



**Personal Injury
Commission**

Information Kit 2021

Mediator

Workers Compensation Division

November 2021

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Background

The Personal Injury Commission is seeking to appoint suitably qualified and experienced individuals to provide mediation services in the Workers Compensation Division, as required by legislation.

Applications are sought from dispute resolution practitioners or persons with skills, qualifications, and experience relevant to the resolution of work injury damages disputes.

The Commission seeks applications from practitioners who are interested in being offered a sessional appointment for up to three years, with eligibility for re-appointment. While most mediations take place in Sydney, there is regular work in other locations in New South Wales.

Remuneration in respect of work done as a Mediator, including travelling and sustenance allowances, is as determined by the Minister from time to time (see page 6).

This information kit is intended to provide a comprehensive overview of the role of the Mediator, the Commission, and the appointment process. Should you have further questions, you may contact Alexandra Michelin on (02) 9372 7953. Alternatively, by email piceo@pi.nsw.gov.au

Expectations of the role of the Mediator

Mediators are, in the exercise of their functions, subject to the general control and direction of the Division Head, Workers Compensation Division, under delegation from the President. They are required to implement and follow directions as outlined in the Workers Compensation legislation, Commission Rules, Procedural Directions and in accordance with the Mediator Code of Conduct. Mediators are required to participate in performance assessments and learning and development programs.

Mediators are required to use their best endeavours to bring the parties to agreement on work injury damages claims. Failing agreement, the mediator is to issue a certificate certifying the final offers of settlement made by the parties in the mediation. The Personal Injury Commission will provide training in the requirements of the Commission.

The legislative provisions as they relate to Mediators are provided in sections 318A to 318H of the *Workplace Injury Management and Workers Compensation Act 1998*.

The President has determined that it is not appropriate for persons who are appointed as Mediators to also appear as advocates in any workers compensation proceedings before the Commission.

For information about the Commission see page 9.

Selection Process

Application

You will need to demonstrate how your skills, experience and qualification meet the selection criteria for the position identified in this information kit.

Any costs incurred in preparing and submitting applications, and any subsequent aspect of the selection process, will be the responsibility of the applicant.

Evaluation of the applications

An Evaluation Committee will review all applications in accordance with the identified Selection Criteria.

Shortlisting

Candidates will be shortlisted based on relative merit between all applicants in relation to skills, knowledge, capabilities, and experience demonstrated within the application.

Interview

If you are selected for an interview, you will be contacted and advised of the date, time, and location of your interview. You will also be advised if you are required to bring further documentation with you to the interview.

The Commission supports the NSW Government's 'Women In Leadership' initiative. The Commission also encourages applications from members of EEO groups and will provide for applicants upon request, a reasonable adjustment to the interview format. Applicants should advise the Commission of any requirements at the time of being invited to interview so that appropriate adjustments can be made.

Appointment

Following the consideration of the applications and subsequent approval by the President, all applicants will be notified of the outcome of their application.

Prior to any appointment, recommended candidates will be probity checked, including a qualifications and national criminal background check.

Should any unexpected delays occur in the assessment and appointment process, candidates will be advised accordingly of the revised anticipated completion date.

How to apply

Your application is to:

- be submitted by the nominated closing date and time
- be submitted online through www.iworkfor.nsw.gov.au
- include a cover letter and resume, and
- include the names and contact details of at least 2 referees (preferably current or past supervisors) that can be contacted during the appointment process.

Note: Referees can be provided at interview.

Selection criteria

Applicants are required to submit:

- an updated CV including telephone and email contact details, qualifications, and relevant experience
- a statement outlining their preferred location/s (Sydney, Wollongong, Newcastle, or other regional locations), and
- names and details of two referees who can be contacted during the evaluation process if required.

In addition, all applicants are required to demonstrate how they meet all the following selection criteria:

- demonstrated dispute resolution and facilitation skills
- sound knowledge and experience in workers compensation law, including an understanding of the jurisdiction, legislation, practice, procedures, and subject matter dealt with by the Commission
- ability to effectively communicate with parties and Commission staff
- demonstrated integrity and independence
- National accreditation as a Mediator, and
- ability to operate within the Commission's electronic environment, including basic proficiency in Word and Microsoft Outlook.

Applicant feedback

Applicants who are unsuccessful will receive notification in writing after the selection process has been finalised. They will be provided with appropriate contact details to obtain feedback. This feedback will consist of constructive comments to assist with future applications and will address issues from the application and interview stages.

Terms of Appointment

Professional development

The Commission provides professional development opportunities for Mediators, including an induction process on commencement. Training will be provided by the Commission in the requirements of the role.

Induction

All new appointees will be required to attend an induction program at the Commission's office in Sydney and by AVL.

Code of conduct

Mediators of the Commission are bound by the Personal Injury Commission Mediator Code of Conduct, issued by the President of the Commission, and updated from time to time. A copy of the Code of Conduct can be accessed [here](#).

Performance evaluation

Mediators are required to participate in a performance evaluation process at six monthly intervals. The following measures are among those evaluated:

- percentage of matters settled
- average cost of mediations
- timeliness of mediations, and
- number of complaints substantiated.

The Commission reserves the rights to canvass parties on Mediator performance.

Remuneration

Section 39(5) of the *Personal Injury Commission Act 2020* provides Mediators are entitled to be remunerated (including travelling and sustenance allowances) in respect of the work done as a Mediator as the Minister may from time to time determine. The current determination is for an hourly rate of \$281.88.

Mediators will be provided with a workstation and support services when in attendance at the Commission's premises.

Duration of appointment

Appointments will be for a period of three years on a sessional basis.

Accommodation and support

Mediation conferences are generally held in the Commission's CBD premises at 1 Oxford Street, Darlinghurst and in regional locations. Mediators may hold conferences at their own premises.

Mediators are to ensure their own premises are a safe working environment and meet all work health and safety standards. Site visits will be conducted by Commission staff of premises proposed by applicants to be used for mediation purposes.

All Mediators will be expected to have the ability to undertake their own typing requirements and conduct research using computer-based technology.

Travel

Mediators may be requested to undertake intra-state travel from time to time.

Disclosure of information

No potential applicant shall disclose any information relating to this application process or the required services via any media release or any other publication without the prior written consent of the President of the Commission.

The President of the Commission has no objection to an applicant copying this document for internal working purposes in preparing their application.

No economic opportunity

By lodgment of this application with the Commission, the applicant affirms that he or she has not given, offered to give, nor intends to give at any time thereafter, any inducement or reward including any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favour or service to any public servant or member of the Commission in connection with the submitted application.

If the applicant is found to have offered any inducement or reward in accordance with the preceding paragraph or is found to have committed corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act 1988*, the applicant shall be disqualified and any resulting arrangements for mediation services void.

Ownership

All information submitted by an applicant shall become the property of the Commission. All ownership in such documentation shall vest entirely in the President of the Commission.

Disclaimer

While the information contained in this document has been formulated with all due care, the Commission does not warrant or represent that the information is free from errors or omissions. The information is made available on the understanding that the Commission and its employees

and members shall have no liability (including liability by reason of negligence) for any loss, damage, cost, or expense incurred or arising by reason of any person using or relying on the information and whether caused by reason of any error, omission, or misrepresentation in the information or otherwise.

Furthermore, the Commission takes no responsibility for the accuracy, currency, reliability, and correctness of any information included in this document, in particular any information provided by third parties.

Indemnity

A matter or thing done or omitted to be done by a Mediator in the exercise of the Mediator's functions does not, if the matter or thing was done or omitted in good faith, subject the Mediator personally to any action, liability, claim or demand.

A Mediator is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a Mediator.

The Mediator shall promptly notify and fully disclose to the Commission in writing any event or occurrence, actual or threatened, which would materially affect the Mediator's ability to perform any of his or her obligations.

Termination

The President of the Commission may at any time remove a Mediator from office.

Electronic operating environment

The Commission operates in an environment that provides for electronic lodgment and electronic document storage and retrieval. Mediators will be required to update matters through the Commission's electronic case management system, conduct mediations in-person and by audio-visual or audio link, use the Commission's extranet and other technological developments implemented by the Commission, and to provide documentation (including mediation outcome documents) electronically.

No partnership, agency, or employer relationship

Appointment as a Mediator does not constitute the Mediator as an agent, partner, or employee of the Commission.

Insurance

Where a Mediator intends to use his or her own premises to undertake mediations, the Mediator warrants that he or she has validly effected and will maintain with a reputable insurance company for the term of the Agreement the following insurances:

- a) public liability policy of insurance as per the law society requirements, and

- b) workers compensation insurance as required by all relevant laws of Australia relating to workers compensation.

The Mediator shall, on request from time to time by the Division Head, Workers Compensation Division, produce satisfactory evidence of insurance.

About the Commission

Our role

The Commission is an independent statutory tribunal within the justice system of New South Wales. Our role, as part of a broader statutory scheme, is to resolve disputes about workers compensation and motor accident injury claims.

The Commission was established under the *Personal Injury Commission Act 2020* and commenced operations on 1 March 2021 under two Divisions - the Workers Compensation Division and Motor Accidents Division.

Legislation relevant to the Commission's jurisdiction includes the:

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

The Hon Victor Dominello MP, Minister for Customer Service, and Minister for Digital, is the Minister responsible for the administration of workers compensation legislation, except for the appointment and remuneration of members, which is the responsibility of the Hon Mark Speakman SC MP, Attorney General and Minister for the Prevention of Domestic and Sexual Violence.

Our objectives

The objectives of the Commission, set out in s 3 of the *Personal Injury Commission Act 2020*, are 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,
- ensure the Commission—
 - is accessible, professional, and responsive to the needs of all its users, and
 - is open and transparent about its processes, and
 - encourages early dispute resolution,
- enable the Commission to resolve the real issues in proceedings justly, quickly, cost effectively and with as little formality as possible,
- 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,
- ensure that the Commission—
 - publicises and disseminates information concerning its processes, and
 - establishes effective liaison and communication with interested parties concerning its processes and the role of the Commission,
- make appropriate use of the knowledge and experience of members and other decision-makers.

What we do

The Commission's non-adversarial process ensures that parties are directly involved in resolving disputes relating to workers compensation claims and motor accident claims.

How we do it

The process for resolving a dispute depends on the type of claim that is in dispute. Parties are encouraged to settle their dispute at any time during the process. The Commission also deals with appeals against decisions of Members in the Workers Compensation Division, appeals and reviews of medical assessments by Medical Assessors and reviews of merit review decisions by Merit Reviewers.

Members

The Commission consists of the following members:

- President
- two Deputy Presidents
- two Acting Deputy Presidents
- two Division Heads
- full-time Principal Members
- full-time Senior Members, and
- full-time and sessional General Members.

President and Deputy Presidents

The President is the head of jurisdiction and works closely with the Division Heads and Principal Registrar in the overall leadership of the Commission. The President is responsible for the general control and direction of the Deputy Presidents and Division Heads in the exercise of their functions. The President is also ultimately responsible for the general control and direction of Principal, Senior and General Members, Mediators and Medical Assessors in the exercise of their functions.

Presidential Members hear and determine appeals from decisions of non-Presidential Members of the Workers Compensation Division for error of fact, law, or discretion. The decisions of Presidential Members may be appealed to the NSW Court of Appeal on questions of law only.

The President also has the responsibility of determining 'novel or complex' questions of law referred by Workers Compensation Division Members or parties in workers compensation disputes. In relation to work injury damages matters, the President has exclusive jurisdiction to determine applications by defendants to strike out pre-filing statements.

Division Heads

Division Heads are Principal Members of the Commission and are also responsible for the direction of the business in their respective Division.

Principal Registrar

The Principal Registrar is directly responsible for providing high-level, executive leadership and strategic advice to the President on the resources of the Commission, including human resources, finance, asset management, facilities, resources, and case management strategies. The Principal Registrar is also responsible for the control and direction of Commission staff.

Principal Members

Principal Members are responsible for the resolution of disputes under the Motor Accident Acts (MACA 1999 and MAIA 2017) and the Workers Compensation Acts (WCA 1987 and WIM 1998).

Senior Members

Senior Members are responsible for the resolution of disputes in either the Workers Compensation Division or Motor Accidents Division of the Commission. They also assist the Commission in professional development, case management, and the development of practice and procedure.

General Members

Members work with the parties to explore settlement options and, where possible, reach an agreed resolution of the dispute. Members manage disputes through to finalisation, utilising a series of conferences, including teleconferences. Unresolved disputes proceed to a formal determination or assessment.

Service Partners

Medical Assessors

Medical Assessors are highly experienced, medical practitioners from a variety of specialities. To be appointed to assess permanent impairment, they must have completed the necessary training in the workers compensation or motor accident guidelines to assess medical disputes, and their application must have undergone a rigorous assessment for impartiality. Medical Assessors appointed for the assessment of general medical disputes must also be in clinical practice or teaching.

Mediators

Mediators have extensive experience in alternative dispute resolution, as well as knowledge of workers compensation law.

Mediators are required to use their best endeavours to bring the parties in disputed work injury damages claims to a negotiated settlement. They conduct mediation conferences in the Commission's Oxford Street premises, in other regional locations when required, by AVL and by telephone.

Merit Reviewers

Merit Reviewers are required to determine all merit review matters under Schedule 2 of the Motor Accident Injuries Act 2017.

Staff

The Commission's staff are located at 1 Oxford Street, Darlinghurst and provide administrative, clerical, and legal support to members and service partners.

Need more information?

For more information on the position, or to get answers to any questions you may have about the position, contact Alexandra Michelin on (02) 9372 7953. Alternatively, by email

piceo@pi.nsw.gov.au

Personal Injury Commission website: www.pi.nsw.gov.au

