also saw the Commission conduct extensive work to respond to the *Two-year Statutory Review of the Personal Injury Commission Act 2020*.² The report's suggestions aligned with work underway to deliver our Strategic Plan priorities and provided an opportunity to uplift some of those activities (please see Chapter 4).

All tribunal users are now on Pathway working safely, securely on the one platform

The reporting year saw the Commission achieve one of its highest strategic priorities since establishment – to create a seamless digital journey for injured people and tribunal users through a single digital platform. In June 2024, we delivered Phase 2 of our Pathway program, with all workers compensation users transitioning to the Pathway platform, joining motor accidents users who have been using it since June 2023. This means all tribunal users are now engaging with us in the same way and all dispute matters are managed within a single, secure platform with robust cyber security protections in place.

² *Report on the outcome of the two-year Statutory Review of the Personal Injury Commission Act 2020*, State Insurance Regulatory Authority, 2023.

1. The reporting year in review (continued)

The successful delivery of Pathway is testament to the determination and commitment of the digital team who worked closely with our vendor SBC IT, our people and our stakeholders to make the platform a reality. They also rolled out a comprehensive change management program, which included a mix of face-to-face and virtual training and a library of learning materials to ensure all stakeholders were well informed and prepared for the change. This was complemented by a responsive support program in the weeks following the go-live date. Feedback from staff, decision-makers and other tribunal users has been positive, and we will continue to work with them as we move towards delivering Phase 3 of the program in 2024-25. This will include further enhancements such as enabling Pathway to facilitate the 500-page limit.

Enhancing the efficiency of dispute resolution processes and services

Another major program that will improve the way the Commission delivers its services for the injured people of NSW is the creation of the new 500-page limit on supporting material for certain initiating applications and replies lodged with the Commission. This will help deliver integrated and efficient tribunal services, a key component of our Strategic Plan that will also better enable the Commission to meet its statutory mandate to deal with the real issues in proceedings justly, quickly, cost-effectively and with as little formality as possible.

Rule amendments to facilitate the 500-page limit were passed by the Rule Committee in April 2024 and, once they commence in 2024-25, will require any party who wishes to lodge more than 500 pages of supporting material for certain disputes to explain how that material relates to the real issues in dispute. This will reduce the amount of irrelevant material being put before the Commission, ensuring that disputes are dealt with more efficiently, thereby reducing process trauma for injured claimants and workers.

The delivery of this program and the extensive stakeholder engagement undertaken throughout the year demonstrate our continued maturity as an established Commission.

Greater accessibility of our services for injured people across NSW

We continue to deliver on our strategic priority to deliver fit-for-purpose venues to ensure accessibility and a quality experience for all users. Our Venue Spaces strategy saw approximately half of all Commission events held virtually in the reporting year, including at our dedicated hybrid event space at the Service NSW Centre in Dubbo. This pilot site allows injured people and other tribunal users to join Commission events virtually in a private, secure space, and has been extended for another year. We continued to hold in-person and hybrid events for parties to disputes in our dedicated court and hearing rooms in Sydney, as well as at regional court facilities. We also conducted over 8,000 medical assessments for injured people in our state-of-the-art medical suites, medical assessors' private suites and online (for most psychiatric assessments).

Actively engaging with tribunal users

We excelled in proactively engaging tribunal users through a comprehensive stakeholder engagement program. We developed a Stakeholder Engagement Framework, identifying further opportunities for engagement, refreshed our Stakeholder and CTP Insurer Reference Groups and increased our engagement with self-insurers. We also made sure to never lose sight of the people we exist to serve – injured workers and claimants. Earlier this year we produced a range of fact sheets and explainer videos featuring our people, which help explain our processes in a simple way. I urge anyone who deals with the Commission to review these on our website.

Continued strong performance and KPI reporting

Through the extraordinary efforts of our people in the face of increased dispute filings, the Commission finalised many more disputes than we received, achieving a clearance rate of 111% (16,585 in, 18,366 out). Our performance achievements and progress against our key performance indicators are outlined in detail in Chapter 9. We continue to focus on growing and enhancing our performance and reducing dispute lifecycles for all our users.

Investing in our people

Creating a high performing team is also about investing in our people to build capability and grow our culture. We rolled out a range of initiatives focused on wellbeing, education, lifting processes and policies, and collaborative performance management. This included the development of the Commission's Mental Health and Wellbeing Framework, which provides clear goals and actions to support and improve the health and wellbeing of all our people and to manage early mental health interventions effectively. This was supported by a series of education sessions and a refresh of our wellbeing champions program.

We also continued to deliver a comprehensive conference and education series for all cohorts, refreshed our performance management program for staff, celebrated the achievements of our people through our recognition program, and hosted a range of special events designed to bring our people together. Special guests included our former Minister (the Minister for Better Regulation and Fair Trading), the Attorney General and Secretary for the Department of Customer Service.

In conclusion, the 2023-24 reporting year has been one of significant growth, maturity and achievement for the Commission. I echo the President's warm sentiments, and would like to thank the President, my Division Head and Director colleagues and all our people for their contributions and support. Without their passion and commitment, we would not have achieved what we have today.

I am looking forward to another year of delivering an important service to injured people in NSW in the year ahead.

Marianne Christmann
Principal Registrar

2. Achievements in the reporting year

Applications



16,585

dispute applications registered



18,366

dispute applications finalised

Dispute resolution activity



8,079

medical assessments held



7,230

preliminary conferences held



2,393

conciliation conferences/ arbitration hearings held



152

assessment conferences held



2,013

mediation conferences held

Dispute resolution outcomes



93%

of workers compensation disputes resolved without formal determination



92%

of motor accident damages disputes resolved without formal determination



72%

of work injury damages cases which proceeded to mediation were settled

Published decisions



85

Presidential decisions published



629

member and merit reviewer decisions published



4

merit review panel decisions published



742

medical appeal panel and medical review panel decisions published



3

Presidential delegate decisions published

Service



20,755

calls to 1800 PIC NSW enquiry line assisted



14,689

emails to help@pi.nsw.gov.au enquiry inbox assisted

Communications and engagement



50

editions of the *Legal Bulletin* published



16

reference group meetings held with Commission stakeholders



20

editions of *Personal Injury Commission News* published

2. Achievements in the reporting year (continued)



One Commission One Vision

- Launched the second phase of Pathway, bolstering our cyber security and bringing all users onto a single digital platform
- Continued to harmonise our dispute resolution services across both divisions
- Published a suite of internal policies and procedures to guide our ways of working
- Brought our people together for a range of events, with special guests including a minister, a secretary, the Attorney General and Rear Admiral Lee Goddard from the Royal Australian Navy



Our Users

- Engaged with our stakeholders on rule amendments regarding the 500-page limit
- Published a range of fact sheets to help explain the Commission's processes
- Produced eight new explainer videos for tribunal users
- Delivered speeches to key stakeholders on the Commission's work



Our People

- Appointed six additional sessional members to the Workers Compensation Division
- Developed our Mental Health and Wellbeing Framework with training for staff and statutory officers, and appointed wellbeing champions to represent and support all our people
- Appointed 11 senior medical assessors and increased the overall number of assessors
- Provided training for our managers to improve performance and efficiency
- Continued to celebrate the work of our staff through our annual recognition program



Our Services

- Held over 4,500 dispute resolution events including assessment conferences, conciliations/arbitrations and mediations
- Continued to provide access to Commission events in-person, virtually or in a hybrid setting
- Extended the pilot of the dedicated virtual hearing space at the Service NSW Centre in Dubbo
- Strengthened the Commission's cyber security and data privacy approach, meeting all key benchmarks set by the Department of Customer Service
- Conducted over 8,000 medical assessments in the Commission's medical suites, medical assessors' private suites and virtually for most psychiatric appointments



Our Performance

- Achieved a clearance rate of 111% with 1,781 more matters finalised than new applications registered
- Reduced total matters on hand by 20% to 6,567
- Continued to meet our targets for early dispute resolution
- Answered on average all Pathway support calls in 30 seconds or less, resolving 80% of requests on the same day as received

3. The work of the Commission

Achieving outcomes for the injured people of NSW

The Personal Injury Commission is an independent statutory tribunal within the justice system of NSW. It commenced operations on 1 March 2021.

The Commission's primary function is to resolve disputes between people injured in motor accidents or workplaces in NSW and insurers and employers.

The Commission is committed to resolving disputes justly and efficiently in the shortest timeframe possible and works with all parties (injured persons, insurers and employers, where relevant) to discuss ways of achieving this.

In cases where the parties are not able to reach their own resolution, the Commission will decide the dispute. If a party is not satisfied with a decision of the Commission, they may seek an appeal or review.

The Commission's objectives

The Commission's objectives, as set out in the *Personal Injury Commission Act 2020*, are:

- a) to establish an independent Personal Injury Commission of New South Wales to deal with certain matters under the workers compensation legislation and motor accidents legislation and provide a central registry for that purpose,
- b) to ensure the Commission –
 - i) is accessible, professional and responsive to the needs of all of its users, and
 - ii) is open and transparent about its processes, and
 - iii) encourages early dispute resolution,
- c) to enable the Commission to resolve the real issues in proceedings justly, quickly, cost-effectively and with as little formality as possible,
- d) to ensure that the decisions of the Commission are timely, fair, consistent and of a high quality,
- e) to promote public confidence in the decision-making of the Commission and in the conduct of its members,
- f) to ensure that the Commission –
 - i) publicises and disseminates information concerning its processes, and
 - ii) establishes effective liaison and communication with interested parties concerning its processes and the role of the Commission,
- g) to make appropriate use of the knowledge and experience of members and other decision-makers.

Legislation administered

The following ministers were responsible for the administration of the *Personal Injury Commission Act 2020* in the reporting year:

- Minister for Finance (1 July 2023 to 28 September 2023)
- Minister for Better Regulation and Fair Trading (28 September 2023 to 21 June 2024)
- Minister for Customer Service and Digital Government (from 21 June 2024)

The Attorney General is responsible for appointing the Commission's members under the *Personal Injury Commission Act 2020*.

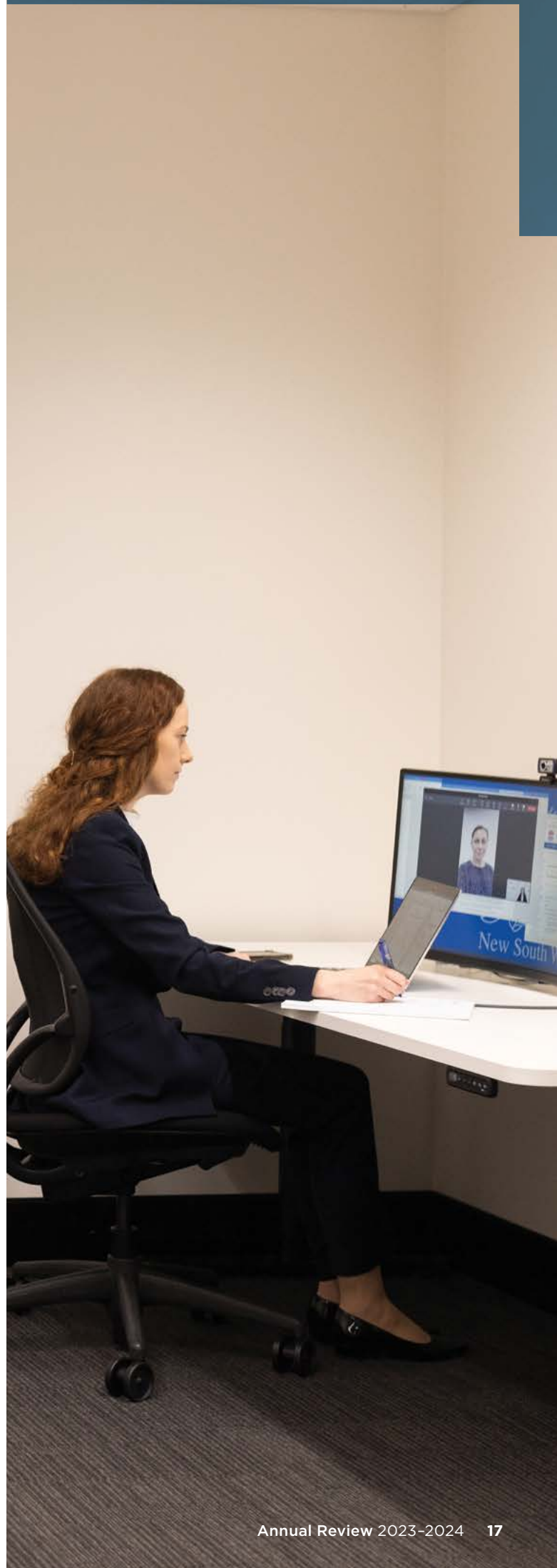
Relevant legislation

- *Personal Injury Commission Act 2020*
- Personal Injury Commission Regulation 2020
- Personal Injury Commission Rules 2021
- *Motor Accidents Compensation Act 1999*
- Motor Accidents Compensation Regulation 2020
- *Motor Accident Injuries Act 2017*
- Motor Accident Injuries Regulation 2017
- *Workers Compensation Act 1987*
- *Workplace Injury Management and Workers Compensation Act 1998*
- Workers Compensation Regulation 2016

Procedural directions

Procedural directions provide information on specific issues and complement the relevant legislation. The President of the Commission may give directions relating to the practice and procedures to be followed in proceedings before the Commission, or before medical assessors or medical reviewers. These directions must be complied with by members, medical assessors, merit reviewers and the parties to proceedings, including their representative(s) and agents. Procedural directions are available on the Commission's website.

Pictured right: Members' chambers can be used for hybrid dispute resolution events.



4. Delivering the Commission's Strategic Plan

The Personal Injury Commission's work is guided by its Strategic Plan – the vision, mission, purpose and values that are aligned to the Commission's legislated objects, as well as its strategic objectives. Together they create a vital, foundational pillar that defines what the Commission is, what it stands for and where it is heading.

The Commission has continued to deliver on its strategic priorities in 2023–24 as outlined in the following pages, with significant progress made. A review and refresh of the Strategic Plan will take place in 2025.

One of the Commission's highest priority objectives since establishment, the delivery of a single digital platform, was completed in the reporting year. Pathway's implementation meets several of the strategic priorities outlined in the plan, as detailed in this chapter.

Also highlighted in this chapter is the work undertaken to create a new 500-page limit on supporting material for certain initiating applications and replies lodged with the Commission. This will help deliver integrated and efficient tribunal services, a key component of the Strategic Plan that will also better enable the Commission to meet its statutory mandate to deal with the real issues in proceedings justly, quickly, cost-effectively and with as little formality as possible.

The reporting year saw the Commission conduct extensive work to respond to the *Two-year Statutory Review of the Personal Injury Commission Act 2020*.³ The report's suggestions aligned with work that was already underway to deliver the Commission's strategic priorities under 'Our Users', 'Our Services' and 'Our Performance', and provided an opportunity to uplift some of those activities.

Finally, this chapter also outlines the ongoing work being undertaken to deliver the Venue Spaces strategy, a key deliverable for 'Our Users' that helps make the Commission's services accessible to all tribunal users, no matter where they live in NSW.

Readers can find various other deliverables against our strategic priorities throughout this Annual Review, including 'Our Services' in Chapter 5, 'Our Users' in Chapter 6, 'Our People' in Chapter 7 and 'Our Performance' in Chapter 9.

³ *Report on the outcome of the two-year Statutory Review of the Personal Injury Commission Act 2020*, State Insurance Regulatory Authority, 2023.

Vision

To lead the way in delivering quality, timely, innovative, and cost-effective justice for personal injury disputes.

Purpose

To make the path to quality justice clear, accessible, timely and cost-effective.

Mission

To deliver just, quick, cost-effective outcomes for injured people, employers, and insurers, in a way that is responsive, timely, fair, consistent and of the highest quality, with as little formality as possible.

Values

NSW Government core values of Integrity, Trust, Service and Accountability.

People: Support our people, so we can deliver service excellence.

Independence: Gaining the trust and respect.

Continuous Improvement: Improving the path to justice through innovation.

One Commission - One Vision

1. Inspire one team, one vision, where all our people contribute.
2. Embrace innovation, excellence in dispute resolution and thought leadership in personal injury law.

Our Users

1. Reduce process trauma for injured people.
2. Be proactive and responsive to the needs of tribunal users.
3. Create a seamless digital journey for users through a single digital platform.
4. Create fit for purpose venues to ensure accessibility and a quality experience for all users.

Our People

1. Inspire an aligned leadership team to achieve the Commission's purpose.
2. Attract and retain a highly capable specialist workforce and foster a high-performance, inclusive work culture.
3. Professional and skills development along with a focus on wellbeing and a great environment for our people to thrive.
4. Workforce planning to promote a diverse and talented workforce and sustain a high-performance work culture.

Our Services

1. Deliver integrated and efficient tribunal services which are responsive to all our users.
2. Transform our medical services through the innovative use of our new medical suites and process redesign.
3. 'Digital' needs of the Commission are successfully delivered with strong cyber security measures.

Our Performance

1. Respected for our independence, the quality and durability of our decisions and excellence in dispute resolution.
2. To meet (and in future exceed) the Commission's key performance indicators.
3. Timely and accurate performance reporting and financial reporting.

4. Delivering the Commission's Strategic Plan (continued)

Single digital platform

Strategic Priority: Our Users – create a seamless digital journey for injured people and tribunal users through a single digital platform, engaging all users in the digital transformation journey and never compromising operational excellence

Strategic Priority: Our Services – digital needs of the Commission are successfully delivered with strong cyber security measures

The reporting year saw the Commission achieve one of its highest strategic priorities since establishment – bringing all tribunal users onto Pathway, the Commission's single digital platform. All staff, decision-makers and parties to personal injury disputes are now engaging online in one place in a similar way, with 5,400 users currently registered to use Pathway.

When the Commission was established in March 2021, it acquired the digital case management platforms of the State Insurance Regulatory Authority's (SIRA) Dispute Resolution Service and the Workers Compensation Commission, the first of which had ongoing technical issues and the latter which was nearing the end of its useful life.

Work soon commenced to build a new fit-for-purpose digital platform that could be used by all staff, decision-makers and tribunal users across both motor accidents and workers compensation, and Phase 1 of that project was completed in June 2023 with motor accidents users moving to Pathway.

The Commission undertook significant work on Pathway in the 2023–24 reporting year, engaging closely with all users to enhance Pathway for motor accidents and prepare the platform for workers compensation matters.

In June 2024, almost 1.2 million documents and around 167,000 current and historical workers compensation disputes were migrated onto Pathway, followed by the transition of all workers compensation users to the platform. They were supported by an extensive program of communication, education and training, and all learning material for motor accidents and workers compensation users remains available on the Commission's website.

The launch of Phase 2 of Pathway enabled the Commission to bring several processes that had previously been conducted offline

into the platform, reducing off-platform administration and improving the efficiency of the dispute resolution process overall. It also allowed harmonisation of several processes that differed between motor accidents and workers compensation matters. These included introducing a single way to request, submit and receive replies and the ability for users in any jurisdiction to communicate with each other via a messaging function within the platform.

The implementation of Pathway has critical benefits for cyber security. All material relating to personal injury disputes is held within the secure platform, bringing lots of paper processes online, thereby reducing the need for parties to email or print and post sensitive documents.

In the first few weeks of Pathway's implementation for workers compensation, the transition proved smooth. Filings and dispute resolution proceeded in the new platform without incident and users were supported and received the assistance they needed as they became comfortable working in the new ways.

While Phase 2 of Pathway is now complete, marking the achievement of this important Commission-wide strategic priority, further enhancements are planned for 2024–25 with the implementation of Phase 3. This will involve further fine-tuning of the platform functionality to continuously improve efficiency and user experience. The enhancements will include changes to support amendments to the Commission's rules, ensure the majority of the Commission's forms can be accessed and lodged within the platform and that correspondence and submissions can be made via the platform and processed by the Registry in the same way. The cyber security protections of the platform will also be further strengthened.

Amending the Commission's rules to introduce a 500-page limit

Strategic Priority: Our Services – deliver integrated and efficient tribunal services which are responsive to all our users

As part of its focus on continuous improvement, the Commission regularly reviews its rules and procedural directions to determine ways to enhance the effectiveness of its dispute resolution model. This ensures the Commission can continue to resolve the real issues in proceedings justly, quickly, cost-effectively and with as little formality as possible while reducing process trauma for injured persons.

In May 2024, the Commission published amendments to the Personal Injury Commission Rules 2021 and Procedural Direction PIC 3 and Procedural Direction PIC 12 which, once they commence, will introduce a new 500-page limit on supporting material lodged with initiating applications and replies for certain dispute types. This followed extensive engagement with key stakeholders in the lead-up to and throughout 2023-24.

These changes are needed to ensure the Commission can meet its statutory mandate to deal only with the real issues in a dispute by addressing a longstanding issue of some parties filing large amounts of material with very little of it referred to in Commission proceedings, as well as duplicate documents. This often includes the highly sensitive and personal information of injured people, such as medical records that do not relate to the matters in dispute.

By focusing the parties' attention on the matters that are truly in dispute, the new rule will streamline the resolution of dispute proceedings, allowing the Commission and parties to progress matters more efficiently. This will directly benefit injured claimants and workers by reducing process trauma, while also reducing the amount of personal information being held by the Commission, an important aspect of the Commission's cyber security approach.

All supporting material accompanying applications and replies with the Commission must be lodged as a single, indexed and paginated bundle sorted by document category. Once the rule commences, if an application or reply for a relevant dispute type is lodged with more than 500 pages of supporting material, it will be rejected by the Commission's Registry.

However, there will be no limit on material over 500 pages provided it relates to the real issues in dispute. Parties will be able to make an application to submit additional documents through Pathway and must show how the additional material relates to the 'real issues in the proceedings' as contemplated in the Guiding Principle, s 42 of the *Personal Injury Commission Act 2020*.

The amendments will also facilitate and streamline the introduction of additional documents during applicable medical assessment proceedings by allowing them to be automatically introduced on one occasion when certain criteria are met, including agreement by both parties.

The new rule and supporting procedural direction will commence in 2024-25, allowing time for related enhancements to be made to Pathway and for all users to familiarise themselves with both the rule changes and Pathway.

4. Delivering the Commission's Strategic Plan (continued)

Statutory Review of the *Personal Injury Commission Act 2020*

In August 2023, the State Insurance Regulatory Authority (SIRA) released the *Report on the outcome of the two-year Statutory Review of the Personal Injury Commission Act 2020*. The Commission has made significant progress in its response.

Pleasingly, the report found that the objects and terms of the Act generally remain appropriate to achieve its policy objectives. The report made two recommendations for the consideration of SIRA and the NSW Government, and three suggestions for the Commission relating to its decision publication policy, data publication and stakeholder engagement. The Commission has undertaken the following actions in response:

Decision publication

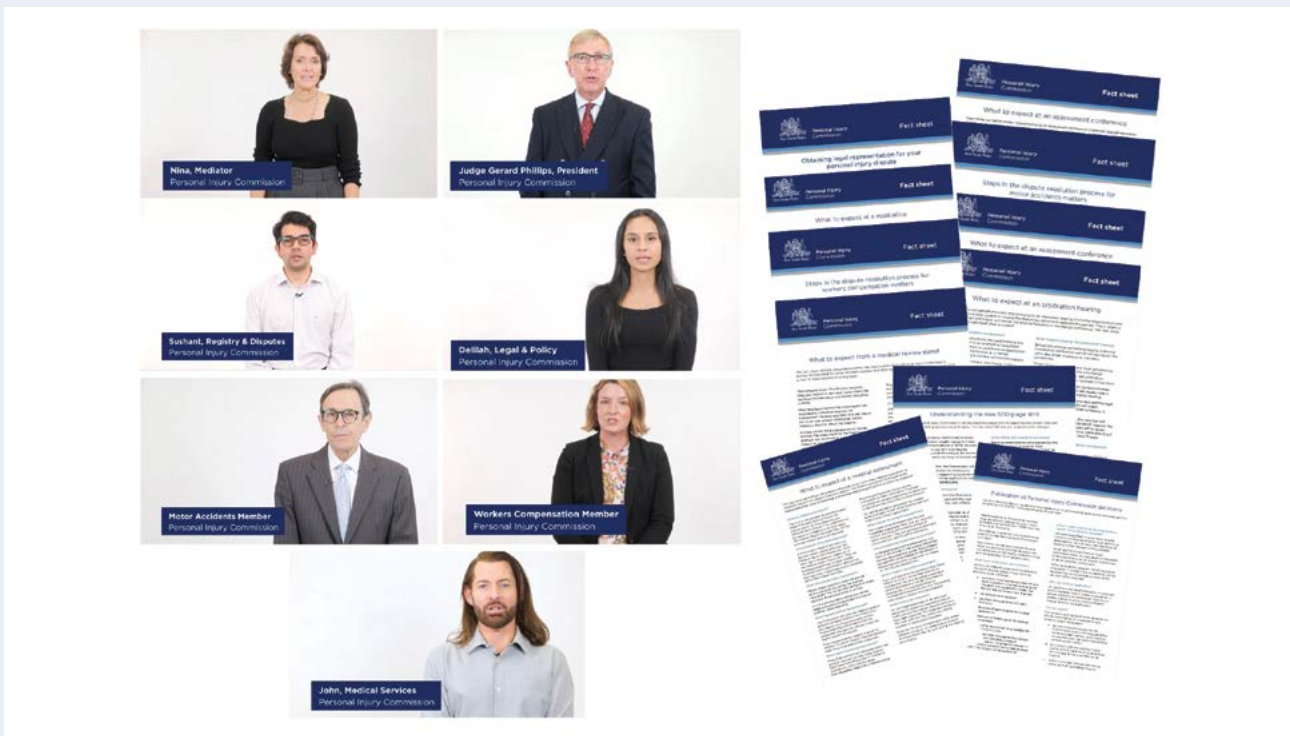
Soon after the release of the report, the Commission updated its decision publication policy, available on the Commission website, to outline the ability for tribunal users to apply for parts of a decision to be de-identified or redacted in line with the terms of rule 132(4) of the Personal Injury Commission Rules 2021 and to encourage early application.

Since then, the Commission has promoted the policy with legal practitioners and other stakeholders through the *Personal Injury Commission News*, stakeholder meetings, speeches and other presentations, as well as provided further education to decision-makers on informing tribunal users of the policy and encouraging early application.

Data publication

The report suggested that the Commission may wish to consider developing a data publication policy in relation to the frequency of publication and type of data that is made available to the public, with consultation to take place with stakeholders and consideration of submissions to the review.

The Commission analysed its existing reporting, which is primarily through this Annual Review and the *Personal Injury Commission News*. It also researched what other courts and tribunals report, finding the Commission's reporting was similar. With Pathway for workers compensation online from June 2024, this will provide enhanced reporting capability allowing the Commission to better consider what can be reported on, acknowledging that it is a small tribunal with finite resources. The Commission will continue to keep its stakeholders informed as this work progresses.



The Commission has released a range of videos and fact sheets to help explain its processes.

Stakeholder engagement

SIRA suggested the Commission may wish to consider further opportunities for engagement and consultation with stakeholders, including medical stakeholders and insurers.

In late 2023, the Commission reviewed its stakeholder engagement program and found that while there were robust engagement channels already in place, including through the *Personal Injury Commission News* and reference groups, there were additional opportunities for engagement.

The Commission subsequently developed and published a Stakeholder Engagement Framework and refreshed its Stakeholder and CTP Insurer reference groups, with additional work undertaken to engage with self and specialised insurers. Extensive engagement has also taken place in relation to Pathway and on changes to the Commission’s rules and procedural directions, including a comprehensive engagement program on the 500-page limit.

The Commission also bolstered its program of work to enhance engagement with injured claimants and workers and others who do not regularly deal with the Commission. In 2024, the Commission published a suite of fact sheets and videos which help explain some of the Commission’s key functions and processes in a simple way. These include what the Commission does, steps in the dispute resolution process, decision publication, seeking legal advice and what to expect when taking part in a range of Commission events. All videos and fact sheets are available on the Commission’s website and the Commission is actively encouraging all practitioners to share these resources with their clients.

4. Delivering the Commission's Strategic Plan (continued)

Venue Spaces

Strategic Priority: Our Users – create fit for purpose venues to ensure accessibility and a quality experience for all users

As a modern and innovative tribunal, the Commission prides itself in making its dispute resolution services accessible to all users, irrespective of their location, physical ability, cultural background or language spoken.

The Commission's Venue Spaces strategy aims to enable opportunities for dispute resolution events to take place in-person, virtually or as hybrid events, ensuring the Commission can deal with disputes justly, quickly, and as cost-effectively as possible, and that parties can access them no matter where in NSW they live.

In the reporting year, the Commission undertook more than 4,500 dispute resolution events of which 49% were in-person or as a hybrid event and 51% were wholly virtual.

In-person and hybrid events are conducted from the Commission's offices in Sydney and within the regions. The Commission's offices contain 14 hearing rooms including three large court rooms, all of which include purpose-built audio-visual equipment and sound-proofing for privacy. The hearing rooms have been designed for accessibility and can accommodate the needs of injured people. There were 39 in-person or hybrid events conducted in the regions in the reporting year, including at Newcastle Local Court and Dubbo Local Court.

The Commission's medical suites provide seven modern consultation rooms for medical assessments, which can also be conducted in medical assessors' private rooms.

Virtual Commission events are conducted over Microsoft Teams and participants can join from anywhere provided they have a secure internet connection and access to Teams. Members' chambers can be used for hybrid events. Some medical assessments, such as psychiatric assessments, may also be conducted virtually.

The Commission extended its pilot of a dedicated virtual event space at Dubbo in the reporting year. The pilot is delivered in partnership with Service NSW and provides a dedicated private room in the Dubbo Service Centre from where injured people and other tribunal users can join Commission events virtually. Provided at no cost to tribunal users, it is designed to reduce barriers to virtual participation in Commission events, such as access to the internet, a lack of computer equipment, privacy, and distance. The Commission continues to investigate other potential sites in regional NSW for dedicated virtual event spaces.

The Commission will arrange interpreters for medical assessments and other formal dispute resolution events upon request and at no cost.

More information about how the Commission makes its services accessible to all parties is available in the [Personal Injury Commission Access Charter](#), which was refreshed in the reporting period.

5. How the Commission delivers its services

Our role

The Commission assists parties to resolve disputes between people who are injured in motor accidents or in their workplaces in NSW and insurers and employers. It is mandated under the *Personal Injury Commission Act 2020* that members use their 'best endeavours' to encourage the early resolution of disputes and resolve the real issues in proceedings justly, quickly, cost-effectively and with as little formality as possible.

Dispute resolution pathways

The Commission deals with a wide range of disputes every day. Disputes lodged with the Commission will follow slightly different pathways depending on the scheme and legislation under which they are lodged, as outlined below. The Commission will work to harmonise these pathways in future years, acknowledging the current differences in enabling legislation.

Workers compensation

Workers compensation disputes are triaged according to the type of claim, the amount of compensation, and/or the intended remedy. There are four main dispute pathways:

Expedited assessments – Disputes for past 10 weeks and future 12 weeks of weekly compensation benefits, past medical expenses incurred up to \$10,770.30 (as of 30 June 2024), injury management disputes and disputes regarding work capacity decisions are fast-tracked to a preliminary conference before a delegate of the President or sessional member. If the parties are unable to resolve the dispute, the delegate or member will determine the issues and make an interim direction.

Legal disputes – Disputes for weekly compensation exceeding 12 weeks, past and future medical and related expenses exceeding \$10,770.30 (as of 30 June 2024) and all other compensation types are heard by a member and are usually resolved by informal conciliation conferences conducted by an audio-visual link. If a dispute cannot be resolved by conciliation, the member will hold a formal arbitration hearing by an audio-visual link, in person or by a combination of these.

The member will decide whether a claim for workers compensation benefits should be paid, whether a party is liable to pay the claim, and the quantum of any entitlement. The decision will be made orally or in writing.

Medical disputes – Medical disputes in respect of the degree of permanent impairment resulting from an injury are usually referred to a Commission-appointed medical assessor for assessment. In some instances where there is a liability dispute regarding the injury, a claim may be referred to a member for conciliation and/or determination. Medical disputes in respect of past and future medical expenses are usually referred to a member for conciliation and/or determination.

Work injury damages disputes – Mediation of work injury damages disputes by a Commission-appointed mediator is mandatory before an injured worker can commence court proceedings. The mediator must use their 'best endeavours' to bring the worker, employer and insurer to agreement. If the parties are unable to reach an agreement at mediation, the injured worker may then commence court proceedings. The Commission is also responsible for resolving pre-trial disputes relating to thresholds for entitlement to work injury damages, defective pre-filing statements, directions for access to information and premises, and pre-filing strike-out applications.

Appeals

A party to a dispute may lodge an appeal against a member's decision. An appeal is limited to the determination of whether the member's decision is affected by an error of fact, law, or discretion and to the correction of any such error. The appeal is referred to the President, Deputy President or Acting Deputy President of the Commission for determination. A party may also appeal against a medical assessment of permanent impairment. If the President's delegate is satisfied on the face of the application and submissions that a ground of appeal has been made out, the matter is referred for determination to a medical appeal panel, consisting of a member and two medical assessors.

5. How the Commission delivers its services (continued)

Motor accidents

Motor accident dispute pathways are dependent on the scheme and legislation under which the application is lodged, namely the *Motor Accidents Compensation Act 1999* (1999 scheme) or the *Motor Accident Injuries Act 2017* (2017 scheme).

1999 scheme

Damages assessment – A member will undertake an assessment of a claim for damages which includes an assessment of the issue of liability, unless the insurer accepts liability, and the amount of damages for that liability. A certificate and statement of reasons are issued.

Further damages claims assessments – A claim for damages may be remitted by the District Court (the Court) to the member who determined the matter if the Court considers that evidence provided in the proceedings may have materially affected the assessment made by the member if it had been made available to the member when the initial claims assessment was made. A further certificate and statement of reasons are issued.

Exemption of a claim from assessment –

A mandatory exemption application is determined by the President, who, if satisfied, may issue an exemption certificate which allows the parties to proceed to the Court for determination of the claim.

A member may make a recommendation to the President regarding whether a claim is unsuitable for assessment. If the President approves the member's recommendation, an exemption certificate will be issued which allows the parties to proceed to the Court for determination of the claim.

Special assessment of certain disputes in connection with a claim – These disputes include whether a late claim can be made, whether there has been due search and enquiry to establish the identity of the motor vehicle, or whether a claim is taken to have been withdrawn. The dispute is determined by a member and a certificate and statement of reasons are issued.

Medical disputes – Medical disputes include whether the degree of permanent impairment resulting from an injury caused by the motor accident is over 10% or whether the treatment provided or to be provided is reasonable and necessary and related to the injuries caused by the accident. Such disputes are determined by a medical assessor. A binding certificate is issued to the parties.

Medical reviews – Reviews are available if it is shown that the medical assessment is incorrect in a material respect. If a delegate of the President is satisfied that the review application can proceed, the matter will be referred to a medical review panel constituted by two medical assessors and one member who will conduct a new assessment. Unlike a medical appeal in the Workers Compensation Division, the review is not limited to only that aspect of the assessment which is alleged to be incorrect, rather it is a new assessment of all matters with which the medical assessment is concerned. A new certificate will be issued which will either confirm the certificate of assessment of the single medical assessor or revoke that certificate.

Further medical assessment – A party may apply for a further medical assessment on the grounds that deterioration of the injury or additional relevant information about the injury is capable of having a material effect on the outcome of the previous assessment. A delegate of the President determines whether the further medical assessment application can proceed. If it can proceed, a medical assessor, the same who conducted the original assessment, if possible, will consider the dispute by way of a fresh examination, or, if suitable, on the papers. A new certificate and statement of reasons will be issued.

2017 scheme

Merit reviews – A claimant may apply for a merit review of a decision made by an insurer. The types of disputes that can be considered for review include the amount of statutory benefits payable, whether the cost of treatment and care is reasonable and necessary, and whether the insurer has given the required notice before suspending or ending weekly payments. The review is undertaken by a merit reviewer and a certificate and statement of reasons are issued. All motor accident members are dually appointed as merit reviewers.

Merit review panel – A claimant or an insurer may apply to the President to refer a decision of a single merit reviewer determining a merit review application to a review panel of merit reviewers for review, on the grounds that the decision was incorrect in a material respect. The review panel may confirm the decision of the single merit reviewer or set aside the decision and make a decision in substitution for the decision the review panel set aside.

Miscellaneous claims assessment – A variety of disputes may be referred to the Commission for assessment by a member. These include whether the accident was mostly caused by the injured person, whether the insurer is entitled to reduce the statutory benefits payable in respect of the motor accident, and whether a late claim can be made.

Damages assessments and exemption of a claim from assessment – These disputes follow the same pathway as under the 1999 scheme.

Damages settlement approvals – The Commission must approve the proposed settlement of a claim for damages in which a claimant is not represented by an Australian legal practitioner. A member will consider the proposed settlement and may approve the proposed settlement, reject the proposed settlement or approve an amended proposed settlement. A certificate and statement of reasons are issued.

Medical disputes – As with the 1999 scheme, disputes may concern permanent impairment and/or treatment matters. Disputes under this scheme also arise in relation to whether an injury is a ‘threshold injury’. Such disputes are determined by a medical assessor. A binding certificate is issued to the parties.

Medical reviews – Reviews follow the same pathway as under the 1999 scheme.

Further medical assessment – As with the 1999 scheme, applications can be made on the grounds that deterioration of the injury or additional relevant information about the injury is capable of having a material effect on the outcome of the previous assessment. A limit of one further assessment per medical dispute is imposed by the 2017 scheme, and the process is the same as under the 1999 scheme.

How disputes are resolved

The Commission employs a combination of informal alternative dispute resolution methods, such as conciliation and mediation, and more formal hearings in the Workers Compensation Division to reach outcomes for the parties to disputes. Many of the Commission’s disputes are resolved by alternative dispute resolution during preliminary conferences without the need to proceed to formal hearings. Medical assessments are undertaken for disputes about the degree of impairment in the Workers Compensation Division. In the Motor Accidents Division, medical assessors determine both causation and the extent of impairment of the injuries caused by the motor vehicle accident.

Preliminary conferences

Members conduct preliminary conferences at an early stage with the parties. This provides a forum to discuss the legal issues and resolution of the dispute. A preliminary conference is usually the first step in the dispute pathway. Members use their skills to assist the parties to identify the real issues in the dispute, explore settlement options, and attempt to find a solution acceptable to all parties.

Conciliation

If a legal dispute has not been resolved at the preliminary conference, the parties will meet again at a conciliation conference in the Workers Compensation Division. These are held via audio-visual link, in person or in a combination of these formats. A member, usually the same member who held the preliminary conference, tries to assist the parties to reach a resolution. Each party can move to private rooms with their lawyers to discuss settlement options and explore ways to resolve the dispute. The member is neutral and does not communicate with one party without the other party also being present.

Hearings and assessment conferences

If a dispute is not resolved through conciliation in the Workers Compensation Division, the member will make a binding determination following an arbitration hearing. In some circumstances, the dispute might be determined on the papers without a formal hearing.

5. How the Commission delivers its services (continued)

In the Motor Accidents Division, if a damages assessment matter is not resolved at the preliminary conference, the member will conduct an assessment conference with the parties and undertake an assessment of damages. A certificate and statement of reasons are issued.

Other disputes in the Motor Accidents Division, such as special assessments under the 1999 scheme and merit reviews and miscellaneous claims assessments under the 2017 scheme, may be determined on the papers, or may involve a preliminary conference or hearing.

Mediation

The Commission's mediators conduct mediations to assist the parties to reach a settlement in work injury damages disputes. The mediator's role is to facilitate discussion between the parties to reach a resolution, not to give advice or make decisions. The mediator may have separate private conversations with each of the parties, if necessary, as this can help in resolving deadlocks in the negotiations. If the parties are unable to reach an agreement, the injured worker may then commence court proceedings.

Medical assessments

Medical assessments usually involve a Commission-appointed medical assessor conducting an examination of the injured person to gain an understanding of the circumstances and extent of their injury, their medical history, and treatments they may have received. A medical assessor reviews the medical reports from the doctors who have provided opinions for the insurer and the injured person, as well as any investigations such as X-rays, MRI scans, ultrasounds, CT scans and other documents that may help them understand the injury and its effects. In some circumstances, the assessment may be conducted on the papers. After completing their assessment, a medical assessor prepares a certificate that sets out their opinion, and the dispute is then resolved based on that assessment. There is an appeal process available if a party believes that there is an error in the certificate.

How the Commission ensures excellence in decision-making

Excellence in decision-making is a high priority for the Commission in delivering its services for the injured people of NSW. The *Personal Injury Commission Act 2020* requires the Commission to:

- ensure that the decisions of the Commission are timely, fair, consistent and of a high quality,
- promote public confidence in the decision-making of the Commission and in the conduct of its members, and
- make appropriate use of the knowledge and experience of members and other decision-makers.

The Commission employs multifaceted strategies to achieve these objectives, including the following:

Recruiting and retaining the right people

The Commission recruits and retains highly skilled decision-makers who are selected using rigorous and competitive merit-based appointment practices. They are retained based on performance reviews conducted in advance of reappointment.

Responding to the changing environment

The Commission, like many tribunals, increased its use of online hearing venues during the COVID-19 pandemic and will continue to use a mix of audio-visual and in-person events, or a combination of these formats. The Commission has trained and supported its decision-makers to ensure their efficient and effective use of technology and the continued delivery of excellent decisions in challenging circumstances.

Building a culture of excellence

The Commission maintains a culture that demands the ongoing development and maintenance of core decision-making skills. This includes formal training and instruction about hearing processes, evidence and principles of administrative law, as well as continuing updates on developments in law and policy within the Commission and its jurisdictions.

The Commission requires its decision-makers to continuously improve their decision-making processes in relation to timing issues, the formal requirements of a decision, burden and standard of proof, using Commission knowledge, structuring decision-making, making findings of fact, assessing credibility, evaluating expert information, weighing evidence, exercising discretion, and providing reasons.

Ensuring consistency

Consistency in decision-making is critical to the Commission meeting its objective of being open and transparent about its processes. Consistency in decision-making means that similarly situated claimants and workers receive similar treatment and outcomes. This in turn means that parties with comparable disputes experience the similar range of procedural treatment, from case management broadly to conciliation and different forms of hearing processes more specifically.

Consistency is promoted through tools such as style guides and through encouraging interaction between members, assisted by electronic document management. However, consistency does not mean that all members share identical views and perspectives on all issues. Rather, the Commission is comprised of members who represent the diverse and varied backgrounds for which it is responsible. The Commission understands that consistency is not solely obtained by requiring members to observe certain protocols. The Commission has built and maintains a culture that values consistency, coupled with support for the robust exchange of different views.

Managing community expectations

Community expectations are managed through written formal communications such as the rules, procedural directions, newsletters and manuals. If the parties and their representatives have a clear set of expectations around process and issues of law and policy, these expectations will be expressed in the way in which cases are prepared and presented to members.

Publishing decisions

The Commission is required to publish the details of its decisions under s 58 of the *Personal Injury Commission Act 2020*, subject to any successful application for de-identification or redaction of publishable decisions. Publication of decisions promotes open justice and helps to ensure the Commission is open and transparent about its processes, as specified in the Act.

The Commission is committed to open justice because it is a fundamental attribute of a fair hearing.⁴ The High Court has said that, “the rationale of the open court principle is that court proceedings should be subjected to public and professional scrutiny, and courts will not act contrary to the principle save in exceptional circumstances”.⁵

The Commission promotes awareness of its decisions by giving easy access to decisions through the weekly publication of the *Legal Bulletin*, which provides links to the Commission’s latest decisions. Stakeholders are encouraged to subscribe to the *Legal Bulletin*.

Explaining our processes

The Commission published a series of fact sheets and videos on its website in the reporting year to help injured workers and claimants understand what the Commission does and what to expect when taking part in a range of Commission events.

4 *John Fairfax & Sons Limited v Police Tribunal of NSW* (1986) 5 NSWLR 465, 476–477 (McHugh JA, Glass JA agreeing).

5 *Commissioner of the Australian Federal Police v Zhao* [2015] HCA 5; 316 ALR 378, [44] (French CJ, Hayne, Kiefel, Bell and Keane JJ).

6. How the Commission supports and engages its users

The Personal Injury Commission places the needs of the injured people of NSW and all tribunal users at the centre of everything it does and proactively engages with all parties and users. In addition to meeting its legislative requirements to educate staff and decision-makers, the Commission values and fosters open and effective relationships and communication with the communities it interacts with on an ongoing basis. To achieve this, it provides substantial engagement, education and support for each stakeholder group across the year through a variety of channels. This is captured in the Personal Injury Commission Stakeholder Engagement Framework, published in late 2023. The Commission's key engagement channels are outlined in this chapter.

Personal Injury Commission News

The *Personal Injury Commission News* is a subscription-based newsletter which provides stakeholders with information and updates about the Commission's operations and changes that impact the dispute resolution process. It is also published on the Commission's website.

Personal Injury Commission website

The Commission's website at www.pi.nsw.gov.au provides information about how to access Commission services, news updates and practice and procedure information relating to the Commission's work.

During the 2023–24 reporting year, fact sheet and video resources were added to help explain key Commission processes to injured workers, claimants and other tribunal users. The Commission will continue to review and enhance its website to inform its stakeholders in the next reporting year.

The following updates are also available via the Commission's website:

- **Legal Bulletin:** a weekly legal bulletin which lists all recent decisions including headnotes, and
- **Appeal Case Summaries:** an overview of the most recent Presidential and Court of Appeal decisions.

The website is complemented by dedicated extranets for the Commission's members, merit reviewers, mediators and medical assessors.

Reference groups

The Commission meets quarterly with its four standing reference groups to discuss changes in the Commission's rules and procedures, provide updates, consult on key issues, gather feedback and answer questions. Reference group members participate on behalf of the key stakeholder groups they represent and serve as a conduit for their cohorts' views. Their participation and collaboration are invaluable to the Commission's work.

In 2023–24 the Commission refreshed the membership of its two external reference groups to ensure the most suitable representatives were working with the Commission and to provide others with an opportunity to contribute.

The Commission's external reference groups are:

- Stakeholder Reference Group, with representatives from the legal profession peak bodies, insurance industry, unions, the State Insurance Regulatory Authority and icare, and
- CTP (compulsory third party) Insurer Reference Group, with representatives from multiple CTP motor accident insurance companies, their legal representatives, and the insurance industry peak body.

Discussions with the NSW Self-Insurers Association on the possible establishment of a Self-insurers Reference Group are ongoing.

The Commission's internal reference groups are:

- Medical Assessor Reference Group, with representatives from the Commission's medical assessor panel, and
- Mediator Reference Group, with representatives from the Commission's cohort of mediators.

Reference group membership as at 30 June 2024 is shown in Appendices G–J.

Industry consultation, education and engagement

The Commission proactively seeks other opportunities to engage with stakeholders outside of its reference groups, given their key role in the dispute process. This includes facilitating and attending meetings, providing education and training about the Commission and its rules and procedures, providing information on proposed changes to operations and legal instruments, and participation in key events within the community. The Commission is responsive to any feedback raised.

Engagements in the reporting year included:

- the President engaged with the NSW Self-Insurers Association on invitation, delivering a presentation on key Commission topics within the reporting period
- the President and Principal Registrar engaged with a broad range of stakeholder groups to discuss rule amendments
- the Commission engaged with a broad range of stakeholders on the implementation of Pathway for workers compensation, including a comprehensive training program.

6. How the Commission supports and engages its users (continued)

Legal profession consultation, education and engagement

As representatives of the parties to disputes, legal professionals play a major role in the dispute resolution process. The Commission recognises the importance of a collegiate relationship with the profession and that legal professionals need a good understanding of how the Commission works and what is required of them to ensure the smooth progression of disputes through the resolution process.

The Commission provides a variety of engagement and education opportunities throughout the year to complement the profession's representation on the Stakeholder Reference Group. These include:

- the President consults regularly with the New South Wales Bar Association and the Law Society of New South Wales regarding its operations and proposed changes to legal instruments and values their collegiate engagement and support
- the President and Division Heads regularly participate in legal profession conferences, forums and other educational events
- the President regularly engages with the NSW Chapter of the Council of Australasian Tribunals and is the Convenor and an Executive Member of the national branch, regularly appearing at its annual conferences
- the President delivers speeches at legal events and gatherings, which in 2023-24 included the St Thomas More Society, the UNSW Faculty of Law and the IRO Sydney Seminar.

Engagement and consultation with NSW Government entities

The Commission regularly engages with representatives of the NSW Government and its departments and agencies to update them about the Commission's operations and consult with them on cross-agency matters. These include:

- Office of the NSW Attorney General
- Office of the Minister for Finance
- Office of the Minister for Better Regulation and Fair Trading
- Office of the Minister for Customer Service and Digital Government
- NSW Department of Communities and Justice
- District Court of NSW
- NSW Department of Customer Service
- State Insurance Regulatory Authority
- Independent Review Office.

Engagement on the 500-page limit

The Commission conducted extensive engagement with stakeholders across the reporting year on the upcoming changes to the Personal Injury Commission Rules 2021 to introduce a 500-page limit. This included at regular reference group meetings, through presentations and speeches, and through a series of dedicated meetings with industry, legal and NSW Government representatives. This focused engagement will continue in the 2024-25 reporting year ahead of the commencement of the new rule.

7. The Commission's people



Left to right: Glenn Capel, Workers Compensation Division Head, Marie Johns, Motor Accidents Division Head, Marianne Christmann, Principal Registrar, and Judge Gerard Phillips, President.

The Personal Injury Commission's work in delivering justice for injured people, employers and insurers is made possible by a dedicated group of members, mediators, merit reviewers, medical assessors and staff who are led by the Commission's Executive Leadership Team.

Executive Leadership Team

President

Judge Gerard Phillips, *LLB, LLM*

The President of the Personal Injury Commission is appointed by the Attorney General under the *Personal Injury Commission Act 2020* and is a Judge of the District Court of NSW. He is responsible for directing the business of the Commission, including ensuring the adoption of rules, procedural directions and good administrative practices which facilitate the effective operation of the Commission.

The President also directly appoints the Commission's medical assessors, merit reviewers and mediators, recommends the appointment of members of both divisions to the Attorney General and manages the members, with the assistance of the Division Heads. In addition, he hears appeals against decisions made by

members in the Workers Compensation Division and strike-out applications in work injury damages proceedings, and determines novel or complex questions of law.

Principal Registrar

Ms Marianne Christmann, *LLB, LLM, BSc (Psychology), GAICD*

The Principal Registrar provides high-level, executive leadership and strategic advice to the President and supports the President in managing the business and affairs of the Commission. The Principal Registrar leads the operations of the Commission, is responsible for service delivery in registry and disputes, medical and legal services and manages the Commission's staff and medical assessors. The Principal Registrar also focuses on strategic and operational planning, governance, and evaluation of service delivery performance.

7. The Commission's people (continued)

Division Heads

Ms Marie Johns, LLB, BSc (Psychology)
Motor Accidents Division Head

Mr Glenn Capel, LLB, BA
Workers Compensation Division Head

The Division Heads are responsible for the motor accidents and workers compensation members, merit reviewers and mediators that are appointed to their divisions. They manage the business of the Commission in their respective divisions under the President's direction, ensuring each division has the appropriate specialised jurisprudence, knowledge, practice and procedures.

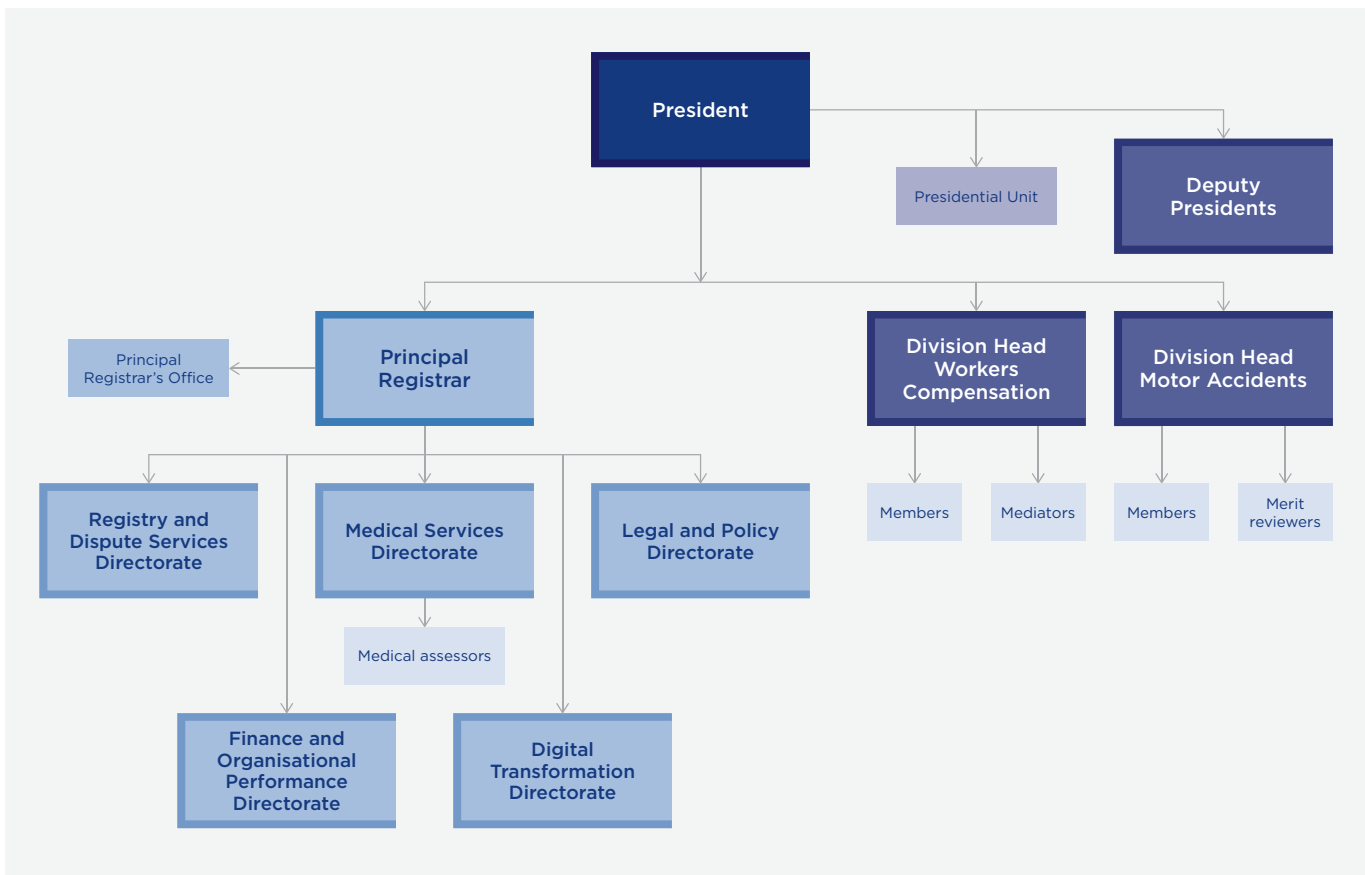
Organisational structure

The Commission's structure reflects two streams:

- the two divisions, led by the Division Heads and comprising the members, mediators and merit reviewers, and
- the Personal Injury Commission Registry, led by the Principal Registrar and comprising the Commission's staff and medical assessors.

The Commission had 424 members, mediators, merit reviewers, medical assessors and staff as at 30 June 2024, comprising:

- 62 members (including the President, Deputy Presidents and Division Heads)
- 25 mediators⁶
- one merit reviewer⁷
- 172 medical assessors
- 164 staff (including the Principal Registrar).



⁶ In addition, four Workers Compensation Division members are also appointed as mediators.

⁷ In addition, all members of the Motor Accidents Division (23 members) also hold a dual appointment as a merit reviewer.



The Commission welcomed six new sessional members to the Workers Compensation Division in March 2024. Left to right: Fiona Seaton, Adam Halstead, Mitchell Strachan, Judge Gerard Phillips, Division Head Glenn Capel, Parnel McAdam, Kathryn Camp and Sophie Jones.

7. The Commission's people (continued)

Members

Members are appointed by the Attorney General under s 9 of the *Personal Injury Commission Act 2020*. They include Presidential members, principal members, senior members and general members and are experts in motor accidents and/or workers compensation jurisdictions.

Deputy Presidents

The Deputy Presidents are Presidential members who hear appeals against decisions made by members in the Workers Compensation Division.

See Appendix B for a list of the Commission's Deputy Presidents as at 30 June 2024.

Principal, senior and general members

Members are experienced, independent decision-makers who are appointed to resolve disputes. They aim to conduct Commission proceedings in a way that is fair to all parties and encourage and assist parties to resolve their dispute by finding a solution that is agreeable to everyone involved. If the parties cannot agree on a solution, the member will decide the dispute after hearing the submissions of the parties and considering the evidence filed.

Members also sit on appeal panels and review panels, which determine appeals and reviews of decisions made by medical assessors and merit reviewers.

See Appendix B for a list of the Commission's members as at 30 June 2024.

Merit reviewers, mediators and medical assessors

Merit reviewers, mediators and medical assessors are statutory appointments made by the President under s 33 (merit reviewers and medical assessors) and s 39 (mediators) of the *Personal Injury Commission Act 2020*.

Merit reviewers

The Commission's merit reviewers exercise functions in the Motor Accidents Division to determine statutory benefit disputes under Schedule 2, 1 of the *Motor Accident Injuries Act 2017*. All members of the Motor Accidents Division also hold a dual appointment as a merit reviewer.

See Appendix C for a list of the Commission's merit reviewers as at 30 June 2024.

Mediators

The Commission's mediators exercise functions in the Workers Compensation Division. They assist parties to resolve work injury damages disputes.

See Appendix D for a list of the Commission's mediators as at 30 June 2024.

Medical assessors

Medical assessors are highly experienced medical and allied health practitioners qualified in a range of specialties. They are appointed to one or both divisions of the Commission and are independent of any party to a dispute.

Medical assessors conduct medical assessments to determine certain aspects of a dispute, such as assessing the degree of permanent impairment resulting from an injury. They can also provide decisions about an injured person's medical condition, threshold injury, the provision of medical treatment and fitness for employment. They are independent decision-makers and therefore do not give clinical advice or provide treatment to the injured person.

Medical assessors also sit on medical appeal panels and medical review panels.

On 24 April 2024, the Commission appointed, for the first time, 11 senior medical assessors to support the mentoring, education and professional development of the medical assessor panel.

See Appendix E for a list of the Commission's senior medical assessors and medical assessors as at 30 June 2024.



Left to right: The Commission's Directors Christine Fitzgerald, George Bullock, Janet Wagstaff, Rushdi Gamielien and Luke Roberts.

Staff

The Commission's staff are employed by the Department of Customer Service and report to the Principal Registrar through five directorates and two support offices, as described below.

See Appendices L-M for further information.

Registry and Dispute Services

Registry and Dispute Services is the Commission's largest directorate and is the 'front door' of the Commission. The team:

- provides frontline services to tribunal users, including claimants, workers, legal representatives, employers and insurers, via the Commission's reception, telephone enquiry line and email enquiry inbox
- registers applications and replies, processes documents received through the digital case management platforms, and streams applications to the appropriate area of the Commission
- case-manages motor accidents claims, merit and miscellaneous disputes and all workers compensation disputes
- supports members and internal stakeholders throughout the life of proceedings to facilitate the fair, timely and cost-efficient disposition of matters.

Medical Services

Medical Services oversees the Commission's medical assessment services and medical assessor panel. The team:

- provides case management to support the delivery of timely decisions in motor accidents medical disputes and supports the workers compensation disputes team with medical assessor availability
- leads the recruitment, engagement and support of the Commission's medical assessor panel
- provides performance management, education and continuous improvement of the medical assessor panel to ensure high-quality and robust single medical, medical review and medical appeal panel decisions
- manages the Commission's on-site medical suites including all facilities and the scheduling of appointments.

7. The Commission's people (continued)

Legal and Policy

Legal and Policy performs important decision-making functions and provides legal and policy advice across the Commission. The team:

- makes gatekeeping and procedural decisions under enabling and related legislation/rules as well as decisions under privacy and access laws
- delivers secretariat services to the Rule Committee and reviews the Commission's procedural directions and delegations
- delivers legal advice about disputes practice and procedure, case management and jurisdiction, together with procedural directions, protocols and templates
- provides general legal advice on work health and safety, inter-agency arrangements, privacy, public interest disclosures and other matters
- coordinates and publishes the *Legal Bulletin*
- manages the Commission's litigation practice ensuring proper representation of the Commission when its decisions are appealed.

Finance and Organisational Performance

Finance and Organisational Performance manages important whole-of-Commission functions, including finance, organisational performance reporting, continuous process improvement and business support. The team:

- maintains a robust, accurate and compliant finance function for the Commission and provides accurate financial and organisational performance reporting, internally and externally
- creates and maintains processes and procedures, identifies continuous improvement opportunities and oversees audit and compliance functions
- manages the office accommodation and provides procurement and contract support
- ensures the Commission has guidelines and mechanisms to capture and utilise corporate knowledge
- supports and enables the divisions and directorates of the Commission to achieve their business outcomes.

Digital Transformation

Digital Transformation drives strategic and operational digital, cyber security and information technology outcomes for the Commission. The team:

- leads the Commission's digital transformation strategy, including the design, development and implementation of Pathway, the Commission's single digital platform
- ensures the stability, performance, cyber security and data privacy of the Commission's core technology systems and manages governance of all data and system changes, aligning with the Department of Customer Service's Chief Information Security Officer to ensure best practices are deployed across all technology
- provides timely support for end users of the Commission's systems and ensures support requirements are met using appropriate channels and processes
- collaborates with the Commission's divisions and directorates to ensure service levels, systems and processes meet business needs.

Presidential Unit

The Presidential Unit is a small, specialist unit whose staff support the Commission's Presidential members in the exercise of their appellate and leadership functions. The team:

- supports the administration of high-quality decision-making through the provision of legal and administrative services, including advice to Presidential members, legal research, case-managing appeals and other matters
- assists with supporting the President's leadership and other functions, such as the appointment of members, merit reviewers and mediators, and stakeholder engagement.

Principal Registrar's Office

The Principal Registrar's Office provides executive support functions for the Principal Registrar to enable the effective operations of the Commission as a whole. The team:

- manages liaison with the Minister's Office, the Department of Customer Service and other government agencies
- coordinates and prepares stakeholder correspondence
- manages communications, stakeholder engagement, events and media liaison
- undertakes strategic planning and project manages Commission-wide projects.



7. The Commission's people (continued)

Supporting our people

All the Commission's people play a vital role in contributing to the just, timely and cost-effective resolution of personal injury disputes. The Commission undertakes a range of conferences, events and meetings to build the culture and social fabric of the organisation and provides education and professional development opportunities as outlined below.

Members, merit reviewers and mediators

The Commission provides regular opportunities for professional networking, updates on the Commission's policies and operations and to hear from external experts in personal injury and vicarious trauma. Activities and resources include:

- annual conferences for members, merit reviewers and mediators
- regular briefings, education and professional networking sessions, including the Twilight lecture series
- ongoing skills development via relevant professional education courses and access to professional subscriptions e.g. LexisNexis legal analytics
- attendance at professional conferences for full-time members, including Council of Australasian Tribunals (COAT) events
- an on-site legal library at the Commission's premises and a comprehensive Decisions Style Guide
- a dedicated extranet containing information and reference material to support members, merit reviewers and mediators.

Opposite page – top row: the Commission's wellbeing champions and an address to staff by the Principal Registrar; second row: a team collaborates at a staff event and staff celebrate Harmony Day; third row: the 2023 Mediator Conference; fourth row: Judge Gerard Phillips with the Attorney General, the Hon Michael Daley MP and the Pathway delivery team celebrate the launch of Phase 2 of the platform.

Medical assessors

The Commission's comprehensive education program for medical assessors meets its obligations under s 37 of the *Personal Injury Commission Act 2020* and promotes high quality decision-making in medical disputes. The medical panel officer team also supports medical assessors with all aspects of their role. Activities and resources include:

- a comprehensive induction and mentorship program for newly appointed medical assessors
- bi-monthly virtual education and briefing sessions
- face-to-face and online myPathway training for all medical assessors and their support staff
- an e-newsletter that details aspects of the Commission's policies and operations relevant to medical assessors
- a dedicated extranet containing information and reference material to support medical assessors
- a dedicated help desk for medical assessor enquiries.

Staff

The Commission supports staff with a range of wellbeing, learning and professional development and inclusion initiatives. Activities and resources include:

- an annual in-person strategic planning and networking workshop
- regular hybrid and in-person all-staff meetings and other events
- training and education to support the Commission's Mental Health and Wellbeing Framework
- wellbeing programs, workshops and events together with continued monitoring and review of the Commission's Healthy Hybrid Habits program
- an official recognition program aimed at acknowledging and celebrating the contribution of staff and teams
- a dedicated intranet with news, reference material and other resources
- individual performance and career planning through the My Contribution program, including a focus on learning and development.



8. The Commission's operations – section 66 requirements

Section 66 of the *Personal Injury Commission Act 2020* prescribes the timetable for the provision of this Annual Review.

Sub-section 4 details the metrics and information that must be reported:

- a) the number and type of proceedings instituted in each Commission division during the year
- b) the sources of those proceedings
- c) the number and type of proceedings that were made during the year but not dealt with
- d) the extent to which the operations of the Commission are funded by each operational fund
- e) any other information that the President considers appropriate to be included or the Minister directs to be included.

This section reports on the above requirements to meet the Commission's obligations under the Act while Chapter 9 reports in more detail the Commission's performance in handling dispute applications.

Operational funds

The Commission resolves dispute applications which are funded from three operational funds:

- a) the Motor Accidents Operational Fund (the SIRA Fund) under the *Motor Accident Injuries Act 2017*
- b) the Motor Accidents Operational Fund under the *Motor Accidents Compensation Act 1999*
- c) the Workers Compensation Operational Fund under the *Workplace Injury Management and Workers Compensation Act 1998*.

The *Motor Accidents Compensation Act 1999* scheme remains in its run-off stage, and the Commission continues to experience a steady trickle of lodgments from this scheme. It is anticipated this will continue to steadily decline for the foreseeable future.

The Commission must demonstrate how much of its operations are funded by each operational fund. This is because, under the enabling legislation, money from these funds can be used only for a fund purpose.

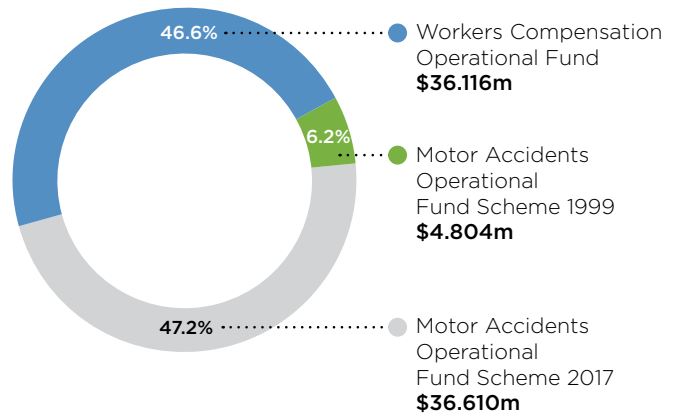
Cost distribution methodology

The Commission has maintained a cost distribution methodology which drives funding allocation and cost distribution to meet its reporting obligations under s 66(4)(d). Wherever possible, when an expenditure is incurred, it is accounted for in either a workers compensation or motor accidents scheme cost centre. Other shared costs are isolated in general cost centres and distributed between the three schemes, based on the proportion of matters finalised within each.

With rises and falls in filings across the schemes, the contribution to each scheme is a changeable figure depending upon the point in time it is observed. However, the formula under which the methodology is based is a reasonable and appropriate means of calculating each scheme's contribution.

To confirm this and given our commitment to best practice, the Commission will perform an external audit of the Commission's financial data reported every second year, as evidenced in 2022-23 Annual Review.⁸

Contributions by operational fund



In the financial year from 1 July 2023 to 30 June 2024, 46.6% (\$36.116m) of the total cost (\$77.530m) was attributed to the Workers Compensation Operational Fund (WCOF), 6.2% (\$4.804m) to the Motor Accidents Operational Fund Scheme 1999 (MAOF Scheme 1999), and 47.2% (\$36.610m) to the Motor Accidents Operational Fund Scheme 2017 (MAOF Scheme 2017).⁹

Details of the operating expenses and income related to each operational fund are shown on page 44. These figures include increased service provider costs when compared to 2022-23 which correspond to the increased workers compensation filings and workload. The significant rise in psychological and psychiatric assessments, which are more complex and expensive than standard physical assessments, a material increase in the number of motor accidents medical review panels performed along with the harmonisation of the medical assessor hourly rate from 1 July 2023 also collectively led to increased provider costs.

⁸ The Commission is not required to perform an independent audit every year as it is an independent tribunal that is only required to publish an annual review (s 66 of the Act). However, the Commission's income and expenditure transactions reported here are subject to audit by the Audit Office as part of the State Insurance Regulatory Authority (SIRA) and Department of Customer Service (DCS) annual audits. This is because SIRA manages the operating funds' bank accounts and DCS manages several shared services on behalf of the Commission, including payroll for Commission staff. Consequently, the transactions reported are captured in the audit of these agencies.

⁹ This compares to a FY23 total cost of \$68.769m, comprising WCOF 44.7% (\$30.734m), MAOF Scheme 1999 11.9% (\$8.177m) and MAOF Scheme 2017, 43.4% (\$29.858m). The increased costs attributed to WCOF reflect increased filings and service provider costs in the Workers Compensation Division. The increased costs attributed to MAOF reflect the increase in complex matters, medical review panels and the harmonisation of the medical assessor hourly rate.

8. The Commission's operations – section 66 requirements (continued)

Operating expenses and income related to each operational fund

Personal Injury Commission	2024 \$'000	WCOF \$'000	MAOF Scheme 2017 \$'000	MAOF Scheme 1999 \$'000
Expense				
Personnel services				
Salaries and allowances (including annual leave) ¹⁰	27,804	12,260	13,741	1,803
Agency short term staff ¹¹	2,201	1,037	1,029	135
Total personnel services	30,005	13,297	14,770	1,938
Other operating expenses				
Accommodation expenses	5,875	2,932	2,602	341
Payments to service partners ^{12 13}	32,620	15,207	15,393	2,020
Software expenses	2,717	1,383	1,179	155
Other miscellaneous expenses ¹⁴	6,313	3,297	2,666	350
Total other operating expenses	47,525	22,819	21,840	2,866
Total expenditure	77,530	36,116	36,610	4,804
Income				
Contributions (WCOF)	36,116	36,116		
Contributions (MAOF Scheme 2017)	36,610		36,610	
Contributions (MAOF Scheme 1999)	4,804			4,804
Total income	77,530	36,116	36,610	4,804
Net result	-	-	-	-

10 The Motor Accident Operational Funds contributed more towards personnel services than the Workers Compensation Operational Fund as higher numbers of staff were required to manage the motor accidents portfolio. This is a true reflection of the personnel engaged in activities for their respective funds.

11 'Agency short-term staff' are contractor expenses. This includes contractors temporarily engaged to deliver Pathway, the Commission's new single digital platform. Phase 2 of the project, for workers compensation matters, was implemented on 11 June 2024.

12 Payments to service partners comprise those to sessional members, medical assessors, mediators and sessional merit reviewers. Payments to service partners under the Workers Compensation Operational Fund increased during FY24, due to a significant increase in the number of applications lodged and subsequently finalised during the year and the harmonised medical assessor hourly rate from 1 July 2023.

13 Payments to service partners under the Motor Accident Operational Fund also increased during FY24, even though the number of applications lodged and subsequently finalised during the year did not materially change. The drivers of this increase were the harmonised hourly rate for medical assessors; material increase in psychological and psychiatric medical assessments in FY24 which are more expensive than a standard physical medical assessment due to their complexity and an increase in the number of medical review panels.

14 'Other miscellaneous expenses' represent other operating expenses incurred, including strategic operational costs and continued design and implementation of Pathway, the Commission's single digital platform.

Section 66(4)(a), (b) and (c) reporting obligations

The following tables summarise the number and type of proceedings instituted in each division during the year, the number and type of proceedings that were made during the year but not dealt with (in progress), and the source of those proceedings.

Motor Accidents Division proceedings 2023-24

Legislation	Jurisdiction	Instituted	In progress
1999 MACA	Medical assessment service	274	216
1999 MACA	Claims assessment and resolution service	71	196
1999 MACA	Total	345	412
2017 MAIA	Medical assessment	3,845	2,391
2017 MAIA	Merit review	91	26
2017 MAIA	Claims assessment	1,656	1,492
2017 MAIA	Miscellaneous claims assessment	93	40
2017 MAIA	Total	5,685	3,949
Total		6,030	4,361

Workers Compensation Division proceedings 2023-24

Application type	Instituted	In progress
Application to resolve a dispute (Form 2 and 2D)	7,033	1,709
Application for expedited assessment (Form 1)	358	20
Workplace injury management dispute (Form 6)	13	0
Application for assessment of costs (Form 15)	3	0
Registration of commutation (Form 5A)	48	6
Application for mediation (Form 11C)	2,399	253
Application to cure a defective pre-filing statement (Form 11B)	3	0
Application for assessment by a medical assessor (Form 7)	109	21
Appeal against decision of a member (Form 9)	83	63
Appeal against a decision of medical assessor (Form 10)	506	134
Total	10,555	2,206

The source of proceedings by division

Source of proceedings	Workers compensation	Motor accidents
Legally-represented claimant	97.2%	81%
Self-represented claimant	0.2%	5%
Insurer	2.6%	14%

8. The Commission's operations – section 66 requirements (continued)

Section 66(4)(e), reporting obligations

On 9 May 2024, the Minister for Better Regulation and Fair Trading, who was the responsible minister for the Commission at the time, wrote to the President (Appendix K) suggesting the Commission consider the information departments and agencies are required to include in their annual reports, available in the Annual Reporting Requirements Treasury Policy and Guidelines¹⁵, and include relevant matters in the Commission's Annual Review 2023–24. The Commission is a small independent tribunal that is legislated to produce an annual review only (s 66), so is not required to comply with Treasury's reporting framework. Pleasingly, the Commission already meets the majority of those requirements in its annual review and has added further information in response to the Minister's request.

This year the Commission has included more information on:

- legislation administered
- senior executives
- work health and safety
- diversity and inclusion
- consultant costs
- information about the annual review
- the annual cyber security attestation.

¹⁵ NSW Treasury Policy and Guidelines – Annual Reporting Requirements TPG23-10, August 2023.

9. The Commission's performance

How performance is reported

The Commission's performance data is reported for the period from 1 July 2023 to 30 June 2024.

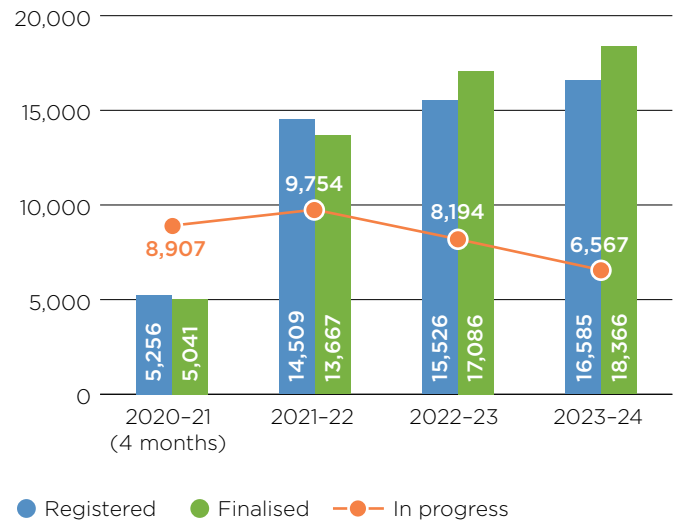
Data is presented for the Commission as a whole and for its two distinct operational areas, the Motor Accidents Division, which resolves motor accidents disputes, and the Workers Compensation Division, which resolves workers compensation disputes.

With the implementation of the Commission's single digital platform, Pathway, there are new opportunities for the Commission to further align how performance data is presented for the two divisions. The Commission will review how data and key performance indicators will be presented in the Annual Review 2024-25 over the next 12 months.

Dispute applications registered, finalised and in progress

For the year 2023-24 the Commission as a whole:

- had 8,194 dispute applications in progress as at 1 July 2023
- registered 16,585 new dispute applications
- finalised 18,366 dispute applications
- had 6,567 in progress dispute applications on hand at 30 June 2024.



Note: Applications registered and later found to have been created in error and applications that were finalised and subsequently reopened account for the variance between 2022-23 and 2023-24 in progress figures (when calculating 2022-23 in progress, adding 2023-24 disputes registered and subtracting 2023-24 disputes finalised).

Dispute applications registered increased by 7% and dispute applications finalised also increased by 7% from the previous year. There were 1,781 more dispute applications finalised in the year than were lodged and work in progress reduced by 20% as a result.

In the Motor Accidents Division, the Commission successfully reduced work in progress by 24% from the previous year, for the second consecutive year.

In the Workers Compensation Division, there was a 13% increase in dispute applications registered from the previous year. Despite this increase, the Commission maintained strong performance in the timely resolution of workers compensation disputes and recorded a 19% increase in finalisations and reduced the overall work in progress at the end of the year by 12%.

9. The Commission's performance (continued)

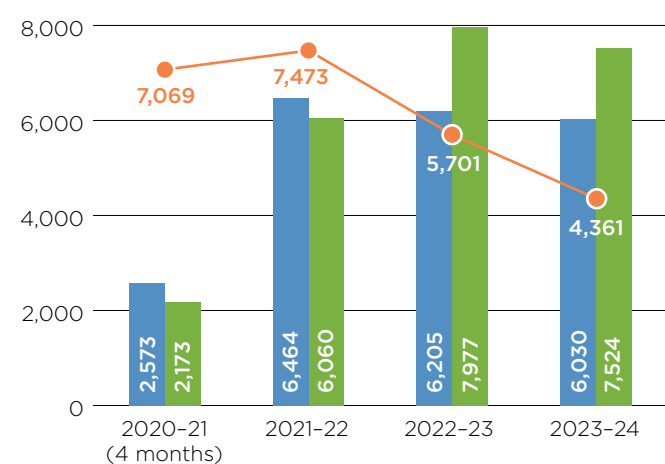
Motor Accidents Division

Most motor accidents dispute applications related to claims under the *Motor Accident Injuries Act 2017* (94%). Dispute applications for claims under the *Motor Accidents Compensation Act 1999* continued to decline, accounting for only 6% of all dispute registrations in the year.

In 2023-24, motor accidents dispute applications registered decreased slightly (-3%) from the previous year. There were 1,494 more disputes finalised in the year than were lodged and the volume of disputes in progress reduced by 24% as a result. At 30 June 2024 there were 4,361 motor accidents disputes in progress. This is shown in the table below.

Motor accidents dispute applications		2023-24		
Legislation	Jurisdiction	Registered	Finalised	In progress
1999 MACA	Medical assessment service	274	540	216
1999 MACA	Claims assessment and resolution service	71	294	196
1999 MACA	Total	345	834	412
2017 MAIA	Medical assessment	3,845	4,557	2,391
2017 MAIA	Merit reviews	91	102	26
2017 MAIA	Claims assessment	1,656	1,923	1,492
2017 MAIA	Miscellaneous claims assessment	93	108	40
2017 MAIA	Total	5,685	6,690	3,949
Total		6,030	7,524	4,361

Motor accidents dispute applications registered, finalised and in progress



Despite the reduction of disputes in progress, the Commission acknowledges there have been delays with panel reviews of single medical assessment disputes through the year. In 2023-24 registrations of medical reviews increased by 14% largely due to the increase in medical assessments and the resulting finalisations. The number of medical reviews finalised also increased, at the end of the 2023-24 the number of medical reviews in progress increased to 702.

● Registered ● Finalised — In progress

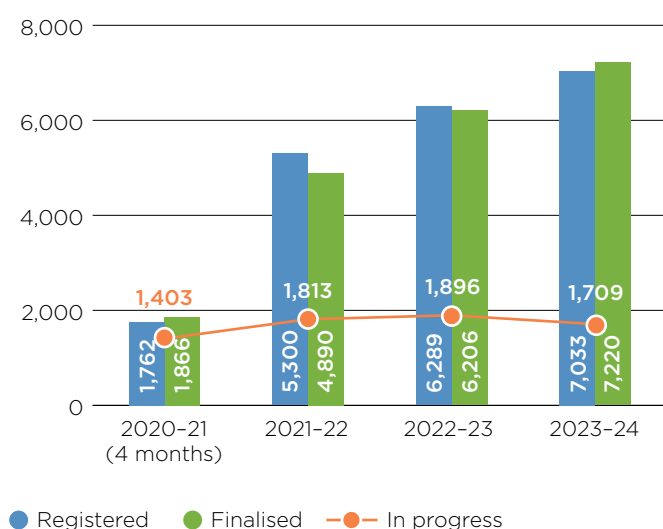
Workers Compensation Division

Most (67%) workers compensation dispute applications registered with the Commission are Form 2 applications to resolve a dispute (including Form 2D: application in respect of death of worker). This is shown in the table below.

Workers compensation dispute applications	2023-24		
	Registered	Finalised	In progress
Application to resolve a dispute (Form 2 and 2D)	7,033	7,220	1,709
Application for expedited assessment (Form 1)	358	373	20
Workplace injury management dispute (Form 6)	13	17	0
Application for assessment of costs (Form 15)	3	5	0
Registration of commutation (Form 5A)	48	47	6
Application for mediation (Form 11C)	2,399	2,422	253
Application to cure a defective pre-filing statement (Form 11B)	3	3	0
Application for assessment by a medical assessor (Form 7)	109	142	21
Appeal against decision of a member (Form 9)	83	94	63
Appeal against decision of a medical assessor (Form 10)	506	519	134
Total	10,555	10,842	2,206

In 2023-24, Form 2 applications registered increased by 12% from the previous year. In the same period the number of Form 2 applications finalised increased by 16%. At 30 June 2024, there were 1,709 Form 2 dispute applications in progress, a 10% decrease on the previous year.

Form 2 and 2D dispute applications registered, finalised and in progress



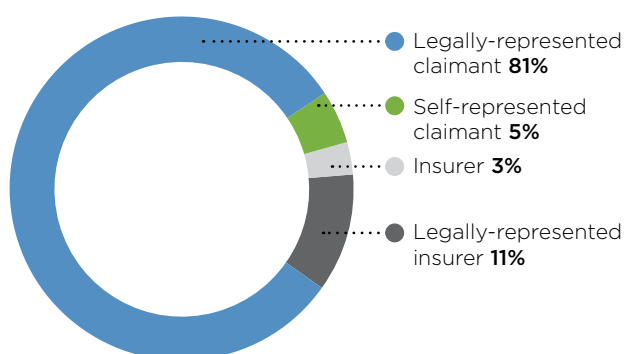
9. The Commission's performance (continued)

Source of dispute applications

The Commission receives dispute applications from a combination of legally-represented motor accidents claimants and workers, self-represented motor accidents claimants and workers, insurers and legally-represented insurers.

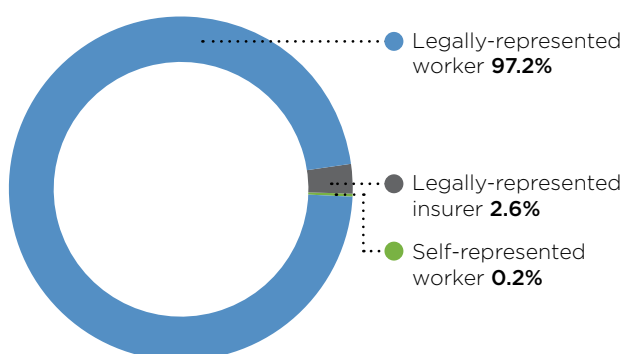
The sources of registrations by operational division are detailed below.

Source of applications – Motor Accidents Division



In the Motor Accidents Division, 81% of dispute applications were lodged by claimant legal representatives. Self-represented claimants registered 5% of applications, insurers registered 3% of applications, and 11% of applications were registered by insurer legal representatives. For applications for panel review of a single medical assessment, 44% were lodged by insurers or insurer legal representatives.

Source of applications – Workers Compensation Division



In the Workers Compensation Division, 97.2% of dispute applications were lodged by legal representatives of injured workers. Self-represented workers accounted for 0.2% of applications. The remaining 2.6% of applications were lodged by insurers. Member appeals and medical appeals had higher percentages of applications lodged by the insurers, at 59% and 35%, respectively.

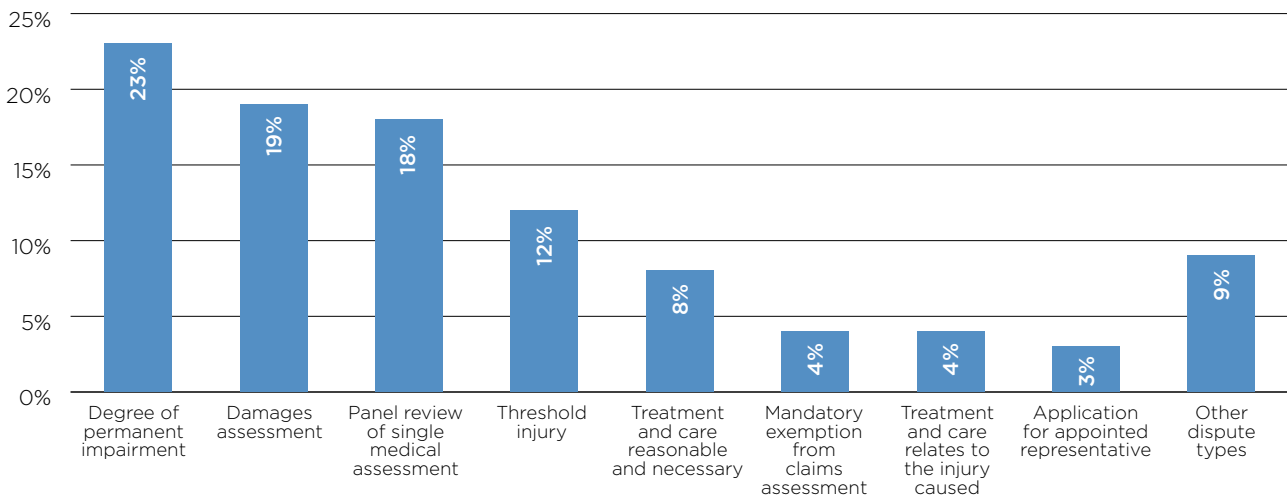
Dispute types and outcomes

Motor Accidents Division

Whilst there was a 3% decrease in motor accidents dispute applications registered in the year, medical disputes registered increased by 4%. Medical disputes across the two schemes now account for 68% of all motor accidents disputes registered, with disputes about permanent impairment, panel review of single medical assessment and threshold injury being the most common.

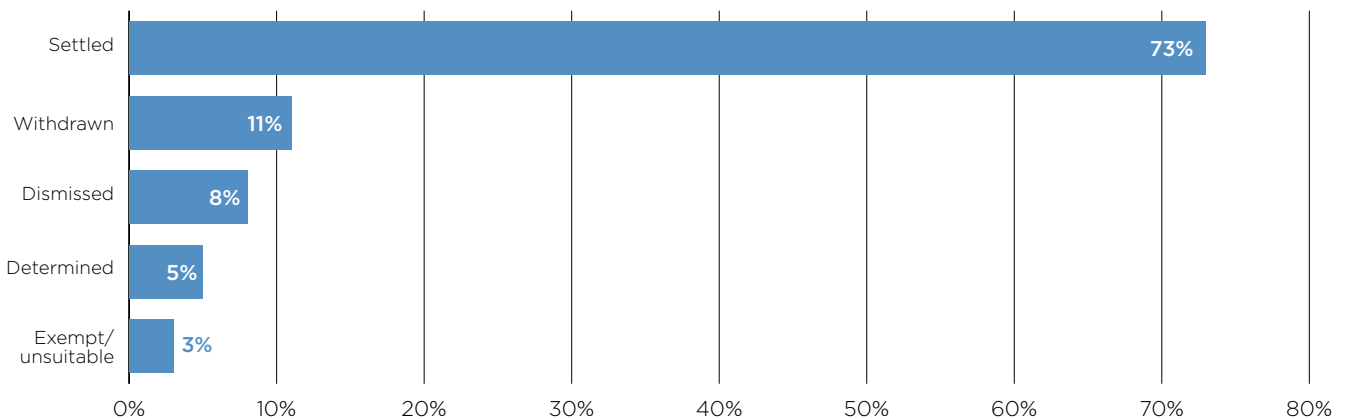
Permanent impairment disputes are now the most frequently registered dispute type, accounting for 23% of all disputes registered.

Dispute types registered



Most damages assessments are resolved prior to a decision being made. Of the damages assessments finalised in the year, 73% were settled by the parties and 5% were determined by a member.

Damages assessment outcomes



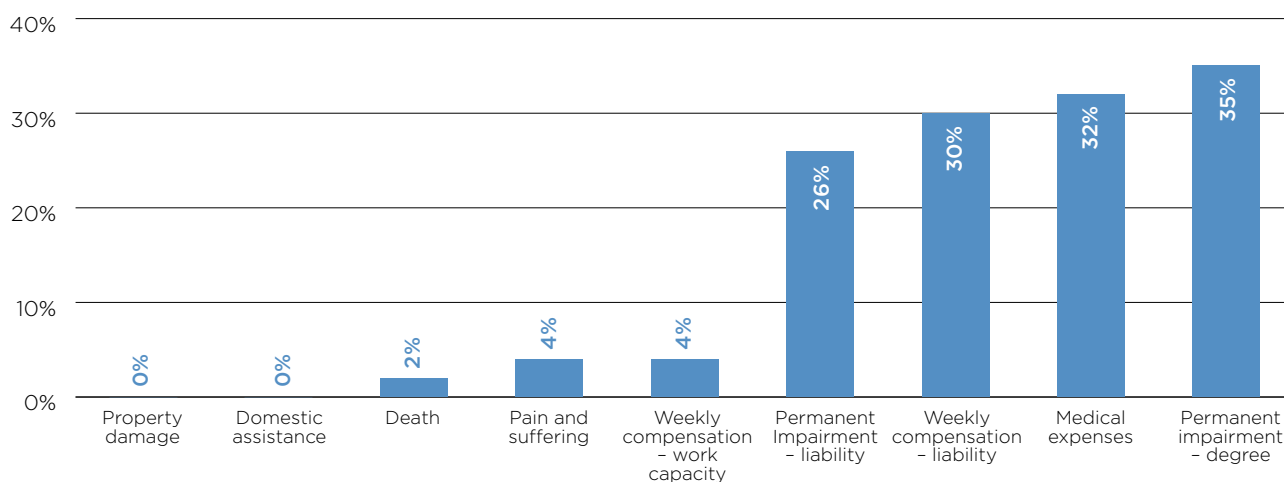
9. The Commission's performance (continued)

Workers Compensation Division

Most workers compensation dispute applications registered in the Commission are applications to resolve a dispute (Form 2 including 2D).

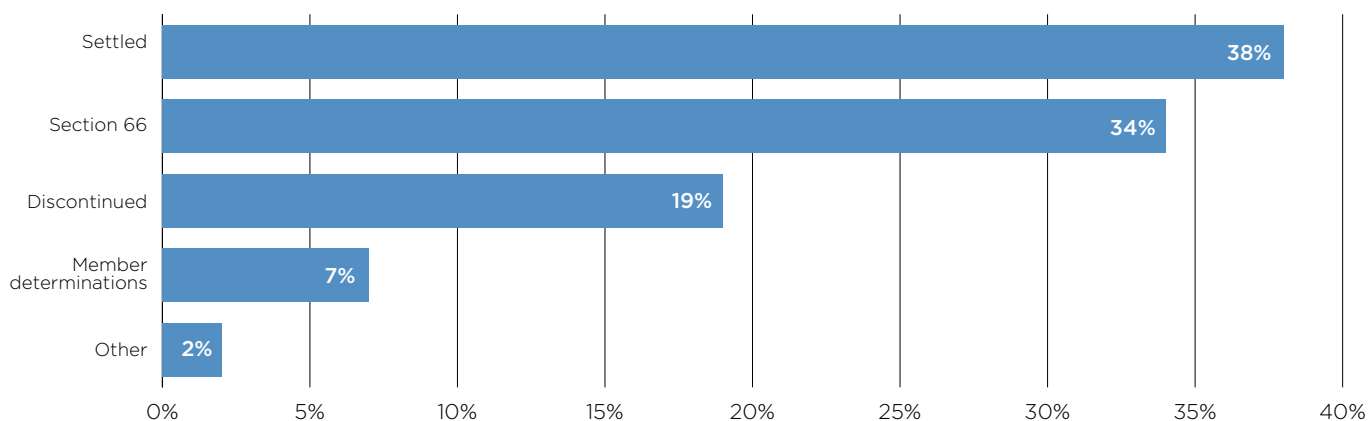
Permanent impairment, medical and related expenses and weekly compensation remain the most frequently disputed compensation types as shown in the chart below. Many Form 2 applications involve claims for more than one type of compensation benefit, and as such the figures total more than 100%.

Form 2 - compensation in dispute



Disputes limited to the degree of permanent impairment (quantum only) made up 34% of all resolutions for Form 2 dispute applications, as shown in the chart below. Settlements accounted for 38% of all resolutions. Members were only required to determine 7% of disputes that were finalised.

Form 2 - outcomes



The Commission also plays a significant role in resolving work injury damages claims through pre-trial case management and mediation services. A total of 2,399 applications for mediation to resolve a work injury damages claim (Form 11C) were registered by the Commission. Mediation conferences were held in 2,013 matters, of which 1,457 (72%) were settled.

Appeals

Motor Accidents Division

Medical reviews

There were:

- 4,695 reviewable medical certificates issued
- 1,086 applications for panel review of single medical assessment made
- 971 applications for panel review of single medical assessment finalised, of which 479 were determined by a medical review panel, and the remainder either dismissed, settled, or withdrawn.

Judicial review of decisions

There were 25 applications for judicial review of motor accidents decisions registered in the Supreme Court of New South Wales.

This included:

- nine Presidential delegate decisions
- four member decisions
- 12 decisions made by a medical review panel.

In the same period, 19 applications for judicial review were finalised, of which:

- three were dismissed
- 16 set aside the original decision.

In 2023–24, two Supreme Court judgments pertaining to motor accidents matters were subsequently appealed to the Court of Appeal, both of which upheld the decisions made by the Commission.

Workers Compensation Division

Appeals against a decision of a member

A total of 83 applications to appeal against a decision of a member (Form 9) were registered, and Presidential members determined 82 appeals.

Overall, 6% of appellable decisions by members were revoked on appeal.

Medical appeals

There were:

- 2,526 appellable medical assessment certificates issued
- 506 applications to appeal against a decision of a medical assessor (Form 10) registered
- 519 medical appeals finalised, of which 319 were determined by a medical appeal panel, and the remainder either dismissed, settled, or withdrawn.

Judicial review of decisions

A total of 20 applications for judicial review of workers compensation decisions were registered in the Supreme Court of New South Wales, all of which were appeals against decisions of medical appeal panels.

In the same period, 22 applications for judicial review of workers compensation decisions were finalised, of which:

- seven applications were dismissed
- 14 applications resulted in the original medical appeal panel decision being set aside, and
- one application was discontinued.

In 2023–24, five Supreme Court judgments pertaining to workers compensation matters were appealed to the Court of Appeal.

Three Court of Appeal decisions were finalised in the same period, of which:

- one application was discontinued
- one appeal was dismissed, upholding the Supreme Court judgment which set aside the decision of the medical appeal panel (*Wright v State of New South Wales* [2024] NSWCA 77)
- one appeal set aside the Supreme Court's judgment, upholding the original decision of the medical appeal panel (*Scone Race Club Ltd v Cottom* [2024] NSWCA 34).

One application for special leave to appeal was made to the High Court of Australia from a judgment of the Court of Appeal. That application was pending as at the end of the 2023–24 financial year.

9. The Commission's performance (continued)

Appeals to the Court of Appeal from Presidential decisions

In 2023-24, four appeals against Presidential decisions were made to the Court of Appeal. Of these, three were dismissed by the Court of Appeal and one appeal was allowed.

Additionally, in 2023-24 the Court of Appeal finalised appeals against two Presidential decisions which had been lodged the year prior. Of these, one appeal was allowed and one was dismissed by the Court of Appeal.

A further appeal, which had also been lodged in the year prior, was discontinued in 2023-24.

At the close of the 2023-24 financial year, there were no Presidential decisions awaiting decision before the Court of Appeal.

In 2023-24, one application for special leave to appeal was made to the High Court of Australia from an appeal decision by the New South Wales Court of Appeal. That application was pending as at the end of the 2023-24 financial year.

Key performance indicators

The Commission published a comprehensive set of key performance indicators (KPIs) on 1 July 2022. These are used to quantify and monitor performance and track how the Commission is meeting its statutory objectives, set out at s 3 of the *Personal Injury Commission Act 2020*. They also provide Commission users with indicative information about the timeframes, quality, and efficiency they can expect when dealing with the Commission's services.

The KPIs were developed acknowledging the practice and procedures in the legacy organisations that preceded the Personal Injury Commission and set consistent standards across

major areas of operation in both the Motor Accidents and Workers Compensation Divisions. The Commission consulted with the NSW Bar Association, the Law Society of NSW, icare and the members of the Commission's CTP Insurer Reference Group.

This is the second year the Commission reports against these KPIs. Results are shown for the 2023-24 year and the previous year (2022-23).

In 2024-25 the Commission will review the KPIs to ensure that performance is measured appropriately, KPIs are relevant, and targets are realistic and achievable.

Workflow

The following workflow measures monitor the Commission's performance in meeting the demands for Commission services and in reducing the volume of work on hand.

Through 2023-24, the Commission has continued to focus on reducing the number of motor accidents medical disputes in progress. In the Motor Accidents Division, the Commission is pleased to report a clearance rate for the year of 125%, meaning more disputes were finalised throughout the year than registered.

In the Workers Compensation Division, the Commission achieved a clearance rate of 103%. Throughout the year, the Commission saw a 13% increase in dispute applications registered and managed to increase finalisations by 19%. At the end of the year the number of disputes in progress reduced by 12%.

Overall, the Commission achieved a clearance rate of 111% in 2023-24, with 1,781 more disputes finalised than registered and a 20% reduction in the volume of disputes in progress.

KPI measure	2022-23	2023-24
Finalisations are greater than or equal to registrations - clearance rate >100%		
Personal Injury Commission	110%	111%
Motor Accidents Division	127%	125%
Workers Compensation Division	98%	103%

Lifecycles

Lifecycle measures monitor the time taken to finalise the Commission's most frequently registered disputes.

In 2023-24 the Commission continued to focus on reducing the average time to finalise disputes. Whilst there has been some improvement in reducing lifecycles in both divisions, overall lifecycles in the Motor Accidents Division remain higher than the Commission would like.

In the Workers Compensation Division, despite an increase in new registrations, the average lifecycle of Form 2 and 2D applications to resolve a dispute has reduced to 129 days. 96% of Form 2 and 2D applications were finalised within 12 months and 87% within six months.

In the Motor Accidents Division, average medical dispute lifecycles reduced by 52 days to 333 days, with 65% of disputes finalised within 12 months, compared with 49% in the previous year. Motor accidents damages assessment average lifecycles increased from the previous year to 565 days. Despite this increase, more damages assessments were finalised within 12 months than the previous year (57%).

KPI measure	2022-23	2023-24
Disputes are resolved within the target timeframes		
Motor accidents - medical disputes		
The average lifecycle is less than 120 days	385	333
45% are resolved in 3 months	17%	16%
85% are resolved in 6 months	26%	33%
97% are resolved in 9 months	37%	51%
99% are resolved in 12 months	49%	65%
Motor accidents - damages disputes¹⁶		
The average lifecycle is less than 120 days	511	565
45% are resolved in 3 months	16%	27%
85% are resolved in 6 months	32%	42%
97% are resolved in 9 months	42%	50%
99% are resolved in 12 months	48%	57%
Workers compensation - Form 2/2D		
The average lifecycle is less than 120 days	149	129
45% are resolved in 3 months	51%	54%
85% are resolved in 6 months	82%	87%
97% are resolved in 9 months	92%	93%
99% are resolved in 12 months	95%	96%

¹⁶ Motor accidents damages dispute data excludes matters that have been stood over.

9. The Commission's performance (continued)

Quality

The quality of the Commission's decision-making is measured in terms of the 'appeal rate' and the 'revocation rate', either internally in the Commission or through the court system. The appeal rate is the number of appeals lodged as a proportion of total number of decisions issued in the period. The revocation rate is the number of appeals finalised that revoked the original decision as a proportion of the total number of decisions issued in the period, however, it should be noted that it has a different meaning depending on which division it relates to.¹⁷

Motor accidents medical decisions continue to experience a high appeal rate, which increased to 23% in 2023-24. Despite the increased appeal rate the proportion of medical decisions revoked on review reduced in the year to 7% and is indicative that the quality of those medical decisions issued remains high.

Medical certificates in the Workers Compensation Division saw a similar increase in the appeal rate which increased to 20% in the year. The revocation rate of workers compensation medical certificates increased to 10% in the year.

The appeal rate of workers compensation member decisions saw a notable reduction in the year down to 16%. The proportion of member decisions revoked on appeal increased slightly to 6%, but both appeal rate and revocation rate remain comfortably within the Commission's target range.

Each year the Commission issues thousands of medical assessor, member, review panel and delegate of the President decisions, of which only a very small number are challenged in the NSW Supreme Court or the NSW Court of Appeal. In 2023-24, fewer than 1% of all appellable decisions were appealed or revoked in a higher court.

KPI measure	2022-23	2023-24
Appeal rate is less than 20%		
Motor accidents medical decisions with a review application lodged	22%	23%
Workers compensation appellable member decisions with an appeal	20%	16%
Workers compensation appellable medical certificates with an appeal	18%	20%
Revocation rate is less than 10%		
Motor accidents medical decisions revoked on review	8%	7%
Workers compensation appellable member decisions revoked on appeal	5%	6%
Workers compensation appellable medical certificates revoked on appeal	7%	10%
'Appeal rate' of the Commission's appellable decisions to a higher court is less than 10%	<1%	<1%
% of the Commission's appellable decisions set aside by a higher court is less than 5%	<1%	<1%

¹⁷ For medical appeal panels in the Workers Compensation Division, the word revocation relates to the panel's appeal decision to set aside the original certificate. In the Motor Accidents Division, the application is a de novo review rather than an appeal from the first instance medical assessor and may be accompanied by additional evidence. The claimant is assessed as they present on the day before the review panel and the panel may reach a different view.

Outcomes

The Commission's success in encouraging early dispute resolution is measured by the percentage of disputes successfully settled without proceeding to formal determination.

The Commission met each of the outcome targets in 2022-23 and further improved performance against each of these measures in 2023-24.

KPI Measure	2022-23	2023-24
Settlement rate is greater than target		
More than 70% of workers compensation Form 11C proceeding to mediation are settled	70%	72%
More than 35% of workers compensation Form 2/2D are settled	35%	38%
More than 60% of motor accidents damages assessment disputes are settled	70%	73%

User expectation

User expectation performance indicators are used to monitor the Commission's performance in meeting expected timeframes of key events throughout the dispute resolution process.

The proportion of disputes with early member listings (within 28 days of registration) reduced in both the Workers Compensation (27%) and Motor Accidents (50%) Divisions. This can in part be attributed to increased workers compensation filings and reduced member availability. Performance against these measures improved in the last quarter of 2023-24, however annual results remain below the target level.

The early scheduling of medical assessments continues to be an issue in both divisions. Medical assessor availability, particularly for high use specialties including psychiatrists and orthopaedic surgeons remains an issue. In motor accidents a continued focus on dealing with the oldest disputes first results in poor performance against this measure.

The timely issuing of medical assessor and member decisions has remained relatively stable but below the Commission's targets. In 2023-24 there has been a modest improvement in the timeliness of member decisions across both the Motor Accidents (45%) and Workers Compensation (54%) Divisions.

The Commission remains committed to improving performance against these measures to reduce wait times and so that Commission users know what to expect when dealing with the Commission.

KPI measure	2022-23	2023-24
90% of key dispute events occur within the target timeframe		
Workers compensation		
Form 2/2D with a listing with a member within 28 days of registration	39%	27%
Medical assessments that are scheduled within 35 days of registration	9%	12%
Medical assessor decisions issued within 14 days	78%	76%
Member decisions issued within 21 days	41%	45%
Motor accidents		
Damages assessment disputes with a listing with a member within 28 days of registration	55%	50%
Medical assessments that are scheduled within 35 days of lodgment	0%	0%
Medical assessor decisions issued within 14 days	69%	63%
Member decisions issued within 21 days	55%	64%

10. The law in focus

Amendments to Rule 67

In April 2024, the Personal Injury Commission Rule Committee approved draft amendments to the Personal Injury Commission Rules 2021 to introduce a new 500-page limit on supporting documents lodged with certain dispute applications, however, these will not commence until late 2024 or early 2025. Draft amendments to Procedural Direction PIC 3 and Procedural Direction PIC 12 have also been published, to commence at the same time. These amendments are available on the Commission's website.

Statutory Review of the *Personal Injury Commission Act 2020*

In August 2023, the State Insurance Regulatory Authority (SIRA) released its *Report on the outcome of the two-year Statutory Review of the Personal Injury Commission Act 2020*. The report found that the objects and terms of the Act generally remain appropriate to achieve its policy objectives. The report made two recommendations for the consideration of SIRA and the NSW Government, and three suggestions for the Commission relating to its decision publication policy, data publication and stakeholder engagement. The Commission has made significant progress in response to these in the reporting year, as reported in Chapter 4.

Notable decisions

The New South Wales Court of Appeal has produced several notable decisions during the review period relating to the *Workers Compensation Act 1987* (1987 Act), the *Motor Accidents Compensation Act 1999* (1999 Act) and the *Motor Accident Injuries Act 2017* (2017 Act). Principal Member John Harris has summarised five of these decisions which have important implications for the Commission and the consideration of personal injury disputes.

AAI Limited trading as GIO v Amos [2024] NSWCA 65

New South Wales Court of Appeal, 26 March 2024
Kirk JA, Adamson JA, and Basten AJA

1. Mr Jesse Amos was involved in a motor accident on 26 July 2018 and sustained injuries including a fractured septum with extensive soft tissue swelling in the nasal cavity. The insurer admitted liability. Approximately one month after the motor accident on 24 August 2018 the claimant fell at home and fractured his eye socket (the orbital fracture).
2. The medical dispute between the parties was whether the fall resulting in the orbital fracture was caused by injuries sustained in the motor accident. The claimant alleged that he fell as a result of dizziness which had been caused by a head injury sustained in the motor accident.
3. The medical dispute was referred to Medical Assessor Steiner who assumed that the orbital fracture was caused by the motor accident.
4. The medical dispute was referred to a medical review panel (the Review Panel) who found that the orbital fracture was not caused by the motor accident.¹⁸
5. The claimant had a pre-accident history of vertigo. On 16 May 2018, the GP made a house call for "severe vertigo" and prescribed Stemetil.
6. The Review Panel noted that the orbital fracture occurred when the claimant was walking down the back steps of his residence, felt dizzy and then found himself on the ground with significant trauma to his right orbit and right upper lid.

¹⁸ *AAI Ltd v Amos* [2022] NSWPICMP 467 (Review Panel).

7. The Review Panel accepted the possibility that the motor accident could have caused paroxysmal positional vertigo (PPV) and stated:¹⁹

“However, when post-traumatic paroxysmal positional vertigo occurs, there is a sensation of the room spinning and immediately the person suffering the condition will reach out for support and close the eyes. Mr Amos described a spinning sensation in his head but did not specifically describe the environment around him spinning such that he found it necessary to reach out for support. In the Panel’s experience the symptoms of positional vertigo are very specific whilst the symptoms described by Mr Amos were non-specific. Indeed, the Panel is satisfied if the claimant’s fall had occurred as a result of positional vertigo Mr Amos would have said so, and it would have triggered further investigations.”
8. The Review Panel noted that no medical practitioner referred the claimant for vestibular functioning testing which indicated the complaints were of non-specific dizziness rather than PPV.
9. The Review Panel concluded that the fall was either accidental or due to non-specific dizziness which was a pre-existing condition unrelated to the motor accident.
10. The claimant was successful in seeking judicial review of the Review Panel’s determination.²⁰
11. Rothman J held that the Review Panel had erred in denying the claimant procedural fairness in failing to enquire of the precise symptoms suffered by the claimant and failing to put certain propositions that were ultimately important in the Panel’s decision. Rothman J relevantly stated:²¹

“The Review Panel did not ask questions designed to draw out that issue, or to give notice to the plaintiff of the issue with which the plaintiff was required to deal.

...

While the plaintiff was able, in answer to questions from members of the Review Panel during the course of clinical examination, to define, in his own words, the difference between ‘dizziness’ and ‘vertigo’, there was no attempt to enquire of the plaintiff whether he felt the need to reach out for support; whether he felt the room spinning around him (whether in the head or otherwise); and the degree to which the symptoms suffered before the accident and after the accident differed.”

12. The insurer’s appeal to the Court of Appeal was successful.²² The reasons of the Court, were delivered by Adamson JA with some additional comments by Basten AJA (Kirk JA agreeing).
13. The extent of the obligation by the Review Panel to afford procedural fairness was discussed in *Wingfoot Australia Partners Pty Ltd v Kocak*²³ and described by Adamson JA as:²⁴

“Having regard to Wingfoot, it can be seen that the legislative choice to have the assessment of %WPI performed by a medical assessor or a review panel (constituted by three members, two of whom are medical assessors) rather than in court proceedings, had significant ramifications for the nature and extent of procedural fairness which was required. In the context of a medical assessment conducted by a medical assessor or a review panel, procedural fairness requires that the critical issue or factor on which the decision will turn be brought to the parties’ attention in order that they can provide material and make submissions about it.”

19 Review Panel, [150].

20 *Amos v AAI Limited t/as GIO* [2023] NSWSC 1193 (Supreme Court).

21 Supreme Court at [124] and [127].

22 *AAI Limited trading as GIO v Amos* [2024] NSWCA 65 (*Amos*).

23 [2013] HCA 43; 252 CLR 480.

24 *Amos*, at [55].

10. The law in focus (continued)

14. Adamson JA stated that the claimant was aware of the insurer's position from the documents it lodged and the submissions it made. This included the proposition that the history of symptoms was inconsistent with the claimant having sustained PPV at the time of the motor accident or at the time of the fall. Her Honour stated:²⁵

"The Review Panel was not obliged to put to the claimant the various versions he had given about his symptoms over time, with a view to ascertaining which version was the correct, or most accurate, one. It can be inferred from the Review Panel's reasons that Dr O'Neill took care to ascertain what the claimant meant by dizziness and vertigo in order that the Review Panel could understand what he meant when describing what led to the fall. The Review Panel was entitled to accept the description of the claimant's symptoms which the claimant gave in the course of the examination it conducted. The Review Panel was not obliged to spell out its thought processes or inform the claimant of the consequences of giving one answer rather than another, or of describing dizziness or vertigo in one way rather than another."

15. Basten AJA held that the reasons of the primary judge that the Panel was required to provide sufficient information and/or questioning to place the plaintiff on notice of the precise issue which the Review Panel thought may be dispositive was incorrect and observed:²⁶

"That expansion was not supported by the reasoning in Wingfoot, which did not refer to procedural fairness at large, but to a specific aspect of the obligation which was described. What the claimant sought to do, and the primary judge accepted, was to expand that obligation to impose on the panel a requirement to provide information to the claimant as to the nature of the medical evidence which the panel thought might be dispositive, so that the plaintiff or his legal representatives could deal with it. That is not the way a medical examination is conducted. The proposed expanded obligation is inconsistent with the function of the medical assessors identified in Wingfoot and with the statutory scheme under the New South Wales legislation noted above."

16. Every dispute will be fact sensitive. However, in the present case the Review Panel was held to have complied with procedural fairness by questioning the claimant about the precise symptoms at the time of the fall. The Review Panel's obligations of fairness did not extend to providing an indication to the claimant of what information might be determinative of the medical dispute.

Mandoukos v Allianz Australia Insurance Limited [2024] NSWCA 71

New South Wales Court of Appeal, 4 April 2024
Leeming JA, Kirk JA, and Stern JA

1. Mr Mandoukos was involved in a motor accident in January 2019. He lodged a claim alleging various injuries, including to the cervical spine. The insurer determined that the injuries were "minor injuries" within the meaning of the 2017 Act.
2. In 2019 a medical assessor found that Mr Mandoukos suffered injuries caused by the motor accident which were minor injuries.
3. In July 2020 Mr Mandoukos underwent a C5/6 foraminotomy. The Court of Appeal assumed that the surgery included the removal of bone.
4. In July 2021 Mr Mandoukos applied for a further assessment. The submissions in support of this application alleged that Mr Mandoukos had suffered from radiculopathy which was surgically treated such that the cervical spine injury would not be a minor injury as defined in the 2017 Act.
5. The medical assessor found that Mr Mandoukos had suffered a soft tissue injury to the cervical spine and determined that this was a minor injury. He did not consider whether the removal of bone during the foraminotomy procedure meant that the injury to the cervical spine was not a minor injury.

²⁵ Amos, at [67].

²⁶ Amos, at [92].

6. Mr Mandoukos filed an application in the Commission for review of the medical assessment arguing that the medical assessor failed to consider whether he suffered radiculopathy at any time and whether the surgical procedure meant that he suffered a non-minor injury.
7. The delegate declined the application for review. Mr Mandoukos brought judicial review proceedings in the Supreme Court alleging that the decisions of the medical assessor and the delegate suffered from jurisdictional error.
8. The primary Judge found that Mr Mandoukos never advanced a case before the medical assessor that the foraminotomy was itself an injury and noted that there was no evidence before the medical assessor and the Court of what was physically involved in a foraminotomy.
9. It was conceded on appeal that the initial submissions in the further application “did not contend that the surgery performed by Dr McKechnie was itself an injury or formed part of an injury caused in the motor accident”.²⁷
10. The Court of Appeal, referring to the High Court decision in *Military Rehabilitation and Compensation Commission v May*²⁸ held that the meaning of injury in the 2017 Act was consistent with the meaning in the workers compensation legislation which involved “some definite or distinct ‘physiological change’ or ‘physiological disturbance’ for the worse which, if not sudden, is at least ‘identifiable’”.²⁹
11. The phrase “about a medical assessment matter” in s 7.17 of the 2017 Act does not mean that the medical dispute necessarily encompasses the whole of the medical assessment matter. Stern JA stated:³⁰

“Rather, a dispute between a claimant and an insurer about a medical assessment matter, in s 7.17, is a reference to the dispute which has in fact arisen between a claimant and an insurer, albeit that, to fall within the definition of ‘medical dispute’ in s 7.17, that dispute must relate to the subject matter of a medical assessment matter.”
12. The whole of a medical assessment matter (as defined in clause 2 of Schedule 2) was not referred for assessment when the dispute between the parties was limited to a particular aspect of the medical assessment matter. The ambit of the medical dispute about a medical assessment matter is a question of fact having regard to the competing claims.³¹
13. The Court also noted that there is no obligation by a medical assessor to consider “a matter [unless it] falls within the ambit of the medical dispute referred for assessment”.³²
14. The preferred construction was consistent with the meaning of medical dispute in the workers compensation legislation considered by the Court of Appeal in *Skates v Hills Industries Ltd*³³ and *Scone Race Club Ltd v Cottom*.³⁴
15. The Court also held that the medical dispute referred again for assessment under s 7.24 of the 2017 Act is the “medical dispute that had previously been referred for assessment”.³⁵
16. The appellant was unsuccessful because it was never submitted as part of the medical dispute that the removal of bone during the foraminotomy was not a minor injury.

²⁷ *Mandoukos v Allianz Australia Insurance Limited* [2024] NSWCA 71 (*Mandoukos*), at [25].

²⁸ [2016] HCA, 19 at [45] and [75].

²⁹ *Mandoukos*, at [52].

³⁰ *Mandoukos*, at [73].

³¹ *Mandoukos*, at [78].

³² *Mandoukos*, at [90].

³³ [2021] NSWCA 142 (*Skates*) at [30] per Basten JA and [44]–[50] per Leeming JA.

³⁴ [2024] NSWCA 34 at [47]–[48], [53] applying *Skates* at [44].

³⁵ *Mandoukos*, at [88].

10. The law in focus (continued)

17. The Court did not decide whether the removal of bone during the foraminotomy procedure could be an injury as defined in the 2017 Act. Stern JA noted:
 - Even on the assumption that the removal of bone during a foraminotomy procedure could be an injury, the provisional view is that this would be a different injury from the injury to the cervical spine sustained at the time of the motor accident, and
 - That different medical dispute could be separately assessed by a medical assessor.
18. The case emphasises that the extent of the medical dispute in the motor accidents legislation is consistent with recent decisions on the workers compensation legislation and is determined by the documents exchanged between the parties and the competing submissions.

Scone Race Club Ltd v Cottom **[2024] NSWCA 34**

New South Wales Court of Appeal,
22 February 2024

Gleeson JA, Mitchelmore JA, Basten AJA

1. Mr Cottom sustained a right knee injury in 2008 and underwent surgery by way of anterior cruciate ligament reconstruction and underwent a total knee replacement in 2011. In 2015, a claim for permanent impairment was made, and the parties entered into a complying agreement under s 66A of the 1987 Act for 20% whole person impairment (WPI).
2. In 2020 a further claim was made for threshold purposes only, noting that there was no previous medical assessment (s 322A of the 1998 Act) but there had been a resolved claim for permanent impairment.³⁶
3. The matter was listed before an arbitrator of the Workers Compensation Commission. At that time the orders deleted any reference to the lumbar spine and remitted the matter for assessment of the right lower extremity (knee and peripheral nerve damage) and scarring.
4. The medical assessor found no peripheral nerve damage and no assessable scarring. Impairment of the right knee based on a fair result from a total knee replacement resulted in an assessment of 20% WPI.
5. The appeal panel dismissed the worker's appeal based on assertions that the assessor failed to properly assess for peripheral nerve damage. During the course of its reasons, the appeal panel stated:³⁷

“Conversely, there are tentative suggestions of problems emanating from the lumbar spine in the evidence. But a lumbar spine injury is not part of the medical dispute referred for assessment.”
6. Mr Cottom was successful in seeking judicial review of the decision of the appeal panel due to a failure by it to address the application to admit late documents. Part of that evidence concerned an injury to the lumbar spine, first raised after the issuing of the medical assessment certificate by Assessor Burns. Schmidt AJ stated:³⁸

“These were all arguments which were for the appeal panel to consider and in my view cannot be resolved on this application, especially given that Dr Burns had not had to consider any possible injury to Mr Cottom's spine.”
7. The employer's appeal to the Court of Appeal was successful. The reasons of the Court, delivered by Basten AJA (Gleeson and Mitchelmore JJA agreeing), included the following principles from previously decided cases:
 - The medical dispute was based on the claim and not limited to the referral (*Skates v Hills Industries Ltd* [2021] NSWCA 142);

³⁶ See *Cram Fluid Power Pty Ltd v Green* [2015] NSWCA at 250.

³⁷ *Cottom v Scone Race Club Ltd* [2022] NSWPCMP 70, at [53].

³⁸ *Cottom v Scone Race Club Ltd* [2023] NSWSC 779, [59].

- The appeal panel is obliged to dismiss the appeal unless there has been a demonstrable error which is material: *Queanbeyan Racing Club Ltd v Burton*;³⁹
 - It is impermissible for an appeal panel to reconsider an element of the medical assessment which has not been the subject of a ground of appeal;⁴⁰
 - The 1998 Act only allowed one appeal: *Sleiman v Gadalla Pty Ltd*.⁴¹
8. The Court noted that the consent orders agreed between the parties removed any reference in the application to an allegation of a consequential condition to the lumbar spine caused by the accepted right knee injury. The only matters referred for assessment were the right knee, peripheral nerve damage and scarring.
9. The Court of Appeal accepted the correctness of the statement by the appeal panel that the lumbar spine was not part of the medical dispute referred for assessment. Basten AJA stated:⁴²
- “As the appeal panel was restricted to the grounds of appeal raised in the referral (and any submissions accompanying the referral) and to the injury the subject of the referral (namely to the right knee), it could not properly have dealt with either of the matters raised in the late documents accompanying the application of 9 March 2022.”*
10. The decision confirms that panels are required to determine the extent of the medical dispute which is not limited to the terms of the referral and is crystallised by the documents exchanged between the parties. In the present matter the consent orders clarified that injury to the lumbar spine was not part of the medical dispute.

Secretary, Department of Education v Dawking [2024] NSWCA 4

New South Wales Court of Appeal,
31 January 2024

Gleeson JA, Mitchelmore JA, Kirk JA

1. Ms Dawking was employed by the appellant as a teacher. On 27 August 2021 the appellant advised all school-based staff of an expected announcement by the Premier of a return to face-to-face learning and that staff would be required to be fully vaccinated for COVID-19.
2. On 2 September 2021, the Deputy Secretary of the appellant sent an email to all school-based staff providing an update on mandatory vaccinations.
3. Ms Dawking claimed that the contents of the Secretary’s email concerning the mandate to be vaccinated caused her to develop a psychological injury. She ceased work on 6 September 2021.
4. On 23 September 2021, the Minister for Health issued a Public Health Order, which directed that all education and care workers must be either fully vaccinated or have been issued with a medical contraindication certificate by 8 November 2021.
5. On 17 November 2021, the appellant advised Ms Dawking that her employment ceased due to non-compliance with the Public Health Order.
6. The member found that the worker sustained psychological injury deemed to have occurred on 27 August 2021. The appellant’s defence under s 11A of the 1987 Act was rejected.
7. The appeal to the Presidential member was limited to issues involving the correctness and/or applicability of a decision decided by another member and whether there was error in finding that the worker’s employment was a substantial contributing factor to the injury or the main contributing factor to the contraction of the disease. That appeal was dismissed.

39 [2021] NSWCA 304 (*Burton*), at [25].

40 *Burton*, at [26].

41 [2021] NSWCA 236.

42 *Scone Race Club Ltd v Cottom* [2024] NSWCA 34, at [53].

10. The law in focus (continued)

8. The reasons of the Court of Appeal dismissing the appeal were provided by Gleeson JA, with Mitchelmore and Kirk JJA agreeing.⁴³
9. Gleeson JA observed:
 - Causation is a question of fact: *Kooragang Cement Pty Ltd v Bates*;⁴⁴
 - The test of whether the employment was a substantial contributing factor to the injury is an evaluative matter involving questions of impression and degree: *Badawi v Nexon Asia Pacific Pty Limited trading as Commander Australia Pty Limited*;⁴⁵
 - A finding that the employment is “the main contributing factor” to the injury “involves a more stringent connection with the employment than the requirement in s 9A”.
10. After a discussion of the evidence, Gleeson JA found that it was open for the Deputy President to conclude that the member correctly determined “that the employment was the main contributing factor to the injury distinguished between the effect that the receipt of the email from the Secretary on 27 August 2021 had on the worker ... and the subsequent Public Health Order issued on 23 September 2021.”⁴⁶
11. Gleeson JA rejected the appellant’s submission that the determination of injury under s 4(b)(i) of the 1987 Act was a question of law noting that the parties’ submissions before the member did not raise the proper construction of 4(b)(i). The Deputy President otherwise correctly decided that if an issue was not raised then it could not be an error for a member not to refer to it: *Brambles Industries Ltd v Bell*.⁴⁷
12. The appellant’s argument that the member and the Deputy President attached disproportionate weight to the circumstances of the employment as opposed to the mandate imposed by the State Government was rejected. The uncontradicted evidence provided by the worker and the unchallenged medical evidence supported the finding that the employment was the main contributing factor to the injury suffered by the worker on 27 August 2021.
13. The Court also rejected the appellant’s submission that the member and the Deputy President failed to address a clearly articulated argument. The Court noted that the appellant’s argument of the substantive distinction between the Secretary’s email and the Public Health Order was summarised, addressed and rejected.
14. Gleeson JA stated:⁴⁸

“What was in issue before the Member was a question of fact: relevantly for a disease injury, whether the employment was the main contributing factor to the injury. The evaluative exercise of determining whether the employment was the main contributing factor to the injury, directed attention to the comparative roles of the Secretary’s email and the Public Health Order in the worker’s injury.”
15. The case emphasises that the determination of issues under ss 4 and 9A of the 1987 Act are questions of fact involving an evaluative exercise involving questions of impression and degree applying the terms of the relevant sections.

⁴³ *Secretary, Department of Education v Dawking* [2024] NSWCA 4 (*Dawking*).

⁴⁴ (1994) 35 NSWLR 452, at 463G.

⁴⁵ [2009] NSWCA 324, at [48(4), (5) and (6)].

⁴⁶ *Dawking*, at [64].

⁴⁷ [2010] NSWCA 162, at [30].

⁴⁸ *Dawking*, at [95].

Fisher v Nonconformist Pty Ltd **[2024] NSWCA 32**

New South Wales Court of Appeal,
20 February 2024

Meagher JA, Kirk JA and Simpson AJA

1. Mr Clifford, a working director of the respondent, died from a heart attack whilst driving in the course of his duties as a courier driver.
2. The allegation of injury arose from employment on 22 January 2016. The deceased commenced employment at 6am on the Central Coast. At 3pm his vehicle left the roadway whilst travelling north of Newcastle when the vehicle impacted into a steel fence post and ran into a tree. Police and paramedics arrived shortly after the collision, attempts at revival were unsuccessful and death was declared at 3.45pm. It was not in dispute that the cause of death was the heart attack and not the collision.
3. The autopsy undertaken shortly after the accident concluded that Mr Clifford died from “ischaemic heart disease secondary to coronary artery atherosclerosis” with 75% atherosclerotic narrowing in one artery and of 50% in another artery. The autopsy report concluded that the extent of heart disease was sufficient that “sudden death would have occurred at any point in time”.
4. The medical evidence established that the most likely cause of death was cardiac arrhythmia. The respective experts disagreed as to the likely causes of the arrhythmia and in particular whether the heart attack was triggered by exposure to traffic related air pollution (TRAP).
5. The appellants (the widow and deceased’s two children) made claims under the 1987 Act alleging that the heart attack was caused by the deceased’s exposure to TRAP.
6. The member found that the heart attack was an injury for the purposes of s 4 of the 1987 Act (noting Mr Clifford died in the course of his employment) sufficient to satisfy one of the elements in s 4. The member concluded that the appellants had not proven “a causal connection between the deceased; employment on 22 January 2016 and his death”.
7. The appellants’ appeal of the member’s decision to the President of the Commission was dismissed.
8. The reasons of the Court of Appeal dismissing the appeal against the decision of the President were provided by Kirk JA, with Meagher JA and Simpson AJA agreeing.
9. After a thorough review of the authorities, Kirk JA concluded that the meaning of “aggrieved by a decision ... in point of law” in s 353(1) of the 1998 Act meant that the grievance raises a point of law whether or not that point of law was decided by the Presidential member.⁴⁹ This construction was supported by decisions of the Court of Appeal which held that a failure to accord procedural fairness or a constructive failure to exercise jurisdiction falls within this type of provision.⁵⁰
10. The broader construction meant that the “point of law need not necessarily have been raised in the proceedings below”⁵¹ and in some instances an argument may be made that the member and the Presidential member misdirected themselves as to the meaning of a statutory provision “even if that argument had not been made at either level”.⁵²
11. Kirk JA held that s 9A introduced a “stronger test” than s 4 noting that an injury could occur in the course of employment within the meaning of s 4 which did not of itself require causation.⁵³

⁴⁹ *Fisher v Nonconformist Pty Ltd* [2024] NSWCA 32 (*Fisher*), at [33].

⁵⁰ *Fisher*, at [39].

⁵¹ *Fisher*, at [42].

⁵² *Fisher*, at [46].

⁵³ *Fisher*, at [62] and [66].

10. The law in focus (continued)

12. Kirk JA noted that the Court in *Badawi v Nexon Asia Pacific Pty Limited trading as Commander Australia Pty Limited*⁵⁴ accepted that the s 9A test of “substantial contributing factor” involved a causal connection between the employment concerned and the injury which “was real and of substance”. The test in s 9A that employment be a substantial contributing factor to employment imposed a more stringent causal test in s 4(a) of arising out of the course of employment. The s 4 test had long been accepted to involve consideration of whether employment caused, or to some material extent contributed to, the injury.⁵⁵
13. Kirk JA held that there was no error by the member in not referring to the phrase “real and of substance” being the phrase used by the joint judgment in *Badawi*. It was evident from the findings of the member that he did not find “any” causal link made out between the heart attack injury and the employment of the deceased.
14. The analysis by the member was that he accepted that there was increased risk of cardiac arrest with exposure to TRAP, but that the evidence did not establish the significance of that risk. That conclusion was consistent with case law of the Court of Appeal that “an increased risk of injury caused by a breach is not enough, to establish causation in tort”⁵⁶ referencing decisions such as *Seltsam Pty Limited v McGuinness*⁵⁷ and *TC by his Tutor Sabatino v New South Wales*.⁵⁸
15. The Court noted that the issue was whether TRAP that “can” cause injury “did” in fact cause injury. As the test of causation in s 9A was more demanding than the test of causation that applied in the law of tort, causation in s 9A had not been established. The argument that establishing an increase in risk would be enough to satisfy the causation test in s 9A was rejected.
16. The Court discussed differing notions of common sense in relation to determining issues of causation. It was noted that the concept has been employed to connote a number of ideas including an evaluative question of fact, drawing upon life experiences in making the judgment required, encompassing the common law test of causation or that causation is “ultimately a matter of common sense”.
17. Kirk JA noted that there were “some dangers in invoking common sense in evaluating causation issues” but that did not mean “that any invocation of common sense involves legal error”.⁵⁹
18. The appellants’ submission that there was a constructive failure to exercise jurisdiction in regard to the late reports of the cardiologist, was rejected. The appellants had made little effort to identify a clear, material argument with which the President had not engaged.
19. The complaint that the member failed to respond to a critical argument, Dr Helprin’s latest report which accepted that TRAP did have some limited causal significance in contributing to the death, was not made out. This is because the appellants had not made a clear submission that was manifestly central to their case, that the final report “of itself sufficed to satisfy the causation requirement in s 9A”.⁶⁰ In any event, the member had addressed the issue and had interpreted the relevant passage by Dr Helprin as a statement of increased risk as opposed to a statement that the exposure had in fact contributed to the death of Mr Clifford.
20. The Court did not decide whether the duty by a member to give reasons as required by s 294 of the 1998 Act was as broad as the requirement for a judge. The complaint that adequate reasons were not provided by the member was not made out. Kirk JA also noted that the matters in s 9A(2) did not require analysis if they were not relevant to the case.

54 [2009] NSWCA 324 (*Badow*).

55 *Fisher*, at [70].

56 *Fisher*, at [86].

57 [2000] NSWCA 29, at [118]–[119].

58 [2001] NSWCA 380, at [59]; see also the decisions cited in *Fisher*, at [88]–[91].

59 *Fisher*, at [111].

60 *Fisher*, at [126].

Less is more – on the road to the just, quick and cost-effective resolution of disputes

Brett Williams, Senior Member, Personal Injury Commission

Both the objects of the *Personal Injury Commission Act 2020*, and the “guiding principle” emphasise the importance of the Commission focusing on the just, quick, and cost-effective resolution of the real issues in dispute.⁶¹

The “just, quick, and cost-effective resolution of disputes” is not an empty slogan. It is a philosophy that underpins modern dispute resolution and informs the approach that must be taken by all participants in proceedings before the Commission. This in turn requires participants in Commission proceedings to prepare, plan and proceed in a way that limits the amount of documentary material exchanged and put before a decision-maker.

Decision-makers and practitioners alike will benefit from the introduction of a 500-page limit on supporting documents filed with certain initiating applications and replies. Whilst the reform is significant, it should not be cast as an unreasonable burden, particularly given the time and costs that will be saved in the aggregate.

Further, the reform does not require legal representatives to do anything they do not already have to do in other proceedings in other jurisdictions. It is consistent with existing practice in courts. An obligation already exists for practitioners to accept the responsibility of making appropriate selections of the material to be put before courts and tribunals.⁶² In this regard, the observations made by Simpson J in *SDW v Church of Jesus Christ of Latter-Day Saints*⁶³ are apposite:

“[35] To my observation, it has become too common a practice for legal practitioners to produce to the court copies of every document that has come into existence associated with the facts the subject matter of the litigation. It denotes, at best, the exercise of no clinical legal judgment and the abdication of the responsibility that lies upon legal practitioners to apply thought and judgment in the selection of the material to be presented to the court. A common example is the photocopying and presentation of hospital files, from which every page is reproduced, and copied multiple times – documents such as histology reports, x-ray reports, nursing notes, and quite irrelevant charts and print outs of complex investigations... The costs to the parties are astronomical. The practice casts immense burdens on the legal representatives of the opposing party, who are obliged to read all of the material, further increasing the costs.”

The 500-page rule will require legal representatives to spend time upfront working through potentially large volumes of documents to identify material that is relevant to the real issues in dispute and make appropriate forensic judgments about those documents. But that will have significant and material flow-on effects.

61 See sections 3 and 42 *Personal Injury Commission Act 2020*.

62 See *Bevan v Bingham & Ors* [2023] NSWSC 19, *Insurance Australia Ltd t/a NRMA Insurance v Milton* [2016] NSWCA 156, and *SDW v Church of Jesus Christ of Latter-Day Saints* [2008] NSWSC 1249.

63 [2008] NSWSC 1249 at [35] (subsequently endorsed by Leeming JA and Simpson JA in *Insurance Australia Ltd t/a NRMA Insurance v Milton* [2016] NSWCA 156)

10. The law in focus (continued)

There is a false economy in practitioners not putting time and thought into the documents lodged with the Commission. This is easily illustrated. Every document that is included in a bundle lodged by a party has to be read by at least two other people: the decision-maker and the lawyer acting for the other side. In cases where counsel appears, add two more people to the list. The time spent upfront by individual practitioners will ultimately result in time being saved by multiple practitioners later in the life of the proceedings.

There are other compelling considerations that support the introduction of the 500-page reform. The first relates to privacy. Much of the material lodged in proceedings contains personal health or financial information. Sensitive information of this nature should only be provided if it is relevant to the real issues in dispute. It bears repeating: all the information lodged in the Commission is provided to and read by at least two, and sometimes four or five, other people. Taking steps to reduce the volume of sensitive personal material lodged in Commission proceedings is consistent with community expectations that material of this nature will only be provided in circumstances where it is absolutely necessary.

Further, and along similar lines, limiting documents lodged in proceedings is also consistent with the Commission's approach to cyber security: to only hold the information that we need to hold.

The 500-page rule is intended to focus the minds of the parties, and their representatives, on the real issues in dispute. The reform is not radical; it is consistent with existing professional obligations, the objects of the Commission, and the guiding principle.

The rule will create an opportunity for legal representatives to talk to each other. That in itself is a good thing. It will prompt lawyers to think differently and creatively about using the full gamut of options available to define the scope of disputes, including the use of statements of agreed facts. It will reduce burdens on legal representatives and decision-makers who are obliged to read all of the material. It will get everyone focused on what really is in dispute, will save time, and save money. Finally, it will ensure injured people, employers and insurers, move a few steps closer to the certainty that comes with the finalisation of disputes.

Vale Michael Concannon

Michael William (Mike) Concannon

A reflection by **Howard Harrison**

*Partner,
Carroll & O’Dea Lawyers*

It is with much gratitude and great affection that I recall and honour the life of one of the great workers compensation practitioners of this State – Mike Concannon – who passed away on 8 February 2024.

I had the privilege of being trained and mentored by Mike and then becoming one of his partners at Carroll and O’Dea. I, like everyone who worked for or with him, was the better for knowing him.

Mike practised law at Carroll and O’Dea for 40 years, and for his entire career specialised in workers compensation and common law industrial accident damages claims. He led and developed the firm’s workers compensation practice, with much of his work being for shearers and rural workers referred to the firm by its client, the Australian Workers’ Union, NSW Branch. In the course of his career, Mike earned a deserved reputation for his dedicated advocacy on behalf of injured worker clients, great technical skill in an area of the law that became increasingly complex (and even arcane) over the course of his career, his total integrity, and unremitting hard work.

Mike was held in very high regard by the profession in his area of practice, and was Sydney’s pre-eminent “applicants solicitor” for much of his career.

Mike had a huge work ethic and a crystal clear moral compass. He loved and was loved and supported by Jan and his family. He was also an early proponent of work/life balance.

But to provide greater insight into Mike the person and the lawyer, I believe it is worthwhile sharing some thoughts of Tim Concannon, Mike’s eldest son.

Tim, who has inherited Mike’s legacy as an outstanding personal injury lawyer and carries on his father’s commitment to justice for injured people, made these remarks about Mike in the course of delivering the eulogy for him at his funeral.



“Of course any celebration of the life of Michael Concannon would be incomplete without commenting on his stellar 40 year legal career all of which was spent at Carroll & O’Dea Lawyers.

I had the good fortune also to be a Partner there for the last 22 years and my sister, Tess, worked there for a few years in the 2000s.

After starting at Carroll & O’Dea in 1962 as an articled clerk, dad became a solicitor in 1966 and a partner in 1972, until his retirement in 2002.

From his early years in the law, dad had both an extraordinary aptitude and passion for workers compensation and related damages claims.

Carroll & O’Dea, for many years, was the law firm of choice for the Australian Workers’ Union and he loved doing claims for shearers and rural workers.

This typically involved multiple trips to the country areas to take instructions and to attend circuits of the Compensation Court or the Workers Compensation Commission.

Dad was always intensely loyal with the Barristers he used over the years, and names such as Horrie Miller, Ron Hotchkiss, Rob Harrington, Larry King SC and the Honourable Cliff Hoeben SC all come to mind.

Dad was one of the doyens of the workers compensation field and was highly regarded and respected by clients, Barristers, Judges and by practitioners acting for the insurer.

10. The law in focus (continued)

Our current Managing Partner, Hanaan Indari, has recounted a story from early in her career about instructing on workers compensation hearings in which my father was the supervising partner.

On arriving at Court she recalls the opposing Barrister frequently asked what Mike thought the case was worth and it would invariably settle on the same or similar basis.

Dad cared for every client and worked incredibly hard to get them the best possible outcome. His personality was such that he had repeat clients all over his career, many of whom I inherited after he left.

He was always ethically sound and fair when dealing with the other party to a litigation and always dealt with them in an open and transparent manner."

Mentoring by Mike at Carroll & O'Dea

I was one of many young lawyers who did their training at Carroll & O'Dea working on a regular basis under Mike for clients in the workers compensation area.

The firm had a strong and effective culture around teamwork, the duty to the Court, access to justice and duty to the client. Young lawyers were enabled, supported and corrected! The two key litigation partners for many years were Mike and Michael O'Dea who worked closely together for the whole of Mike's time at the firm – a very successful partnership.

Mike Concannon was a very effective mentor. He had a genuine interest in assisting young lawyers to deal with conflict and to work out the art and science of successful and respectful negotiation to get the deal done. Mike's approach was not passive, and from time to time there were lively and necessary interventions in the files of young lawyers – but always ending on a note of humanity, understanding and reconciliation.

Expansion of protections for injured workers

Mike had commenced his tertiary education studying medicine before turning to law, and as a result had a strong understanding of medical issues. He brought that skill to his life's task of pursuing common sense justice and fairness for injured workers.

During his time as a leading NSW workers compensation practitioner the scope of coverage of the State's 1926 and 1987 workers compensation statutes was substantially expanded. Much of that expansion flowed from cases brought by Mike in relation to complex medico/legal issues such as psychiatric injury, heart attacks, strokes and repetitive strain injury.

Mike was probably most proud (and rightly so) of his contribution to the workers compensation rights of shearers – a class of workers always held in great affection by him. Shearers were the beneficiaries of successful litigation (instituted by Mike and in which he briefed renowned workers compensation barrister Ron Hotchkiss) addressing the problem of worn out "shearer's back" – in particular causation for that condition. The NSW Workers Compensation Commission and Court ultimately accepted that such cases fell within the definition of an injury that was "a disease of gradual onset". This breakthrough gave a far more effective compensation remedy to shearers coming to the end of their working life as a result of spinal trauma attributable to employment by many different employers over that working life.

In addition, Mike's advocacy for injured workers' rights through the Law Society's Common Law Rights Committee and other forums was very influential, particularly during the era of tort reform in the late 1990s and early 2000s. In that advocacy Mike was effective and consistent in asserting his strong conviction about the need for injured workers to have access to adjudication by independent judicial officers, and to coherent, credible, transparent and fair mechanisms for dispute resolution.

Vale Mike Concannon

Mike's passing is a great loss to his family, the legal community and all his many friends, but provides us with an opportunity to reflect on his significant contribution over a lifetime to the profession and to injured workers. It is also a time for all those many lawyers still in practice who were mentored or inspired by Mike to remember and strive to emulate his values and his commitment to not only his clients, but also to the law and access to justice for those most in need of it.

Vale Stephen Churches

Stephen John Churches (Steve) was a general member of the Workers Compensation Division of the Personal Injury Commission from 1 February 2023 until shortly before his passing in late 2023 after a short illness.

Steve's appointment to the Commission was the culmination of a long and varied career in the law as a Clerk and Registrar of the Court in Local Courts throughout regional and metropolitan New South Wales, a Coroner, a legal officer with the Director of Public Prosecutions, and a solicitor of the Supreme Court of New South Wales

Steve was employed as a solicitor in the Newcastle area from 1980 to 1991, practising principally in the fields of personal injury and civil litigation, and crime. From 1991 he was a partner of Armstrongs Solicitors, of Toronto and Morisset, taking over as sole proprietor of that practice in 2001. After the merger of Armstrongs and Turner Freeman in 2019, Steve remained as a consultant to the firm until he joined the Personal Injury Commission.

From 1994 until his death Steve was an accredited personal injury law specialist, and a Local Court arbitrator from 2005 to 2019.

Steve brought a wealth of experience in personal injury and workers compensation litigation with him on his appointment to the Commission. This was evident in the matters he conducted as a member during the short time he occupied that role.

As a solicitor Steve was popular with his staff, had a great sense of humour, and an ability to size up a person very quickly and adjust his approach accordingly. He was comfortable in anyone's company, slow to take offence and proud of the work he performed with great skill.

A notable case in which he was involved as solicitor for the plaintiff was *McGrath & Anor v Campbell & Anor* [2006] NSWCA 180, which clarified the law relating to implied easements created by *Wheeldon v Burrows*, extended by *Aldridge v Wright*, and the effect of transfer of title and registration under the *Real Property Act 1900*.



Away from the law, Steve was very involved as a player and administrator in the sport of hockey, being a life member of the South Newcastle Hockey Club, a former board member and chairman of the Newcastle International Hockey Centre, and a former chairman of the men's judiciary tribunal.

Steve loved sailing on Lake Macquarie with the Wangi Amateur Sailing Club, and camping and fishing including an annual, not to be missed, trip with family and friends to Diamond Head on the New South Wales north coast.

Above all, Steve was devoted to his family, a much-loved husband of Sue-Anne, and father of Donna, Tim, Jess and Stephanie, and Pa to his grandchildren.

Steve will be sorely missed by his family, his many friends, and the Newcastle legal fraternity.

Brett Batchelor

Member

Personal Injury Commission

10. The law in focus (continued)

Vale Philip Anthony Young

Philip Anthony Young was first appointed as an arbitrator in the Workers Compensation Commission of New South Wales in February 2017 and held that role until the establishment of the Personal Injury Commission on 1 March 2021. He then continued as a general member in the Workers Compensation Division as well as a general member of the Motor Accidents Division until his untimely passing on 18 September 2023.

Philip obtained degrees in Commerce and Law from the University of New South Wales in December 1984. He relocated to Newcastle and began working for Rankin and Nathan. He appeared for both plaintiffs and defendants in a broad range of workers compensation and commercial cases across many industries nationally and in New South Wales. These included catastrophic claims arising from the Newcastle earthquake disaster, beef export litigation, truck, bus and motor vehicle accidents involving seriously injured drivers, psychological claims arising from investigations following the Wood Royal Commission, claims involving structural failure of bridges, cranes, buildings, drilling rigs and general infrastructure as well as product liability claims.

Philip was among the first lawyers to obtain Specialist Accreditation in Personal Injury Law in New South Wales. He presented at numerous seminars on legal developments in insurance and personal injury law and he also conducted training for solicitors in insurance contract issues, civil liability, workers compensation, practice and procedure, motor litigation, estate planning, professional indemnity and recoveries. He filled an important role as an arbitrator and member of the Commission in Newcastle and regional New South Wales.

Philip will be sorely missed by his partner Katherine, his children Blake, Georgia, Lachlan and Alyce, and three grandchildren.

Glenn Capel

Division Head

Workers Compensation Division



Appendices

Appendix A – Executive Leadership Team

President

Judge Gerard Phillips

Division Heads

Division Head, Motor Accidents Division

Ms Marie Johns

Division Head, Workers Compensation Division

Mr Glenn Capel

Principal Registrar

Ms Marianne Christmann

Appendix B – Members

Presidential members

Deputy Presidents

Mr Michael Snell

Ms Elizabeth Wood

Acting Deputy Presidents

Mr Geoffrey Parker SC

Ms Kylie Nomchong SC

Mr Michael Perry

Dual principal members

Ms Josephine Bamber

Mr John Harris

Senior members

Ms Elizabeth Beilby

Ms Kerry Haddock

Mr Brett Williams

Appendices (continued)

General members

Full-time

Workers Compensation Division	Motor Accidents Division	Dual appointment
Mr Cameron Burge	Mr Alexander Bolton	Ms Susan McTegg
Ms Rachel Homan	Ms Belinda Cassidy	Mr Terence O’Riain
Mr John Isaksen	Mr Raymond Plibersek	
Ms Jacqueline Snell		
Mr Gaius Whiffin		

Sessional

Workers Compensation Division	Motor Accidents Division	Dual appointment
Mr Brett Batchelor	Mr Stephen Boyd-Boland	Mr Michael Inglis
Ms Diana Benk	Mr Terrence Broomfield	Mr Anthony Scarcella
Ms Kathryn Camp	Mr Maurice Castagnet	Mr Cameron Thompson
Mr Marshal Douglas	Mr Allan Cowley	
The Honorable Lea Drake	Mr David Ford	
Ms Karen Garner	Mr Hugh Macken	
Ms Anne Gracie	Ms Elizabeth Medland	
Mr Adam Halstead	Ms Bridie Nolan	
Ms Sophie Jones	Mr Gary Patterson	
Mr Parnel McAdam	Ms Shana Radnan	
Ms Catherine McDonald	Mr Terence Stern	
Mr Michael McGrowdie	Ms Elyse White	
Ms Deborah Moore		
Mr Michael Moore		
Ms Jane Peacock		
Mr Richard Perrignon		
Ms Carolyn Rimmer		
Ms Fiona Seaton		
Mr Mitchell Strachan		
Mr Paul Sweeney		
Ms Jill Toohey		
Mr John Turner		
Mr Michael Wright		
Mr Christopher (John) Wynyard		

Notes:

- Four sessional members are also appointed as mediators as listed on page 75.
- All members of the Motor Accidents Division (23 members) also hold a dual appointment as a merit reviewer as listed on page 75.

Appendix C – Merit reviewers

Ms Josephine Bamber
Mr Alexander Bolton
Mr Stephen Boyd-Boland
Mr Terrence Broomfield
Ms Belinda Cassidy
Mr Maurice Castagnet
Mr Allan Cowley
Mr David Ford
Mr John Harris
Mr Michael Inglis
Mr Hugh Macken
Ms Susan McTegg
Ms Elizabeth Medland
Ms Bridie Nolan
Mr Terence O’Riain
Mr Gary Patterson
Mr Raymond Plibersek
Ms Shana Radnan
Ms Katherine Ruschen⁶⁴
Mr Anthony Scarcella
Mr Terence Stern
Mr Cameron Thompson
Ms Elyse White
Mr Brett Williams

Appendix D – Mediators

Mr Ross Bell
Ms Lara Bishkov
Professor Laurence Boulle
Mr Jak Callaway
Mr Philip Carr
Ms Janice Connelly
Ms Catherine Davidson
Ms Geri Ettinger
Mr David Flynn
Mr Robert Foggo
Ms Nina Harding
Mr John Ireland
Ms Kathryn Ireland
Dr Katherine Johnson
Ms Bianca Keys
Mr Stephen Lancken
Ms Margaret McCue
Mr Michael McGrowdie
Mr John McGruther
Mr Garry McIlwaine
Mr Chris Messenger
Mr Dennis Nolan
Ms Philippa O’Dea
Mr Richard Perrignon
Mr Anthony Scarcella
Mr Paul Sweeney
Mr John Tancred
Mr John Whelan
Mr Christopher Wood

⁶⁴ Ms Katherine Ruschen is solely a merit reviewer with the Commission, while all other merit reviewers also have dual appointment as a motor accidents member.

Appendix E – Medical assessors

Senior medical assessors

Medical assessor	Specialty
Dr Douglas Andrews	Psychiatry
Dr John Baker	Psychiatry
Professor Ian Cameron	Rehabilitation Medicine
Ms Anna Castle-Burton	Occupational Therapy
Dr Drew Dixon	Orthopaedic Surgery
Dr John Garvey	General Surgery
Professor Nicholas Glozier	Psychiatry
Dr Todd Gothelf	Orthopaedic Surgery
Dr Wayne Mason	Psychiatry
Dr Kerrie Meades	Ophthalmology
Dr Brian Williams	ENT

Medical assessors

Medical assessor	Specialty	Division
Dr Nigel Ackroyd	General Surgery	Workers Compensation and Motor Accidents
Ms Lauren Alach	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Martin Allan	Psychiatry	Workers Compensation and Motor Accidents
Dr Timothy Anderson	Occupational Medicine	Workers Compensation
Dr Mohammed Assem	Rehabilitation Medicine	Workers Compensation and Motor Accidents
Dr Leslie Barnsley	Rheumatology	Motor Accidents
Dr Gerard Barold	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Melissa Barrett	Psychiatry	Workers Compensation and Motor Accidents
Dr Jennifer Batchelor	Neuropsychology	Workers Compensation and Motor Accidents
Dr Timothy Berry	Psychiatry	Workers Compensation and Motor Accidents
Dr Graham Blom	Psychiatry	Workers Compensation and Motor Accidents
Dr James Bodel	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Michael Bowler	Oral & Maxillofacial Surgery	Workers Compensation and Motor Accidents
Dr Truls Bratten	Psychiatry	Workers Compensation
Dr Mark Burns	Occupational Medicine	Workers Compensation
Dr Gregory Burrow	Orthopaedic Surgery	Workers Compensation
Dr Christopher Canaris	Psychiatry	Workers Compensation and Motor Accidents
Dr Malcolm Capon	Ophthalmology	Workers Compensation and Motor Accidents
Professor John Carter	Endocrinology	Workers Compensation and Motor Accidents

Medical assessor	Specialty	Division
Dr Donald Cawthorne	Orthopaedic Surgery	Workers Compensation
Dr Norman Chan	Gynaecology	Workers Compensation and Motor Accidents
Dr Wing Chan	Occupational Medicine	Motor Accidents
Dr Gerald Chew	Psychiatry	Workers Compensation and Motor Accidents
Ms Fiona Condie	Physiotherapy	Motor Accidents
Dr Michael Couch	Occupational Medicine	Workers Compensation and Motor Accidents
Dr James Cowlshaw	Gastroenterologist	Workers Compensation and Motor Accidents
Dr Terence Coyne	Neurosurgery	Workers Compensation and Motor Accidents
Dr David Crocker	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Geoffrey Paul Curtin	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Dr Michael Davies	Neurosurgery	Workers Compensation
Dr Russel Davies	Psychiatry	Workers Compensation and Motor Accidents
Dr Sathish Dayalan	Psychiatry	Workers Compensation and Motor Accidents
Dr Alan Doris	Psychiatry	Workers Compensation and Motor Accidents
Dr Sylvester Fernandes	ENT	Workers Compensation and Motor Accidents
Dr Robin Fitzsimons	Neurology	Workers Compensation and Motor Accidents
Dr Paul Friend	Psychiatry	Workers Compensation and Motor Accidents
Dr Atsumi Fukui	Psychiatry	Workers Compensation and Motor Accidents
Dr Peter Giblin	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Margaret Gibson	Occupational Medicine	Workers Compensation and Motor Accidents
Dr John Giles	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Dr Ronald Gill	Psychiatry	Workers Compensation and Motor Accidents
Dr David Gorman	General Medicine	Workers Compensation and Motor Accidents
Associate Professor Christopher Grainge	Respiratory Physician	Workers Compensation and Motor Accidents
Dr Ron Granot	Neurology	Workers Compensation and Motor Accidents
Dr Rhys Gray	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Graham Gumley	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Ankur Gupta	Psychiatry	Workers Compensation and Motor Accidents
Dr Richard Haber	Cardiology	Workers Compensation and Motor Accidents
Dr Peter Haertsch	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Dr Henley Harrison	ENT	Workers Compensation
Dr Peter Heathcote	Urology	Workers Compensation and Motor Accidents
Dr Jonathan Herald	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Samuel Mark Herman	Cardiology	Workers Compensation and Motor Accidents
Dr Roland Ronald Hicks	Orthopaedic Surgery	Workers Compensation

Appendices (continued)

Medical assessor	Specialty	Division
Dr Yiu-Key Ho	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Adeline Hodgkinson	Rehabilitation Medicine	Workers Compensation and Motor Accidents
Dr Alan Home	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Peter Honeyman	Occupational Physician	Workers Compensation and Motor Accidents
Dr Michael Hong	Psychiatry	Workers Compensation and Motor Accidents
Dr Nigel Hope	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Kenneth Howison	ENT	Workers Compensation and Motor Accidents
Dr Murray Hyde-Page	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Louis Izzo	Gynaecology	Workers Compensation and Motor Accidents
Dr Mark Jones	General Medicine	Workers Compensation
Dr Matthew Jones	Psychiatry	Motor Accidents
Dr Gregory Kaufman	Respiratory Medicine	Workers Compensation and Motor Accidents
Dr Clive Kenna	Musculoskeletal Medicine	Motor Accidents
Dr Sikander Khan	General Surgery	Workers Compensation and Motor Accidents
Dr Edward Korbel	Urology	Workers Compensation and Motor Accidents
Dr John Korber	Diagnostic Radiology	Workers Compensation and Motor Accidents
Dr Robert Kuru	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Mukesh Kumar	Psychiatry	Workers Compensation and Motor Accidents
Dr Sophia Lahz	Rehabilitation Medicine	Workers Compensation and Motor Accidents
Dr John Lam-Po-Tang	Psychiatry	Workers Compensation and Motor Accidents
Mr Andrew Leaver	Physiotherapy	Workers Compensation and Motor Accidents
Dr David Lewington	Rehabilitation Medicine	Workers Compensation
Dr Samuel Lim	Psychiatry	Workers Compensation and Motor Accidents
Dr James Linklater	Diagnostic Radiology	Workers Compensation and Motor Accidents
Dr Malcolm Linsell	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Dr Jane Lonie	Neuropsychology	Workers Compensation and Motor Accidents
Dr Frank Machart	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Anup Mangipudi	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Tommasino Mastroianni	Occupational Medicine	Workers Compensation
Dr Andrew McClure	Psychiatry	Workers Compensation and Motor Accidents
Dr Michael McGlynn	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Dr David McGrath	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Gregory McGroder	Occupational Medicine	Workers Compensation
Dr John McKee	General Surgery	Workers Compensation and Motor Accidents
Dr Ross Mellick	Neurology	Workers Compensation and Motor Accidents

Medical assessor	Specialty	Division
Dr Nigel Menogue	Musculoskeletal Medicine	Motor Accidents
Ms Lisa Middleton	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Geoffrey Miller	General Surgery	Workers Compensation and Motor Accidents
Dr Robin Mitchell	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Shane Moloney	Musculoskeletal Medicine	Motor Accidents
Dr Patrick Morris	Psychiatry	Workers Compensation and Motor Accidents
Dr Abhishek Nagesh	Psychiatry	Workers Compensation and Motor Accidents
Dr Anil Nair	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Jonathan Negus	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Thomas Newlyn	Psychiatry	Motor Accidents
Dr Bradley Ng	Psychiatry	Workers Compensation and Motor Accidents
Dr Paul Niall	ENT	Workers Compensation
Dr Paul Nichols	Dentistry	Workers Compensation and Motor Accidents
Dr Christopher Oates	Occupational Medicine	Workers Compensation and Motor Accidents
Dr John O'Neill	Neurology	Workers Compensation and Motor Accidents
Dr Shannon Paisley	Psychiatry	Workers Compensation and Motor Accidents
Dr Robert Payten	ENT	Workers Compensation and Motor Accidents
Ms Dawn Piebenga	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Roger Pillemer	Orthopaedic Surgery	Workers Compensation
Dr Andrew Porteous	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Daniel Posel	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Sally Preston	Rheumatology	Motor Accidents
Dr Thandavan Raj	ENT	Workers Compensation and Motor Accidents
Dr Adam Rapaport	General Surgery	Workers Compensation and Motor Accidents
Associate Professor Trudy Rebbeck	Physiotherapy	Workers Compensation and Motor Accidents
Dr Loretta Reiter	Rheumatology	Workers Compensation and Motor Accidents
Dr Sharon Reutens	Psychiatry	Motor Accidents
Dr Christopher Rikard-Bell	Psychiatry	Workers Compensation and Motor Accidents
Dr Samson Roberts	Psychiatry	Workers Compensation and Motor Accidents
Dr Tania Rogers	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Thomas Rosenthal	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Doron Samuell	Psychiatry	Workers Compensation and Motor Accidents
Dr John Schmidt	Gynaecology	Workers Compensation and Motor Accidents
Dr Siddarth Sethi	Gastroenterology	Workers Compensation and Motor Accidents
Dr Farhan Shahzad	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Glen Sheh	Rehabilitation Medicine	Workers Compensation and Motor Accidents

Appendices (continued)

Medical assessor	Specialty	Division
Dr Yu-Tang Shen	Psychiatry	Workers Compensation and Motor Accidents
Dr Doron Sher	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Himanshu Singh	Psychiatry	Workers Compensation and Motor Accidents
Dr Alexey Sidorov	Psychiatry	Workers Compensation and Motor Accidents
Dr Clayton Smith	Psychiatry	Workers Compensation and Motor Accidents
Ms Gillian Smith	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Glen Smith	Psychiatry	Workers Compensation and Motor Accidents
Dr Peter Spittaler	Neurosurgery	Workers Compensation and Motor Accidents
Dr Michael Steiner	Ophthalmology	Workers Compensation and Motor Accidents
Dr John Brian Stephenson	Orthopaedic Surgery	Workers Compensation
Dr Jeanette Stewart	Neuropsychology	Motor Accidents
Dr Geoffrey Stubbs	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Aman Suman	Psychiatry	Workers Compensation and Motor Accidents
Dr Ash Takyar	Psychiatry	Workers Compensation
Dr Bernard Tamba-Lebbie	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Damon Thomas	Plastic Surgery	Workers Compensation
Dr Stephen Thornley	Endocrinology	Workers Compensation and Motor Accidents
Dr Philip Truskett	General Surgery	Workers Compensation and Motor Accidents
Dr Ahamed Veerabangsa	Rehabilitation Medicine	Motor Accidents
Dr Surabhi Verma	Psychiatry	Workers Compensation and Motor Accidents
Dr Adrian Vertoudakis	Dentist	Motor Accidents
Dr Raymond Wallace	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Gerard Walsh	Psychiatry	Workers Compensation and Motor Accidents
Dr Tai-Tak Wan	Rehabilitation Medicine	Motor Accidents
Mr Michael Ward	Physiotherapy	Motor Accidents
Mr Andrew Webster	Physiotherapy	Workers Compensation and Motor Accidents
Dr Ian Wechsler	Ophthalmology	Workers Compensation and Motor Accidents
Dr Nelukshi Wijetunga	Occupational Medicine	Workers Compensation and Motor Accidents
Ms Jennifer Wise	Occupational Therapy	Workers Compensation and Motor Accidents
Dr James Wong	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Associate Professor Dr Siu Kin Cyril Wong	General Surgery	Workers Compensation and Motor Accidents
Dr Alexander Woo	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Steven Yeates	Psychiatry	Workers Compensation and Motor Accidents
Mr David Young	Physiotherapy	Workers Compensation and Motor Accidents
Dr Peter Young	Psychiatry	Workers Compensation and Motor Accidents
Dr Peter Yu	Occupational Medicine	Workers Compensation and Motor Accidents

Appendix F – Rule Committee

Chair

Judge Gerard Phillips, President

Membership

Representative	Organisation represented
Ms Marie Johns, Division Head, Motor Accidents Division	Personal Injury Commission
Mr Glenn Capel, Division Head, Workers Compensation Division	Personal Injury Commission
Ms Mandy Young	State Insurance Regulatory Authority (SIRA)
Ms Natasha Flores	Unions NSW
Ms Elizabeth Greenwood	Ai Group, Australian Federation of Employers and Industries, NSW Business Chamber
Ms Elizabeth Welsh	Council of the NSW Bar Association
Mr Ross Stanton	Council of the NSW Bar Association
Mr Ian Jones	Council of the Law Society of NSW
Mr Shane Butcher	Council of the Law Society of NSW
Adjunct Professor Robin Fitzsimons	Royal Australasian College of Physicians (RACP), The Royal Australian and New Zealand College of Psychiatrists (RANZCP) and The Royal Australasian College of Surgeons (RACS)

Secretariat

Ms Janet Wagstaff

Appendix G – Stakeholder Reference Group

Chair

Judge Gerard Phillips, President

Membership

Representative	Organisation represented
Ms Marianne Christmann, Principal Registrar	Personal Injury Commission
Ms Marie Johns, Division Head, Motor Accidents Division	Personal Injury Commission
Mr Glenn Capel, Division Head, Workers Compensation Division	Personal Injury Commission
Ms Genevieve Henderson	Australian Lawyers Alliance
Mr David Bullock	Australian Lawyers Alliance
Mr Tony Wessling	icare NSW
Ms Alice Nichol	Insurance Council of Australia
Mr Tom Lunn	Insurance Council of Australia
Mr Anthony Bowen	NSW Bar Association
Dr Petrina Casey	State Insurance Regulatory Authority (SIRA) Motor Accidents Insurance Regulation
Mr Darren Parker	State Insurance Regulatory Authority (SIRA) Motor Accidents Insurance Regulation
Mr Timothy Concannon	The Law Society of New South Wales
Mr Leigh Davidson	The Law Society of New South Wales
Ms Katherine Toshack	The Law Society of New South Wales
Mr Greg Guest	The Law Society of New South Wales
Ms Sherri Hayward	Unions NSW

Appendix H – CTP Insurer Reference Group

Chair

Ms Marie Johns, Division Head, Motor Accidents Division

Membership

Representative	Organisation represented
Ms Marianne Christmann, Principal Registrar	Personal Injury Commission
Ms Maja Maric	Allianz Australia Insurance Ltd
Ms Diana Farah	Carroll & O'Dea Lawyers
Mr Scott Frazer	Enstar Australia
Ms Samantha Reynolds	icare NSW
Mr Jamie Planes	icare NSW
Ms Lindsay Wilson	IAG
Ms Alice Nichol	Insurance Council of Australia
Mr Tom Lunn	Insurance Council of Australia
Mr John Cooper	Moray & Agnew
Ms Shannon Martin	QBE Insurance Group
Mr Peter Tran	Suncorp
Ms Michelle Graham	Suncorp
Ms Elizabeth Marinopoulos	Transport Accident Commission (TAC)
Ms Lauren Johnson	Transport Accident Commission (TAC)
Mr David Floro	Youi
Ms Courtney Archer	Youi

Appendix I – Medical Assessor Reference Group

Chair

Ms Marianne Christmann, Principal Registrar

Membership

Representative	Specialty
Mr Luke Roberts, Director Medical Services	Personal Injury Commission
Mr John Barlow, Manager Medical Services	Personal Injury Commission
Dr Mark Burns	Occupational Medicine
Professor Ian Cameron	Rehabilitation Medicine
Dr Michael Couch	Occupational Medicine
Dr Drew Dixon	Orthopaedic Surgery
Dr John Garvey	General Surgery
Dr Peter Giblin	Orthopaedic Surgery
Dr Margaret Gibson	Occupational Medicine
Professor Nicholas Glozier	Psychiatry
Dr Henley Harrison	Ear, Nose and Throat
Dr Chris Oates	Occupational Medicine
Associate Professor Trudy Rebbeck	Physiotherapy
Dr Nel Wijetunga	Occupational Medicine

Appendix J – Mediator Reference Group

Chair

Mr Glenn Capel, Division Head, Workers Compensation Division

Membership

Representative	Organisation represented
Ms Marianne Christmann, Principal Registrar	Personal Injury Commission
Mr Philip Carr, Mediator	Personal Injury Commission
Ms Geri Ettinger, Mediator	Personal Injury Commission
Ms Nina Harding, Mediator	Personal Injury Commission
Ms Bianca Keys, Mediator	Personal Injury Commission
Mr John McGruther, Mediator	Personal Injury Commission
Ms Philippa O’Dea, Mediator	Personal Injury Commission
Mr Jak Callaway, Mediator	Personal Injury Commission
Mr David Flynn, Mediator	Personal Injury Commission

Appendix K – Letter from the Hon Anoulack Chanthivong MP

The Hon Anoulack Chanthivong MP

Minister for Better Regulation and Fair Trading, Minister for Industry and Trade,
Minister for Innovation, Science and Technology, Minister for Building,
Minister for Corrections



Ref: MIN-00434-2024

The Hon Gerard Phillips
President
Personal Injury Commission
By email: judge.phillips@pi.nsw.gov.au

Dear Judge Phillips,

Thank you for your request for my suggestions for additional content to be included in the Personal Injury Commission (Commission) Annual Review for 2023-2024.

I acknowledge that section 66 of the *Personal Injury Commission Act 2020* makes a requirement that the Commission provide both the Minister and SIRA with an annual review of the Commission's operations for the financial year 'as soon as practicable after 30 June (but on or before 31 December) of each year'. Further, the Commission is to include any other information as directed by the Minister.

In preparing the Commission's annual review I would like you to consider what information departments and agencies are required to include in their annual reports, available in the [NSW Treasury Annual Reporting Framework](#), and include relevant matters in the Commission's annual review.

I look forward to receiving the Commission's 2023-2024 annual review.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anoulack Chanthivong'.

9/5/24

Anoulack Chanthivong MP

Minister for Better Regulation and Fair Trading, Minister for Industry and Trade,
Minister for Innovation, Science and Technology, Minister for Building,
Minister for Corrections

Appendix L – Staff profile

This section provides data on the number of full-time members, senior executives and staff working in the Commission.

	Head count		
	2021-22	2022-23	2023-24
Full-time members	22	20	20
Senior executives	6	6	6
Staff (including administrative and legal officers)	150	158	158
Grand total	178	184	184

Notes:

The head count is the number of people in each group, shown in the Commission's establishment report, at 30 June 2024. The head count includes contractors.

The senior executives and staff of the Commission are employed by the Department of Customer Service pursuant to s 22 of the *Personal Injury Commission Act 2020*.

The full-time members are appointed by the Attorney General, pursuant to s 9 of the *Personal Injury Commission Act 2020*.

The remuneration of the President, members and senior executives is determined each year by the Statutory and Other Offices Remuneration Tribunal (SOORT):

- SOORT Judges and Magistrates Group Annual Determination
- SOORT Public Office Holders Group Annual Determination
- SOORT Public Service Senior Executives Determination.

The salaries of staff members are set under the Crown Employees (Administrative and Clerical Officers – Salaries) Award and the Legal Officers, Various Departments, Agreement No. 2375 of 1982.

Information about sessional members, medical assessors, merit reviewers and mediators can be found in appendices B-E.

Appendix M – Senior executive profile

In 2023-24, 4.9% of Commission employee-related expenditure was for senior executives compared to 5.1% in 2022-23.

Headcount	2022-23				2023-24			
Senior executive band	Female	Male	Total	Representation by women (%)	Female	Male	Total	Representation by women (%)
Band 4 (Secretary)								
Band 3 (Deputy Secretary)								
Band 2 (Executive Director)	1		1	100	1		1	100
Band 1 (Director)	2	3	5	40	2	3	5	40
Total	3	3	6	50.0	3	3	6	50.0

Appendix N – Work health and safety

The Personal Injury Commission is committed to the health, safety and wellbeing of all its people, with strategies focused on promoting a safe, diverse and inclusive workforce while also meeting legislative requirements. In this reporting period, the Commission undertook significant work to address psychosocial risks, mental health and wellbeing and physical security while also continuing to strengthen its governance arrangements around work, health and safety.

In 2024–25, a Work Health and Safety Committee comprising representatives from across the Commission will be established and assume responsibility for the coordination of these activities. The Commission will also undertake a risk assessment and develop an action plan to mitigate the key risks identified.

Commission initiatives to support the health, safety and wellbeing of its people are outlined below.

Mental Health and Wellbeing Framework

The Commission launched its Mental Health and Wellbeing Framework in the reporting year to support performance, job satisfaction and the overall wellbeing and better mental health of its people. It is a key deliverable from the Commission's Strategic Plan and linked to the wellbeing pillar of the Commission's People Strategy. The framework provides clear goals and objectives to support and improve health and wellbeing with a focus on managing early mental health interventions effectively, helping the Commission meet its legislative obligations for managing psychosocial risks in the workplace.

The framework was developed in partnership with the Centre for Corporate Health and the Commission's Wellbeing Steering Committee through a series of workshops and discussions. The Committee was made up of representatives from all cohorts across the Commission. An accompanying roadmap charts the actions that are and will be undertaken to deliver on the goals in the framework.

This year, the Commission also refreshed its wellbeing champions network and trained all its people leaders, champions and staff in early mental health intervention and support. The Commission continued to maintain a wellbeing hub on the intranet as a central repository of self-care tips and tools to promote wellbeing as well as employee assistance resources and contacts.

Health programs and services

Health programs and services available to all staff include:

- Employee Assistance Program (EAP) for all staff and their immediate family
- annual flu vaccination program
- Fitness Passport program, providing access to a low-cost, flexible corporate gym and pool membership.

Physical security

As a functioning tribunal with many in-person dispute resolution events and medical assessments taking place each day and many tribunal users attending the physical premises, the physical safety and wellbeing of all the Commission's people remain paramount. The Commission therefore continued to enhance its physical security measures by fine-tuning the reception areas, signage and security settings and enhancing procedures and processes.

A 'Physical Security Health Check' was also undertaken by the Service NSW security team this year and the Commission will continue to implement measures in the report and conduct security awareness training for its people in 2024–25.

Appendices (continued)

Work health and safety claims

Reportable claims⁶⁵ (excludes non-reportable claims⁶⁶)

	2021-22	2022-23	2023-24
Total	1	3	1
Mechanism of injury			
Falls, trips and slips of a person	-	1	1
Body stressing	1	1	-
Mental stress	-	1	-

There were no prosecutions under the *Work Health and Safety Act 2011* during the 2023-24 financial year.

⁶⁵ Reportable claims are incidents where payments were made or estimates established.

⁶⁶ Non-reportable claims are incidents with no payments and nil estimates that are not or not yet classified as claims. They are excluded from reportable claims, however can be reopened or become reportable claims in future and incur costs.

Appendix O – Diversity and inclusion

The Commission values diversity and inclusion in its workplace. It should be noted that completion of Equal Employment Opportunity (EEO) data by employees is voluntary and as such under-reporting is likely.

Workforce diversity statistics⁶⁷

Workforce diversity group	Benchmark (%)	2021-22 (%)	2022-23 (%)	2023-24 (%)
Women ⁶⁸	50	66.5	67.2	68.0
Aboriginal and/or Torres Strait Islander people ⁶⁹	3.3	0.0	0.9	1.6
People whose first language spoken as a child was not English ⁷⁰	23.2	22.4	31.0	33.7
People with disability ⁷¹	5.6	3.1	7.3	6.5
People with disability requiring work-related adjustment ⁷²	N/A	0.0	0.9	0.8

67 Statistics are based on NSW Public Service Commission Workforce Profile census data as of 23 June 2022, 22 June 2023 and 20 June 2024.

68 The benchmark of 50% for representation of women across the sector is intended to reflect the gender composition of the NSW community.

69 The NSW Public Sector Aboriginal Employment Strategy 2019–2025 takes a career pathway approach in that it sets an ambitious target of 3% Aboriginal employment at each non-executive grade of the public sector by 2025.

70 A benchmark from the Australian Bureau of Statistics (ABS) Census of Population and Housing has been included for 'People whose first language spoken as a child was not English'. The ABS Census does not provide information about first language but does provide information about country of birth. The benchmark of 23.2% is the percentage of the NSW general population born in a country where English is not the predominant language.

71 In December 2017, the NSW Government announced the target of doubling the representation of people with disability in the NSW public sector from an estimated 2.7% to 5.6% by 2027. More information can be found at: [Jobs for People with Disability: A plan for the NSW public sector](#).

72 The benchmark for 'People with disability requiring work-related adjustment' was not updated.

Appendix P – Consultants

A consultant is an individual or organisation engaged to provide recommendations or high-level specialist or professional advice to assist in the decision-making by management. Their role is advisory in nature.

The Commission did not engage any consultants from 1 July 2023 to 30 June 2024.

Appendix Q – About this review

This review covers the Personal Injury Commission’s operations from 1 July 2023 to 30 June 2024 and is available at:

pi.nsw.gov.au/resources/annual-review

The review was prepared with the help of an external graphic design agency. The following table sets out the production costs excluding GST.

	Amount (\$)
Graphic design and artwork	\$10,100
Proofreading	\$2,600
Printing	\$1,820
Grand total	\$14,520

Appendix R – Cyber security attestation statement



New South Wales

**Personal Injury
Commission**

Office of the President

CYBER SECURITY ATTESTATION

Cyber Security Attestation – Annual Statement for the 2023-2024 Reporting Year for the Personal Injury Commission of New South Wales

I, Judge Gerard Phillips, President of the Personal Injury Commission (Commission) of New South Wales, am of the opinion that:

1. The Commission has managed cyber security risks in a manner consistent with the mandatory requirements established by Cyber Security NSW. I have been presented with evidence of the detailed and comprehensive cyber security measures that the Commission has implemented during the reporting period and am satisfied that these measures are proper and appropriate.
2. The Commission has, during the reporting year, deployed its new single digital platform, Pathway, which was developed with the vendor in consultation with the Department of Customer Service Chief Information Security Officer (CISO). This platform aligns with the Department's cyber security policies and has greatly enhanced the Commission's approach to cyber security measures. The design of the new system had enhanced and contemporary cyber security measures as a design requirement.
3. The Commission has worked closely with CISO to develop and refine our cyber security strategy, conducting risk assessments and refining the cyber risk register.
4. The Commission has introduced enhanced authentication mechanisms, enhanced safeguards against automated threats and conducted training, including phishing exercises conducted by CISO, with all Commission staff and decision-makers. We have conducted extensive consultation and training with external users, principally the legal profession, in the proper use of the system.
5. The Commission's cyber security governance framework integrates shared service arrangements with CISO and third party providers, however, key responsibilities such as the cyber security strategy, incident response and the safeguarding of the Commission's critical digital asset Pathway remain under the control of the Commission.
6. The next stage of the Commission's development of cyber protections will include further hardening of the Commission's platform, better data archiving and critical incident simulations. We also intend conducting random penetration tests during the year. In the event of a cyber security incident, the Commission will immediately report same to CISO who will escalate the matter to Cyber Security NSW.
7. The Commission experienced no cyber security incidents during the reporting year.

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1800 742 679 | www.pi.nsw.gov.au

8. The Commission is committed to continual improvement in its approach to cyber security threats, which are both real and constantly evolving. Our strategy and approach must meet these threats as they change and multiply.



Judge G. M. Phillips

President, Personal Injury Commission of New South Wales

Sydney, 29 August 2024

Appendix S – Accessing the Commission’s information

Types of information held by the Commission

The Commission collects information to register applications and make decisions about personal injury disputes. This includes personal information, health information and other information provided by the parties and their legal representatives in Commission proceedings, including but not limited to:

- claim forms
- medical and investigative reports
- injury management plans, clinical notes and medical certificates
- witness statements
- notices issued under workers compensation or motor accidents legislation
- complying agreements
- receipts
- wage information and payslips.

The Commission also holds information relating to its decisions, proceedings, services and administration.

Protecting personal and health information

The Commission has obligations under the New South Wales *Privacy and Personal Information Protection Act 1998* (PPIPA) and the *Health Records and Information Privacy Act 2002* (HRIPA) to protect the privacy rights of customers, service providers, staff and members of the public. The Commission takes these responsibilities seriously.

The PPIPA and HRIPA contain principles about managing personal and health information which the Commission must comply with. These principles are legal obligations that describe what the Commission must do when it collects, stores, uses or discloses personal and health information. This is to ensure safeguards are in place to protect personal and health information from loss, unauthorised access, use, modification or disclosure, and against all other misuse. The Commission complies with these obligations.

While anyone can seek access under the *Government Information (Public Access) Act 2009* (GIPA Act) to government information that is held by the Commission, there are certain considerations taken into account before any information is released. The Commission is unlikely to disclose the personal or health information of another person.

Information that is publicly available

The GIPA Act requires the Commission to make certain information, known as ‘open access information’, publicly available. Publicly available information which can be found on the Commission’s website includes details about our structure and functions, and a range of policy documents.

The GIPA Act also authorises the proactive release of information unless there is an overriding public interest against disclosure of the information. Accordingly, the Commission has made the following information publicly available, free of charge, on the website:

- procedural directions and guidelines
- decisions
- guides and codes of conduct
- policies
- annual reviews
- papers and presentations
- bulletins and brochures.

How to access the Commission’s information

If the information sought is not available on the Commission’s website, there are, under the GIPA Act, two mechanisms for the release of government information that may be used: an informal request or a formal access application.

An informal request can be made to the Commission for the release of certain information. The Commission is not obliged to consider an informal request but may do so if possible.

Much of the information that is held by the Commission, other than the publicly available information referred to above, relates to the personal information of individuals and is likely to be exempt from disclosure under the GIPA Act. However, a formal access application may be made using the formal access application form.

Applications for internal review of the conduct of the Commission under section 53(1) of the PPIPA

The Commission did not receive any applications in the 2023-24 reporting year under section 53 of the PPIPA.

Government Information (Public Access) statistics

All agencies are required to report annually information and data on their obligations under the GIPA Act. For the purposes of these reporting requirements, the Commission is treated as part of DCS (GIPA Regulation Schedule 3) and reports the relevant data to DCS for inclusion in the DCS Annual Report.

During 2023-24, the Commission received two access applications to release information under the GIPA Act. There were no invalid applications during this period.

Of the two applications received, one application was granted in full. The second was granted access in part. Part of this request related to some information not held by the Commission and to some that was already available.

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New South Wales

**Personal Injury
Commission**

Personal Injury Commission

Level 21, 1 Oxford Street, Darlinghurst NSW 2010

1800 PIC NSW (1800 742 679) within Australia

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