

WORKERS COMPENSATION COMMISSION

ANNUAL REVIEW

2015



ONLINE VERSION

The online version of this Annual Review can be accessed at www.wcc.nsw.gov.au



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CONTENTS

PART ONE: OVERVIEW	2
President's Foreword.....	2
Registrar's Report.....	2
Year in Review	2
About the Commission.....	2
Strategic Plan 2015-17	2
 PART TWO: PERFORMANCE	 20
Workload and Performance	20
Key Performance Indicators.....	20
Developments in the Law	20
Education and Collaboration	20
 PART THREE: GOVERNANCE, PEOPLE AND CULTURE.....	 37
Governance and Accountability	37
People and Culture.....	37
 PART FOUR: APPENDICES.....	 47
Appendix 1: Arbitrators.....	47
Appendix 2: Approved Medical Specialists	47
Appendix 3: Mediators.....	47

PART ONE: OVERVIEW

PRESIDENT'S FOREWORD

REGISTRAR'S REPORT

YEAR IN REVIEW

ABOUT THE COMMISSION

STRATEGIC PLAN 2015-17

PRESIDENT'S FOREWORD



I am delighted to report that the workload fluctuations that affected the Commission over the last few years have now finally plateaued. Our workload is now stable and predictable. I am also pleased to report that we have been successful in restoring our key performance indicators for the timely disposal of cases. As at December 2015, 48 per cent of disputes not involving an appeal were resolved in less than three months.

The Commission started 2015 with 2,536 matters on hand and by the end of the year had 1,792 matters on hand. There were 7,959 dispute applications lodged and 8,863 applications resolved in 2015.

The stability in workflow has enabled the Commission to focus on its core objectives of providing an independent, accessible and timely dispute resolution service. To deliver on these objectives, our strategic focus in 2015 has been in three areas: exceptional client service, skilled and committed people, and operational excellence.

In terms of client services, during 2015 we commissioned an independent survey to measure, against existing benchmarks, client satisfaction levels with the Commission's services and facilities. The results of the survey reveal satisfaction levels among insurers and legal representatives continue to rise. Satisfaction levels among workers remain high but are slightly less than previous years. It is unclear to what extent that result reflects dissatisfaction with the workers compensation system as a whole or is reflective only of the Commission's services. In any event, we will continue to ensure that workers are fully engaged in the Commission's dispute resolution process.

Also, in 2015 we held a series of nine free information sessions in Sydney and regional New South Wales on recent developments in the law, and practice and procedure. These sessions were extremely well attended with 637 registrations. The feedback was overwhelmingly positive.

Our capacity to deliver on our objectives is in the main dependent upon the knowledge, skill and experience of our members and staff. During the year the majority of our existing Arbitrators and Approved Medical Specialists were re-appointed for further terms of three years. Several new appointments were made, further enhancing the Commission's existing capacity. Most of our members are former barristers and solicitors of many years standing who bring a maturity and professionalism to proceedings in the Commission.

Our focus on enhancing the skill and commitment of our people was demonstrated by delivering and engaging our Arbitrators, Mediators, Approved Medical Specialists and staff in dedicated continuing professional development activities throughout the year.

In the coming year we will continue to work towards the introduction of a new electronic filing and case management system. We anticipate that the new system will enable applications and supporting information to be lodged directly into the Commission's database. Our goal is for lodgment and service of documents to occur electronically and for physical movement of paper files among our Approved Medical Specialists and Arbitrators to be a thing of the past.

As in previous years, this annual review will provide further relevant information regarding the Commission's performance of a quantitative and qualitative nature. I trust you will find it informative.

Finally, I take this opportunity to express my appreciation to the Registrar, Deputy Registrar, members and staff of the Commission for their dedication and commitment throughout the year.

A handwritten signature in black ink, which appears to read 'G Keating'.

His Honour Judge G Keating
President



REGISTRAR'S REPORT

Dispute applications in 2015 remained remarkably stable compared to the previous year, with only 41 matters separating 2014 and 2015 lodgments. The second successive year of stability allowed the Commission to make significant inroads into its timeliness. Disputes were consistently listed at the standard timeframes of 14 days for expedited assessments and 35 days for liability disputes and the time to medical appointments with Approved Medical Specialists was reduced.

By the end of 2015 the Commission had achieved its key performance indicators (KPIs) of resolving 45 per cent of dispute applications within three months, 85 per cent within six months, 95 per cent within nine months and 99 per cent within 12 months.

The workers compensation legislation presented further challenges for Arbitrators and Presidential members, with a number of important decisions being delivered on the operation and interpretation of new provisions.

The Commission continued its commitment to stakeholder education through the delivery of training seminars and publications.

In November, senior members and staff embarked on a seminar series in greater Sydney and regional New South Wales, which focused on the legal profession. This is the third time the Commission has delivered a seminar series and it is pleasing that support for them remains strong. So much so, in 2016 the Commission intends to deliver a similar seminar series for scheme agents, specialised insurers and self-insurers.

2015 also marked the first collaboration with the State Insurance Regulatory Authority (SIRA) to deliver a combined medical specialist conference. Themed "Moderate and Minor Head Injuries", the conference was well supported by medical specialist members of both agencies and we were privileged to have assembled a leading team of specialist presenters. Plans are already in place to run another joint seminar in 2016.

Summary publications of appeal decisions (*On Appeal*) and judicial review decisions (*On Review*) continue to provide valuable sources of information and are readily accessible on the Commission's website.

During the year the Commission completed the first stage of its organisation realignment. The number of staff employed by the Commission has now reduced by one-third since the 2012 amendments were introduced. While the realignment has not been without its difficulties, it is pleasing that positions were found for displaced staff and no staff members faced forced redundancies. The work of reviewing our staff establishment and operations will continue throughout 2016 but the worst is now well and truly behind us.

2016 promises to be an exciting year for the Commission. A main priority is updating the Commission's electronic case management system. The Commission will also be embarking on a major refurbishment of accommodation and facilities, including a complete refit of the Oxford Street conference rooms.

I wish to acknowledge the support of the President and Deputy Presidents and the valued contributions of staff, members and service partners in what has been a very rewarding year.

Rodney Parsons
Registrar

YEAR IN REVIEW

In 2015, the Commission:

- registered 7,961 dispute applications
- held 5,160 teleconferences, 2,365 conciliation conferences/arbitration hearings (con/arbs) and 3,608 medical assessments
- resolved 6,334 workers compensation disputes
- resolved 1,372 work injury damages disputes
- recruited and appointed 22 Arbitrators and 27 Mediators including inducting new appointees
- re-appointed Deputy President Bill Roche
- re-appointed Registrar Rod Parsons
- completed a review of regional venues for suitability and fitness for purpose
- held annual training days for Arbitrators, Approved Medical Specialists and Mediators
- held a conference for medical specialists on 'moderate and minor head injuries'
- held a series of training seminars for staff
- held a seminar series for the legal profession for over 600 registrants in greater Sydney and regional New South Wales
- held periodic user group meetings with legal profession representatives from The Law Society of NSW and the NSW Bar Association
- met with representatives of The Law Society of NSW regarding compliance with practice and procedure by lawyers appearing in the Commission
- presented at various government and commercial seminars for the legal profession and others
- conducted a training seminar for in-house lawyers and lawyers from the Motor Accidents Authority and Workers Compensation Independent Review Office on Rule 57 requirements
- held quarterly Arbitrator practice meetings
- held bi-monthly Approved Medical Specialist forums
- established a Mediator Reference Group and held quarterly group meetings
- held bi-monthly management meetings and quarterly staff meetings
- held quarterly work health and safety meetings
- held periodic Joint Consultative Committee meetings with the Office of Finance and Services/ Department of Finance, Services & Innovation/ Safety, Return to Work & Support and union representatives
- retained membership of the Council of Australasian Tribunals and committee membership of the NSW Chapter
- implemented the first year of a three-year strategic plan for 2015-17
- implemented stage one of a staff establishment realignment and commenced stage two
- undertook client surveys by independent consultants
- commenced review of the Commission's accommodation and facilities at 1 Oxford Street, Darlinghurst
- commenced review of the Commission's electronic case management system
- completed a rules review, updated a number of rules and introduced new rules
- commenced review of the Commission's practice directions
- amended approved forms in accordance with legislative changes
- commenced a project to pre-book medical examinations by Approved Medical Specialists
- issued various external publications including *On Appeal*, *On Review*, *Decisions of Medical Appeal Panels* and e-Bulletins
- issued periodical bulletins to Arbitrators, Approved Medical Specialists and Mediators
- published 72 Presidential member decisions on AustLII, LexisNexis and Jade BarNet
- published 301 Arbitrator decisions, 86 Medical Appeal Panel decisions and 18 costs assessment decisions on the Commission's website
- participated in Harmony Day and NAIDOC celebrations.

ABOUT THE COMMISSION

OUR ROLE

The Workers Compensation Commission is an independent, statutory tribunal within the justice system of New South Wales.

The Commission's primary function is to resolve workers compensation disputes between injured workers and their employers.

The Commission also facilitates the resolution of disputes in work injury damages claims through mediation.

Legislation relevant to the Commission's jurisdiction and administration include:

- *Workers Compensation Act 1987* (1987 Act),
- *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act),
- *Workers Compensation Regulation 2010* (2010 Regulation), and
- *Workers Compensation Commission Rules 2011* (2011 Rules).

The Hon. Victor Dominello MP, Minister for Innovation and Better Regulation, is the Minister responsible for the administration of workers compensation legislation, except for:

- the appointment of members – Attorney General, and
- uninsured liabilities, Nominal Insurer, the Insurance Fund and scheme agents – Minister for Finance, Services and Property.

OUR OBJECTIVES

The Commission has the following objectives:

- to provide a fair and cost effective system for the resolution of disputes,
- to reduce administrative costs,
- to provide a timely service,

- to provide an independent dispute resolution service that is effective in settling disputes and leads to durable agreements,
- to create a registry and dispute resolution service that meets expectations in relation to accessibility, approachability and professionalism, and
- to establish effective communication and liaison with interested parties.

In exercising their functions, members of the Commission must have regard to the Commission's objectives.

OUR FUNCTIONS

Workers compensation disputes are resolved by informal conciliation conferences conducted by telephone and in person. If a dispute cannot be resolved by conciliation, the Commission will conduct a formal arbitration hearing and will decide whether a claim should be paid and the extent of any entitlement to workers compensation benefits.

When required to decide a dispute, the Commission aims to provide fast, consistent and durable outcomes. The 'Developments in the Law' section provides a summary of relevant decisions in workers compensation disputes in the last 12 months.

In-person conciliation conferences and arbitration hearings, referred to as con/arbs, are conducted at 20 different regions throughout New South Wales. Con/arbs are usually held at locations convenient to injured workers.

The Commission has proven to be effective in resolving disputes in a timely manner. It encourages the early exchange of information and open communication between the parties. Most parties are legally represented and an interpreter is provided if required to assist a worker.



There are five main categories of disputes lodged with the Commission.

1. LEGAL DISPUTES

- Weekly compensation benefits.
- Medical and related treatment expenses, both past and future.
- Compensation to dependants of deceased workers.
- Lump sum compensation for permanent impairment.
- Lump sum compensation for pain and suffering.
- Domestic assistance.

2. MEDICAL DISPUTES

- The degree of permanent impairment that results from an injury.
- Whether any permanent impairment is due to a previous injury or pre-existing condition or abnormality.
- The nature and extent of hearing loss.
- Whether impairment is permanent.
- Whether the degree of permanent impairment is fully ascertainable.

3. EXPEDITED ASSESSMENTS

- Weekly compensation benefits for periods up to 12 weeks.
- Medical and related treatment expenses, where the amount claimed is less than \$8,693.40 (as at 1 October 2015).
- Workplace injury management disputes, including the provision of suitable employment and injury management plans.

4. COMMON LAW

- Applications to cure defective pre-filing statements or to strike out pre-filing statements.
- Orders for access to information and premises.
- Compulsory pre-court mediation.

5. LEGAL COSTS ASSESSMENTS

- Assessment of costs entitlements between parties and costs disputes between clients and their legal representatives.

The Commission also has an intermediate appellate jurisdiction for legal and medical disputes.

ARBITRAL APPEALS

- A party to a legal dispute may appeal to a Presidential member against a decision of an Arbitrator.
- An appeal is limited to determination of whether the decision was or was not affected by any error of fact, law or discretion.
- The amount of compensation at issue on appeal must be at least \$5,000 and at least 20 per cent of the amount awarded in the decision appealed against.

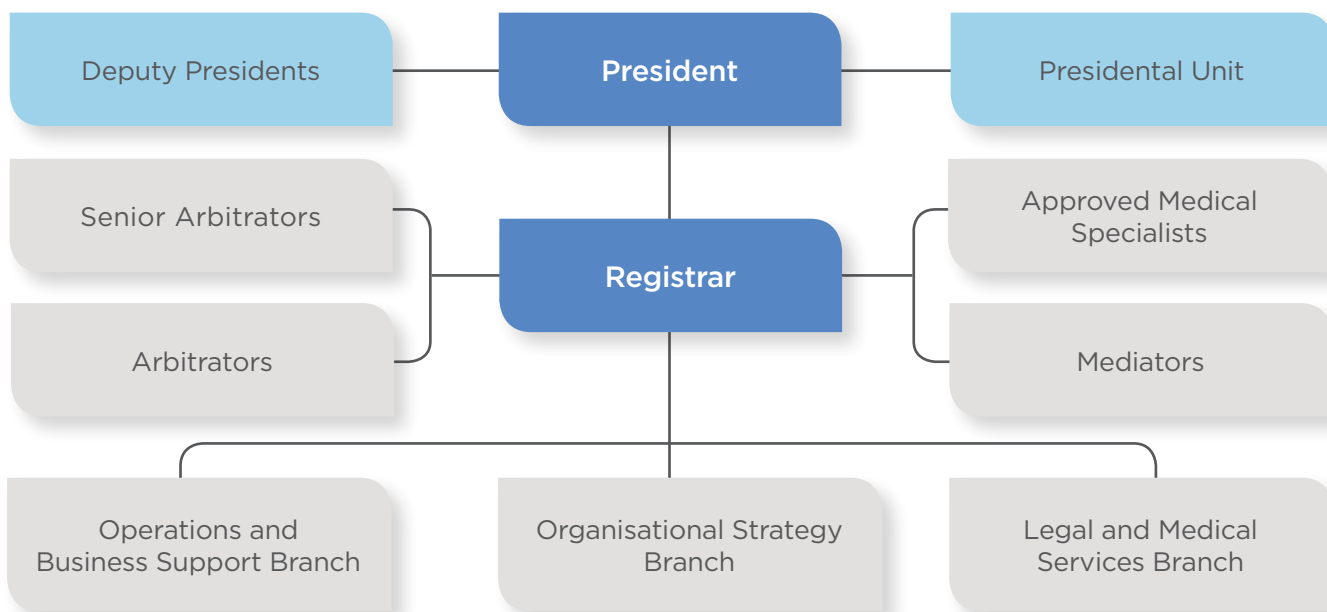
MEDICAL APPEALS

- A party to a medical dispute may appeal against a medical assessment with respect to:
 - the degree of permanent impairment as a result of an injury,

- whether any permanent impairment is due to a previous injury or pre-existing condition or abnormality,
- the nature and extent of hearing loss,
- whether impairment is permanent, and
- whether the degree of permanent impairment is fully ascertainable.

- A medical appeal is determined by a Medical Appeal Panel constituted by two Approved Medical Specialists and one Arbitrator.
- A medical appeal is limited to four grounds:
 - deterioration of the condition that results in an increase in the degree of permanent impairment,
 - additional relevant information,
 - the medical assessment was made on the basis of incorrect criteria, and
 - the medical assessment certificate contains a demonstrable error.
- Decisions of Medical Appeal Panels are subject to judicial review by the Supreme Court of New South Wales.

ORGANISATION STRUCTURE



OUR MEMBERS

As at 31 December 2015, the Commission consisted of the following members:

- Judge G Keating, President,
- Bill Roche and Kevin O’Grady, Deputy Presidents,
- Lorna McFee, Acting Deputy President,
- Rod Parsons, Registrar,
- Marshal Douglas, Catherine McDonald and Michael Snell, Senior Arbitrators, and
- Six full-time and 13 sessional Arbitrators (see Appendix 1).

President and Deputy Presidents

The President is the head of the Commission and works closely with the Registrar in the strategic leadership of the Commission. The President is responsible for the general direction and control of the Deputy Presidents and the Registrar in the exercise of their functions.

Presidential members hear appeals against decisions made by Arbitrators. Appeals are limited to determinations of whether the decision appealed against was or was not affected by any error of fact, law or discretion.

A party may appeal against a decision of a Presidential member in point of law to the NSW Court of Appeal.

The President is also responsible for determining novel or complex questions of law referred by Arbitrators or parties to proceedings, applications to strike out pre-filing statements in work injury damages disputes and administrative functions such as issuing Practice Directions.

Registrar

The Registrar is the functional head of the Commission and is responsible for managing the Commission’s operations. Commission staff, Arbitrators, Approved Medical Specialists and Mediators are subject to the general control and direction of the Registrar in the exercise of their functions.

The Registrar provides high-level, executive leadership and strategic advice to the President on the Commission’s resources, including human resources, budget, asset management, facilities and case management strategies.

Deputy Registrar, Annette Farrell and Manager of Executive Services, Geoff Cramp assist the Registrar with ongoing operational planning and management.

In addition to operational responsibilities, the Registrar may exercise all of the functions of an Arbitrator.

Senior Arbitrators and Arbitrators

Arbitrators are required to use their best endeavours to bring the parties to a dispute to a settlement acceptable to them. Arbitrators work with the parties through conciliation to explore settlement options and possible resolutions. Conciliation is conducted in two phases. The first is by way of a telephone conference. If the dispute cannot be resolved at telephone conference, a further conciliation conference will be held where the parties and their legal representatives attend in person.

If a dispute cannot be resolved through conciliation, the proceedings will enter a formal phase involving an arbitration hearing. The arbitration hearing will usually be conducted on the same day following the face-to-face conciliation conference. During the arbitration hearing, an Arbitrator will hear evidence and submissions from the parties. The hearing is sound-recorded.

An Arbitrator will either deliver an oral decision immediately following the conclusion of the hearing or a written decision will be issued shortly after the hearing.

Decisions of Arbitrators are binding on the parties.

Arbitrators are generally assigned a dispute from the initial teleconference through to finalisation.

Arbitrators are also members of Medical Appeal Panels. Medical Appeal Panels, constituted by one Arbitrator and two Approved Medical Specialists, determine appeals against assessments by Approved Medical Specialists.

In addition to exercising the functions of an Arbitrator, Senior Arbitrators are also consulted on the strategic direction of the Commission and the professional development of Arbitrators including peer review, mentoring and appraisal.

OUR SERVICE PARTNERS

Approved Medical Specialists

Approved Medical Specialists assess workers in relation to medical disputes, including assessments of the degree of permanent impairment of a worker as a result of a work-related injury, and provide opinion on whether proposed medical treatment is reasonably necessary.

Approved Medical Specialists are appointed by the President. In 2015, there were 156 Approved Medical Specialists who held appointments and conducted medical assessments throughout New South Wales.

Approved Medical Specialists are highly-experienced medical practitioners across a range of medical specialties. To be appointed, they must have completed mandatory training set by SIRA. Approved Medical Specialists appointed to assess proposed medical treatment must also be in clinical practice or teaching in their area of specialisation.

A number of Approved Medical Specialists are also members of Medical Appeal Panels.

(See Appendix 2 for the list of Approved Medical Specialists, as at 31 December 2015.)

Mediators

Disputes in relation to work injury damages claims are subject to mandatory mediation in the Commission before a claimant is able to commence court proceedings.

Commission appointed Mediators use their best endeavours to bring the parties to agreement. Mediation conferences are mainly conducted in the Commission's Oxford Street, Darlinghurst premises and also in regional locations when required.

Unlike in workers compensation disputes, Mediators do not determine work injury damages disputes when the parties do not reach agreement. If a dispute is not resolved by agreement, the worker may commence court proceedings.

Mediators are appointed by the President and must be nationally accredited to be eligible for appointment. In 2015, there were 29 Mediators appointed to mediate in work injury damages disputes.

(See Appendix 3 for the list of Mediators, as at 31 December 2015.)

OUR BUSINESS UNITS

The Commission's staff establishment as at 31 December 2015 was 69 full-time equivalent positions across four business areas:

Presidential Unit

The **Presidential Unit** manages and determines arbitral appeals, questions of law and applications to strike out work injury damages pre-filing statements. The unit is comprised of the President, two Deputy Presidents, an acting Deputy President, and legal and support staff.

The main role of the Presidential members is to determine arbitral appeals.

In determining arbitral appeals, Presidential members exercise intermediate appellate jurisdiction. This feature of the Commission's dispute resolution model enables the rectification of identified errors in arbitral determinations at minimal cost to the justice system.

Presidential Unit staff work closely with Presidential members to provide high-level administrative support, legal research and case management of appeals and other matters.

The unit prepares and publishes *On Appeal*, an online publication of summaries of Presidential, NSW Court of Appeal and High Court decisions. The summaries provide a snapshot of the facts, legal principles and reasons involved in appeal cases. *On Appeal* is published monthly on the Commission's website (www.wcc.nsw.gov.au).

The unit also coordinates and provides secretariat support for the Commission's User Group and organises the annual meeting of workers compensation jurisdictions from all Australian states and territories, and New Zealand. The meeting is usually held in conjunction with the Council of Australasian Tribunals (COAT) national annual conference.

Organisational Strategy Branch

The Organisational Strategy Branch is responsible for planning, strategy and organisational development. The branch comprises the Registrar's Office, Executive Unit and Organisational Performance Unit.

The **Registrar's Office** provides general support to the Registrar, including coordinating responses to Ministerial inquiries, SIRA and stakeholder inquiries, managing complaints, and coordinating presentations to internal and external stakeholders and other interested groups.

The **Executive Unit** is responsible for providing executive services, including preparing and monitoring the Commission's budget, providing timely and accurate organisational data, risk and audit management, and managing requests under the *Government Information (Public Access) Act 2009*.

The **Organisational Performance Unit** is responsible for coordinating training and development for staff, human resource management, managing appraisal processes for Arbitrators, Mediators and Approved Medical Specialists, managing appointments for service providers, coordinating reference group meetings, and publishing internal and external communications materials.

Legal and Medical Services Branch

The Legal and Medical Services Branch comprises five units:

- Legal Unit,
- Legal Administrative Support Unit,
- Legal and Medical Support Unit,
- Arbitrator Support Unit, and
- Research and Information Unit.

The branch performs a wide range of legal and administrative functions, including providing legal advice to members and staff, responding to legal inquiries from the public and legal profession, undertaking various legal and quasi-legal functions, and contributing to the ongoing professional development of Arbitrators, Mediators and Approved Medical Specialists.

The **Legal Unit** is mainly responsible for determining applications regarding:

- expedited assessments,
- costs orders and assessments,
- defective pre-filing statements,
- disputes regarding access to information and premises, and
- conduct money/production fees.

The unit assesses whether appeals against medical assessments by Approved Medical Specialists are made out before allowing them to proceed to Medical Appeal Panels.

The unit also provides legal support to Arbitrators, Approved Medical Specialists and Medical Appeal Panels, including updating the Commission's *Arbitrator Practice Manual* and *AMS Practice Manual*, drafting bulletins and answering legal inquiries.

The **Legal Administrative Support Unit** provides administrative support to the team of legal officers. The unit also issues decisions of the legal team and Medical Appeal Panels, answers telephone inquiries, and provides support to projects managed within the Legal and Medical Services Branch.

The **Legal and Medical Support Unit** is responsible for developing ongoing education programs for Arbitrators, Mediators and Approved Medical Specialists, including annual conferences and periodic forums. This involves managing membership of the relevant reference groups, providing professional development opportunities to Arbitrators, Mediators and Approved Medical Specialists, and coordinating activities such as induction, mentoring and peer review.



The **Arbitrator Support Unit** staff work closely with Arbitrators to provide high-level administrative support, legal research and proof reading services.

The **Research and Information Unit** is responsible for maintaining the Commission's research library. The unit ensures members and staff have access to significant sources of legal information. The unit is also responsible for the publication of Commission decisions.

Operations and Business Support Branch

The Operations and Business Support Branch manages client services and business support functions within the Commission. The Branch has five units:

- Registry Services Unit,
- Dispute Services Unit,
- Operations Support Unit,
- Business Services Unit, and
- Information Systems Unit.

The **Registry Services Unit** is the first point of contact with the Commission for workers, insurers, legal representatives and the general public. The unit manages the call centre, mailroom, registration of dispute applications and information exchange

processes, and concierge functions for the Commission's hearing rooms in its Oxford Street, Darlington premises.

Dispute Services Unit staff are responsible for case management of workers compensation disputes and work injury damages disputes.

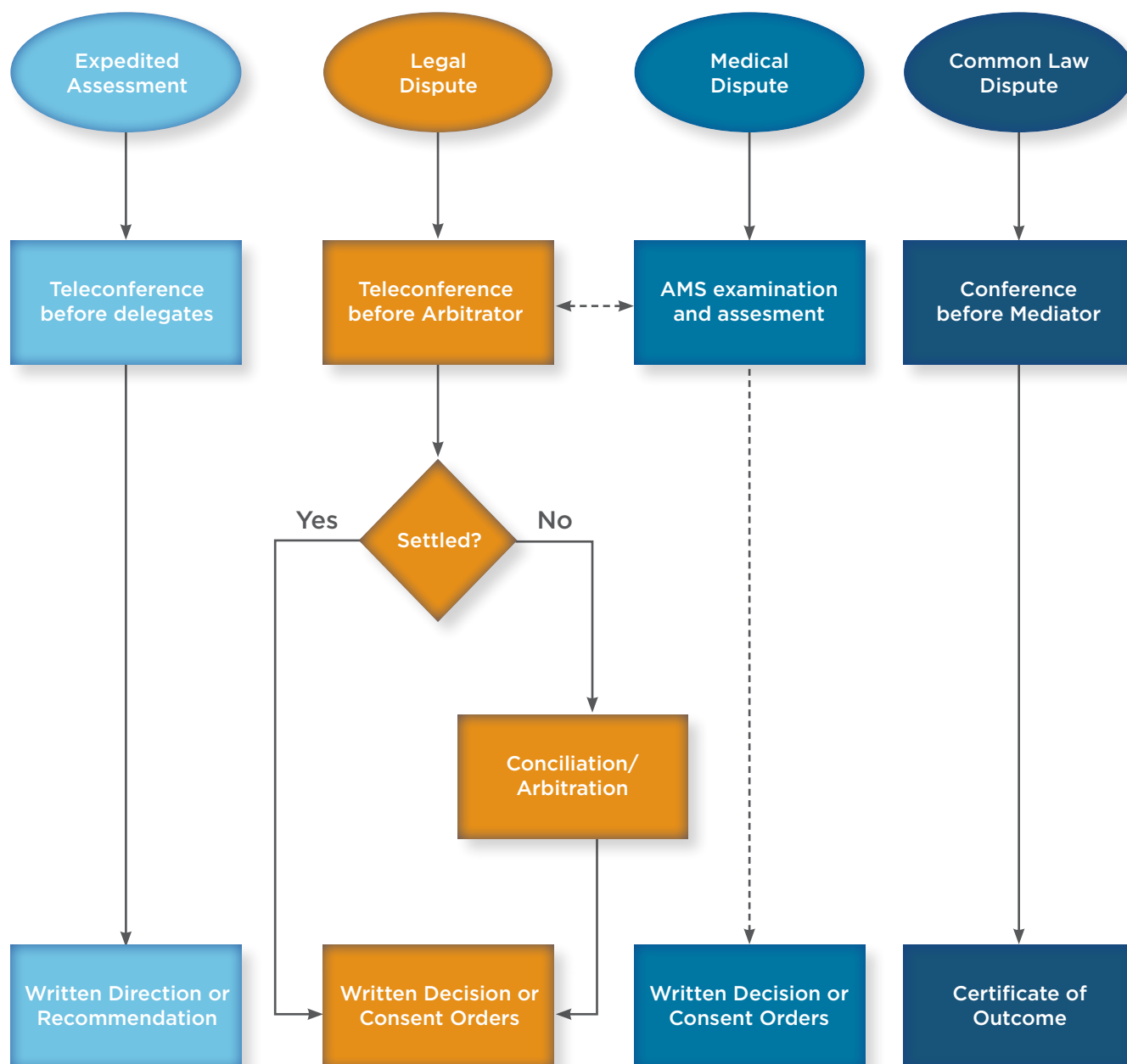
The unit refers medical disputes for assessment by Approved Medical Specialists and makes interlocutory decisions to ensure matters progress in the Commission without undue delay. Dispute Services staff also draft Certificates of Determination for the Registrar in relation to permanent impairment compensation awards.

The **Operations Support Unit** initiates and undertakes service improvement projects across the Registry Services and Dispute Services Units. The unit develops and maintains business processes and procedures, and manages audit and risk within the operational areas.

The **Business Services Unit** is responsible for facilities management, purchasing, processing invoices, managing file archives and audio processes.

The **Information Systems Unit** provides technical support for the Commission's electronic case management system and other IT applications and equipment. The unit also operates a help desk facility for Commission members, staff and service partners.

DISPUTE PATHWAYS



WORKERS COMPENSATION DISPUTES

The process for resolving a workers compensation dispute in the Commission depends on the type of dispute. Parties are encouraged to settle their dispute at any time during the process.

The Registrar will refer disputes regarding legal issues to an Arbitrator for conciliation and arbitration.

Medical disputes are referred to an Approved Medical Specialist to assess the degree of permanent impairment. Approved Medical Specialists can also provide an opinion on the need for proposed medical and related treatment or answer questions of a general medical nature.

Applications for expedited assessment are fast tracked to a conference with a delegate of the Registrar.

Legal Disputes

Telephone Conference

When an Application to Resolve a Dispute (Form 2) involves a legal dispute, a proceedings timetable is issued to the parties advising of the date and time for telephone conference (teleconference). Teleconferences in liability disputes are usually listed 35 days from the date of lodgment of the dispute and are scheduled for one and a half hours duration.

A teleconference is conducted by an Arbitrator and involves the worker, the insurer and their legal representatives. The employer is also encouraged to participate but is more commonly represented by the insurer.

The teleconference is the first opportunity for the Commission to bring the parties together to discuss the dispute.

During the teleconference, the Arbitrator will ensure that all parties understand the process, identify the relevant issues and encourage the parties to reach an agreement. If the parties reach an agreement, the Arbitrator will record the agreement in consent orders.

If the parties are unable to reach an agreement, the Arbitrator will:

- determine the dispute if the Arbitrator is satisfied that he or she has sufficient information without the need to list the matter further,
- schedule a conciliation conference and arbitration hearing (con/arb), and
- refer the dispute to the Registrar for other action (e.g. to arrange a medical assessment by an Approved Medical Specialist).

Applications to issue directions for the production of documents (such as documents from treating doctors) will also be considered at the teleconference stage.

Con/Arb

If a dispute is not resolved at the teleconference stage and is set down for con/arb, the parties are required to attend in person with their legal representatives. Again, the employer is usually represented by the insurer although the Commission encourages their attendance and participation in the dispute resolution process.

If the worker lives in Sydney, the con/arb will be held at the Commission's premises at 1 Oxford Street, Darlinghurst. If the worker lives in regional NSW, the Commission will arrange the con/arb in either Sydney or at one of its regional venues, according to the convenience of the worker and the Commission's venue policy.

The con/arb is generally scheduled for three hours, commencing either at 10:00 am or 2:00 pm, but may be longer depending on the complexity of the issues and the progress of settlement discussions.

The con/arb is a two-step process, comprising a conciliation conference followed by an arbitration hearing if the parties are unable to resolve the dispute during conciliation.

At the conciliation conference, the Arbitrator will work with the parties to attempt to resolve the issues in dispute. If the parties reach an agreement, the Arbitrator will record the agreement in consent orders, which will be issued to the parties in a formal certificate of determination.

If the parties are unable to reach an agreement about the dispute, the Arbitrator will end the conciliation conference and allow a short break before reconvening for a formal arbitration hearing. Arbitration hearings are usually held on the same day as the conciliation conference.

The arbitration hearing, which is open to the public, is a formal proceeding. The proceeding is sound-recorded and evidence may be taken under oath or by affirmation. Occasionally Arbitrators will direct the parties to provide written submissions following the hearing.

The Arbitrator may deliver an oral decision immediately following an arbitration hearing or a short period thereafter. Oral decisions are sound-recorded and a copy can be made available to the parties.

Otherwise, the Arbitrator will deliver a written decision at a later date. The Commission attempts to issue written decisions within 21 days of the arbitration hearing.

Medical Disputes

Medical disputes may be about the degree of permanent impairment, whether medical and related treatment is reasonably necessary or to answer general medical questions as referred, including at the request of the parties.

A medical dispute will be referred by the Registrar, or delegate, to an Approved Medical Specialist. Where the assessment involved multiple body parts, assessments may be conducted by more than one Approved Medical Specialist.

Approved Medical Specialists provide independent, medical assessments for the Commission.

All legal issues must be resolved before a medical dispute can be referred for medical assessment.

A medical assessment will, in all but the rarest of cases, require an examination of the injured worker by the Approved Medical Specialist.

The following matters certified by Approved Medical Specialists are conclusively presumed to be correct in proceedings before the Commission:

- the degree of permanent impairment of the worker as a result of an injury,
- whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality,
- the nature and extent of loss of hearing suffered by a worker,
- whether impairment is permanent, and
- whether the degree of impairment is fully ascertainable.

If the dispute concerns whether proposed medical and related treatment is reasonably necessary as a result of an injury, the dispute may be referred for opinion by an Approved Medical Specialist. The opinion of the Approved Medical Specialist is evidence but is not conclusively presumed to be correct. It is for an Arbitrator to determine if the proposed medical treatment or service is reasonably necessary as a result of a work-related injury.

Expedited Assessments

Expedited assessments are divided into three categories:

- interim payment directions (for future weekly compensation benefits up to 12 weeks, past weekly compensation benefits up to 10 weeks and medical and related treatment up to \$8,693.40 as at 1 October 2015),
- small claims (for past periods of weekly compensation benefits for a period not exceeding 12 weeks), and
- workplace injury management disputes.

Proceedings are listed for teleconference before a delegate of the Registrar, usually 14 days after lodgment of the dispute with the Commission. The dispute resolution process is designed to resolve disputes quickly and efficiently. The parties are almost always legally represented in expedited assessments and insurers are encouraged to attend.

There is a presumption in favour of granting an interim payment direction for weekly compensation and medical expenses compensation.

Workplace injury management disputes allow the parties to openly discuss appropriate steps to return an injured worker to meaningful employment. A delegate can issue a recommendation for certain action to be taken by the parties to resolve a workplace injury management dispute.

COMMON LAW DISPUTES

The Commission provides an administrative and mediation framework for disputed work injury damages claims, together with a process for determining if the degree of whole person impairment is sufficient to meet the threshold for an award of damages.

The Commission is also responsible for resolving disputes relating to defective pre-filing statements, directions for access to information and premises and pre-filing strike out applications.

In most cases, a claimant must refer a claim for work injury damages to the Commission for mediation before court proceedings for damages can be commenced. A defendant employer may only decline to participate in mediation where liability is wholly denied.

Where a claim proceeds to mediation, the Registrar appoints a Mediator. All parties, including the worker and the insurer, are required to attend the mediation.

The Mediator must use his or her best endeavours to bring the parties to agreement on the claim. If the parties fail to reach agreement, the Mediator will issue a certificate to that effect and the worker may then commence court proceedings.

COSTS ASSESSMENTS

The Commission retains jurisdiction to determine costs disputes in workers compensation matters where the worker is an 'exempt worker' (that is, a police officer, paramedic, firefighter or coal miner) or where the claim for compensation was made prior to 1 October 2012 and the dispute was lodged in the Commission prior to 3 April 2013.

The Commission also has jurisdiction to determine costs disputes in work injury damages matters.

Costs in workers compensation and work injury damages claims are regulated. Parties may make application to the Registrar to assess costs where an agreement or order for costs has been made and the quantum of those costs cannot be resolved.

Applications may be made for party/party costs, solicitor/client costs or agent/client costs and disputes regarding apportionment between former and current legal representatives.

Costs assessments are undertaken by the Registrar or his delegates.

APPEALS

Arbitral Appeals

Under s 352 of the 1998 Act, a party to a dispute in connection with a claim for compensation may appeal to the Commission against a decision made by an Arbitrator. The President, or a Deputy President, sitting alone, hears and determines arbitral appeals.

Arbitral appeals are limited to the determination of whether the decision appealed against was or was not affected by any error of fact, law or discretion, and to the correction of such error. It is not a review of an Arbitrator's decision and is not a new hearing.



An arbitral appeal must be made by application to the Registrar. The appeal will not proceed unless the Registrar is satisfied that the relevant procedural requirements as to the making of an appeal have been complied with.

Following formal registration of an arbitral appeal application, a timetable for proceedings will be set down to provide the parties to the dispute with an opportunity to provide written submissions. On the expiration of the timetable of proceedings a Presidential member will determine the matter and provide written reasons for the decision. Presidential members may determine matters ‘on the papers’, where the written submissions constitute sufficient information, or after a telephone conference or formal hearing.

Before a matter can proceed to determination of the substantive merits of the case, there are a number of preliminary requirements that must be satisfied. These include the time in which an appeal can be made and monetary thresholds for bringing an appeal. Leave must be sought to appeal against an interlocutory decision of the Commission.

An Arbitrator’s decision may be confirmed or revoked. If a decision is revoked, a new decision may be made in its place or, in the alternative, the dispute may be remitted for a new hearing and determination by an Arbitrator.

Determinations by Presidential members are final, subject only to an appeal in point of law to the Court of Appeal under s 353 of the 1998 Act. Decisions of the Court of Appeal are binding on the Commission and all parties to Commission proceedings.

Medical Appeals

A party may appeal against the parts of a Medical Assessment Certificate that are conclusively presumed to be correct. A party who appeals may rely on any of the following four grounds of appeal:

- deterioration of the worker’s condition,
- availability of additional relevant information (where not available and not reasonably obtainable before the medical assessment),
- incorrect criteria, and
- demonstrable error.

An appeal is made by application to the Registrar. The Registrar, or delegate, must be satisfied that a ground of appeal is made out before referring the matter to a Medical Appeal Panel. The Registrar may also refer the matter to an Approved Medical Specialist for further assessment or reconsideration.

Medical Appeal Panels are comprised of an Arbitrator and two Approved Medical Specialists. The matters to be determined by Medical Appeal Panels are restricted to the grounds of appeal on which the appeal was made, being the grounds identified in the submissions of the appellant.

The Arbitrator appointed to the Medical Appeal Panel will convene a teleconference between the panel members at which the panel will discuss the issues raised on appeal. The Medical Appeal Panel will determine whether further submissions are required from the parties, whether the worker needs to be re-examined by an Approved Medical Specialist panel member, and/or whether an assessment hearing is required wherein the parties may make oral submissions to the Medical Appeal Panel.

Alternatively, appeals may be dealt with 'on the papers' without further submissions from the parties. This is the most common procedure undertaken by Medical Appeal Panels.

The Medical Appeal Panel may confirm the original Medical Assessment Certificate of the Approved Medical Specialist, or may revoke that certificate and issue a new Medical Assessment Certificate in its place.

Decisions of Medical Appeal Panels are binding, subject to judicial review by the Supreme Court.

PRE-FILING STATEMENTS

A defendant (employer) may apply to the President to have a worker's pre-filing statement struck out. The President hears and determines these applications, but in limited circumstances may delegate the functions to a Deputy President for determination.

At least six months must have elapsed since the defendant served the claimant with a pre-filing defence before an application can be made.

If the procedural requirements are satisfied the application will be registered and a timetable for proceedings will be set down. On the expiration of the timetable of proceedings, the President will determine the matter. The President may determine matters 'on the papers', where the written submissions constitute sufficient information, or after a telephone conference or formal hearing.

The President may strike out the pre-filing statement but must not do so if satisfied that the degree of permanent impairment of the injured worker is not yet fully ascertainable and the matter is the subject of a referral for assessment of the degree of permanent impairment of the worker.

QUESTIONS OF LAW

The President may grant leave for a question of law to be referred for his opinion, either by an Arbitrator's motion or after an application by a party to an Arbitrator. The President hears and determines all questions of law.

The President is not to grant leave for the referral of a question of law unless satisfied that the question is novel or complex.

In determining whether or not to grant leave to refer a question of law, the President will take into account, among other things, whether the question involves an interpretation of legislative provisions not previously considered at a Presidential or appellate level.

Despite referral of a question of law to the President, Arbitrators will, wherever possible, continue to progress the proceedings.

STRATEGIC PLAN 2015–2017



PART TWO: PERFORMANCE

WORKLOAD AND PERFORMANCE

KEY PERFORMANCE INDICATORS

DEVELOPMENTS IN THE LAW

EDUCATION AND COLLABORATION



WORKLOAD AND PERFORMANCE

TOTAL REGISTRATIONS

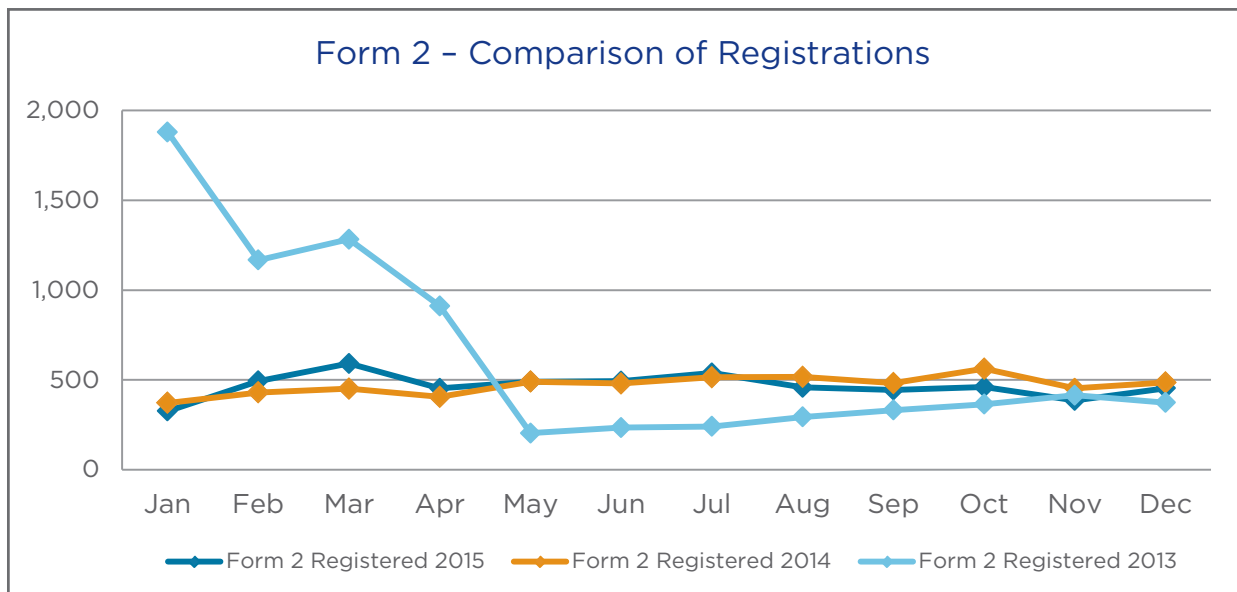
The Commission registered 7,961 applications in 2015, as detailed in the table below. Overall, registrations have remained stable compared to 2014.

Application Type	2013	2014	2015
Application to Resolve a Dispute (Form 2)	7,702	5,644	5,590
Application for Expedited Assessment (Form 1)	293	136	125
Workplace Injury Management Dispute (Form 6)	40	45	57
Application for Assessment of Costs (Form 15)	127	54	22
Registration of Commutation (Form 5A)	145	111	58
Application for Mediation (Form 11C)	1,280	1,192	1,372
Application to Cure a Defective Pre-filing Statement (Form 11B)	9	3	2
Application to Strike Out a Pre-Filing Statement (Form 11E)	11	9	11
Disputed Direction for Access to Information and Premises (Form 11)	11	10	7
Arbitral Appeal (Form 9)	72	114	73
Application for Leave to Refer a Question of Law (Form 13)	3	0	0
Medical Appeal (Form 10)	655	684	644
TOTAL	10,348	8,002	7,961

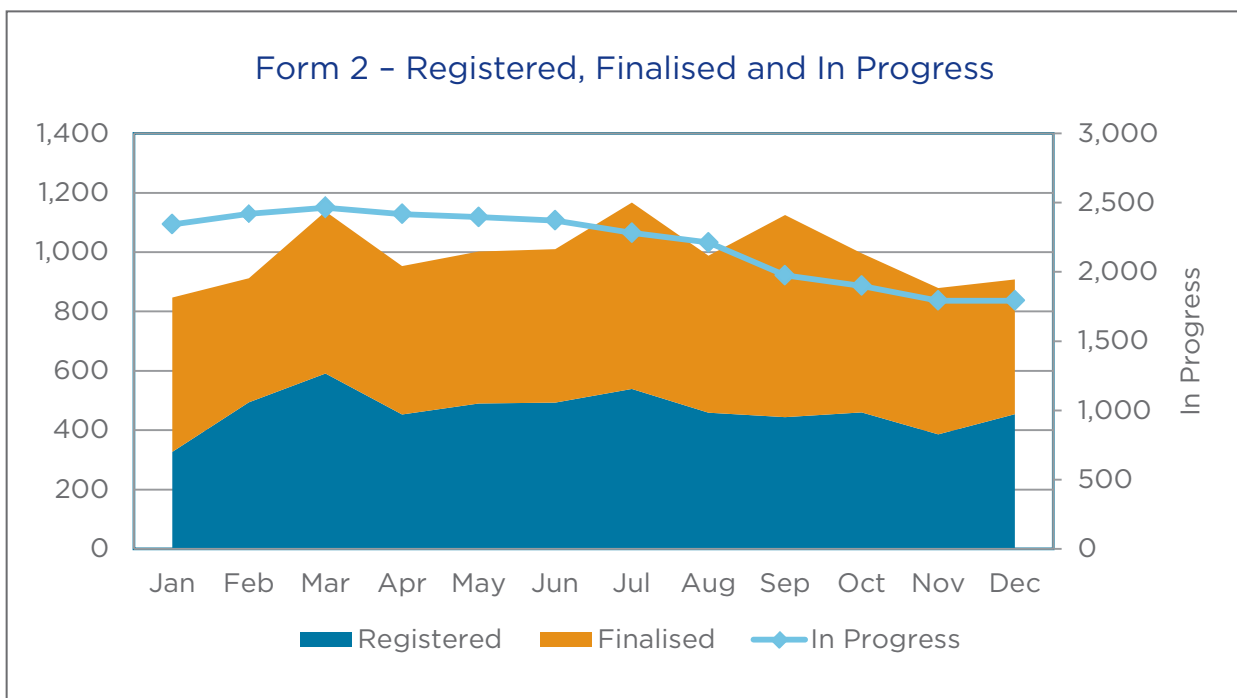
Applications to Resolve a Dispute (Form 2)

In 2015, Form 2 registrations continued the stable pattern that was re-established in 2014 after the turbulence that followed the 2012 legislative amendments. The steady number of dispute lodgments enabled the Commission to more effectively manage matters on hand and return to target resolution timeframes.

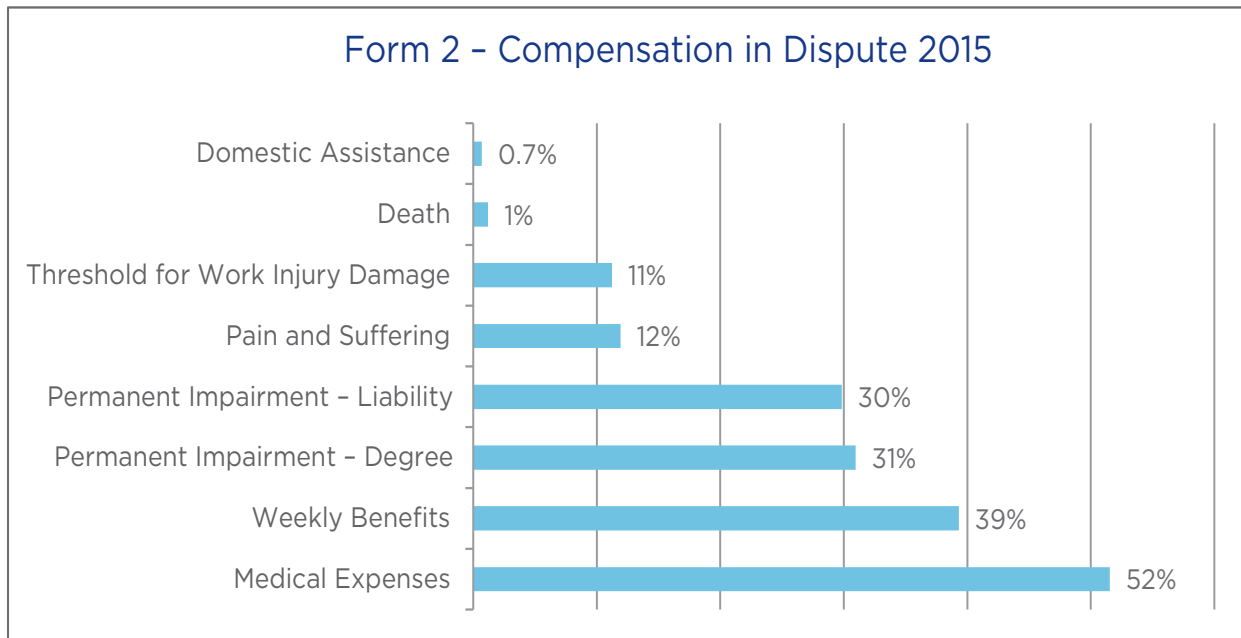
During 2015, the Commission registered an average of 466 Form 2 Applications to Resolve a Dispute per month.



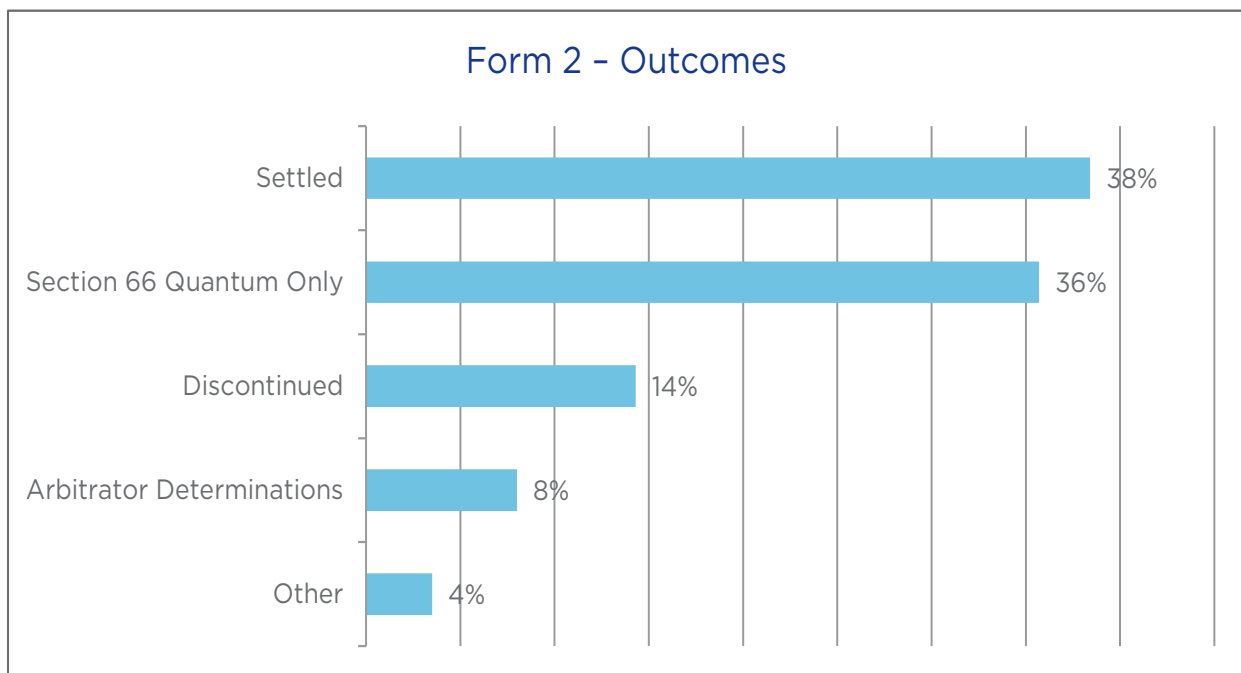
Work in progress continued to reduce during 2015 reaching a stable position towards the end of the year. As at 31 December 2015, there were 1,792 Form 2 matters on hand, down from 2,536 at the same time in 2014.



Claims for permanent impairment compensation, medical expenses compensation and weekly benefits compensation continue to make up the significant majority of disputed compensation types.



In 2015, the proportion of matters that resolved without the need for determination was 56 per cent. The overall proportion of disputes that were determined by Arbitrators in 2015 remained relatively similar to 2014, namely, 8 per cent compared to 7 per cent in 2014.



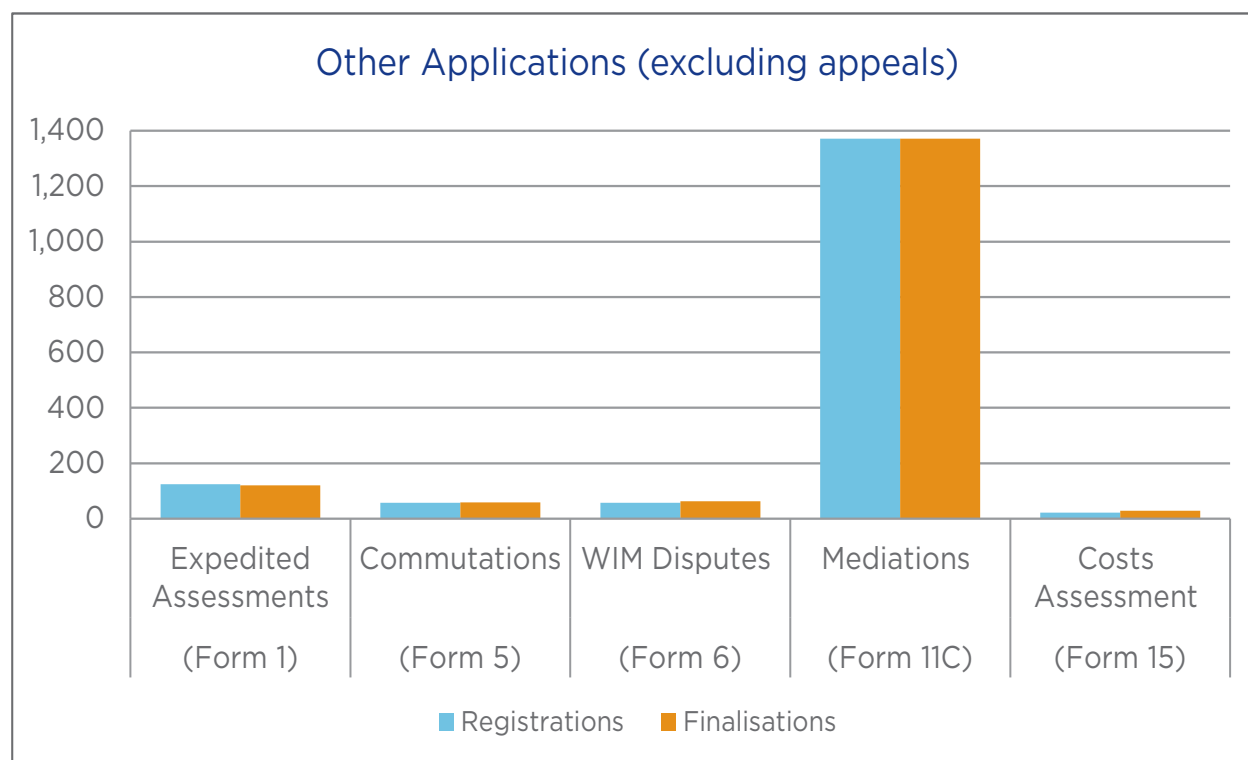
During 2015, the Commission held 2,365 con/arbs at the following 20 locations:

Albury	Ballina
Bathurst	Broken Hill
Bourke	Coffs Harbour
Dubbo	Gosford
Griffith	Newcastle
Orange	Penrith
Port Macquarie	Queanbeyan
Sydney	Tamworth
Taree	Tweed Heads
Wagga Wagga	Wollongong

Other Applications (excluding appeals)

Lodgment of Application for Expedited Assessment (Form 1) and Application for Assessment of Costs (Form 15) declined during 2015, continuing the trends that began in 2013 following the 2012 legislative amendments. Compared to 2014, expedited assessment applications reduced by 8 per cent and cost assessment applications had a more significant reduction of 59 per cent.

Lodgment of Application for Mediation of a Work Injury Damages Claim (Form 11C) and Application to Resolve a Workplace Injury Management Dispute (Form 6) increased in 2015 over the previous year, by 15 per cent and 27 per cent respectively.





Outcomes for the various applications are detailed in the following tables:

Form 6 — WIM Disputes	
% Recommendation Issued	62
% Discontinued	14
% Other	19
% Recommendation Refused	5

Form 1 — Expedited Assessments	
% IPD Issued	44
% Discontinued	27
% Refused	4
% Settled	20
% Other	5

Form 11C — Mediations	
% Settled	53
% Certificate of Final Offer	35
% Wholly Denied Liability	7
% Other	5

Form 15 — Costs Assessments	
% Determination Issued	69
% Discontinued	28
% Other	3



Arbitral Appeals

In 2015, 85 arbitral appeal applications were finalised, of which 72 arbitral appeals were determined. Forty-four per cent of determined arbitral appeals revoked or part-revoked the original decision and 53 per cent confirmed the original decision. In three per cent of cases, leave was not granted to appeal.

The overall revocation rate of arbitral appeals, expressed as the proportion of revoked decisions over the total appealable decisions, was five per cent.

Medical Appeals

There were 3,684 Medical Assessment Certificates issued in 2015, which represents a 17 per cent decrease from 2014.

Application to Appeal Against Decision of Approved Medical Specialist (Form 10) lodgments held relatively steady at 644 in 2015 (684 in 2014).

There were 778 medical appeals finalised in 2015 with 269 Medical Assessment Certificates being overturned by a Medical Appeal Panel.

Judicial Review of Registrar and Medical Appeal Panel Decisions

Thirteen judicial review applications were lodged in the Supreme Court of New South Wales in 2015, and one Notice of Appeal against a judicial review decision was lodged in the Court of Appeal. Of those matters, 11 applications were lodged against the decisions of Medical Appeal Panels and two were lodged against decisions of delegates of the Registrar. Overall, the judicial review rate was less than two per cent of all decisions made by Medical Appeal Panels and Registrar's delegates.

In 2015, the Supreme Court determined 12 judicial review applications, dismissing five applications and quashing seven Medical Appeal Panel decisions.

Appeals to the Court of Appeal from Presidential Decisions

In 2015, the Court of Appeal determined six appeals from Presidential decisions. Of the appeals that were determined, two were dismissed, two were upheld, one was allowed in part and in another leave to appeal was refused.

As at the end of 2015, one Presidential decision was pending before the Court of Appeal.

Appeals to the High Court of Australia

One special leave application was filed in 2015, which was pending before the Court at the end of 2015.

KEY PERFORMANCE INDICATORS

The Commission monitors its performance against a series of key performance indicators (KPIs). KPIs track the Commission's progress in the delivery of a number of its statutory objectives including timeliness and durability of outcomes.

The table below tracks the progress of timeliness in dispute resolution over the 2015 calendar year. During 2015, the Commission finalised more matters each month than were registered. Work in progress reduced from 2,536 dispute applications at the end of 2014 to 1,792 applications at the end of 2015.

Each quarter in 2015 showed improvements in the percentage of disputes resolved in each bandwidth. By the fourth quarter of 2015, the Commission had returned to its target timeframes for resolution of disputes without appeal.

Durability of decisions remained strong with revocation rates at six per cent for Arbitrator determinations and nine per cent for medical assessments.

Timeliness	Target	Mar 2015	Jun 2015	Sep 2015	Dec 2015
% of Dispute Applications resolved (no appeal):					
• 3 months	45	24	32	38	45
• 6 months	85	74	79	86	88
• 9 months	95	89	93	97	97
• 12 months	99	92	96	99	99
% of Dispute Applications resolved (with appeal):					
• 3 months	40	21	28	32	38
• 6 months	80	67	70	72	77
• 9 months	94	82	84	84	88
• 12 months	98	87	89	90	94
Average days to resolution for Dispute Applications with no appeal	105	171	145	121	114

Application Type	Target	2015 Average
Average days to resolution of Arbitral Appeals	112	83
Average days to resolution of Medical Appeals	100	169
% of Expedited Assessments resolved within 28 days	90	36

Durability	Target	% Revoked
% of determined Dispute Applications revoked on appeal ^[1]	< 15	6
% of Medical Assessment Certificates revoked on appeal ^[2]	< 15	9

[1] This KPI represents the number of arbitral decisions revoked, expressed as a percentage of the total number of appealable arbitral decisions (i.e. excluding s 66 determinations).

[2] This KPI represents the number of Medical Assessment Certificates revoked by a Medical Appeal Panel, expressed as a percentage of the total number of Medical Assessment Certificates issued.

DEVELOPMENTS IN THE LAW

THE 2015 AMENDMENT ACT

On 21 August 2015, the *Workers Compensation Amendment Act 2015* (2015 Amendment Act) received royal assent. The 2015 Amendment Act made changes to benefits for a variety of entitlements under the workers compensation scheme.

One procedural amendment, which was relevant to the Commission's jurisdiction, was the amendment of s 60(5) of the 1987 Act. Section 60(5) was amended to remove the mandatory requirement to refer a dispute about a proposed medical treatment or service to an Approved Medical Specialist. Arbitrators determine disputes regarding proposed medical treatment and service. Referral of disputes regarding proposed treatment for opinion by an Approved Medical Specialist is at the discretion of the Arbitrator or the Registrar.

AMENDMENTS TO COMMISSION RULES

The 2011 Rules were amended with effect from 16 November 2015.

The main amendment was to r 10.3, which now makes it a mandatory requirement for a worker to lodge, with the dispute application, a signed statement of the evidence to be given by the worker.

Rule 10.3 was also amended to restrict the occasions for parties to lodge late documents. This amendment was made in response to the ongoing high number of late documents applications lodged in proceedings.

A summary of the substantive amendments to the Rules is available on the Commission's website.

CRAM FLUID POWER PTY LTD V GREEN [2015] NSWCA 250

The decision in *Cram Fluid Power Pty Ltd v Green* [2015] NSWCA 250 (*Cram Fluid v Green*) was delivered by the Court of Appeal on 27 August 2015. The decision has legal and procedural implications for permanent impairment disputes before the Commission.

The facts briefly are as follows. The worker sustained an injury to his back in 2005. In 2010, he made a claim for lump sum compensation and the claim was resolved by way of a complying agreement. By 2012, the worker's condition deteriorated and he underwent surgery to his back. In 2013, the worker made a claim for further lump sum compensation which the insurer denied. The dispute before the Commission concerned the operation of the amendments made by the *Workers Compensation Legislation Amendment Act 2012* (2012 Amendment Act), and in particular the 'one claim' limitation contained in s 66(1A) of the 1987 Act.

At first instance, the Arbitrator determined that the worker could bring a claim for further lump sum compensation. The Arbitrator's decision was confirmed in a Presidential appeal. The Presidential decision was overturned by the Court of Appeal.

The Court of Appeal determined that s 66(1A) disentitled the worker from making a claim for further lump sum compensation. The Court held that the 2013 claim was a different claim to the 2010 claim. The 2010 claim had been resolved and the 2013 claim, having been made after the commencement of s 66(1A), was subject to that section's operation, applying cl 15 of Pt 19H to Sch 6 of the 1987 Act that the 2012 Amendment Act applies to claims made on or after 19 June 2012. The Court held that cl 11 of Sch 8 to the 2010 Regulation did not apply to exclude the 'one claim' limitation.

The Court also held that s 66A(3), giving the Commission power to award additional compensation following a complying agreement, must give way to the 'one claim' limitation in s 66(1A).

THE REGULATION AFTER *CRAM FLUID V GREEN*

The *Workers Compensation Amendment (Lump Sum Compensation Claims) Regulation 2015* (2015 Amendment Regulation) was made in response to the decision in *Cram Fluid v Green*. The 2015 Amendment Regulation inserted cl 11A in Sch 8 to the 2010 Regulation. Clause 11A enables a worker who made a claim for permanent impairment compensation before 19 June 2012 to make one further claim on or after that date. Arrangements were made by the Commission to accommodate matters affected by the decision in *Cram Fluid v Green* and the 2015 Amendment Regulation.

AGGREGATION OF IMPAIRMENTS

In 2015, there were several determinations concerning whether workers could aggregate impairments to meet the threshold requirements for claiming compensation for whole person impairment under s 66(1) and to be characterised as a 'seriously injured worker' under s 32A of the 1987 Act. If a worker reached the required permanent impairment threshold of more than 30 per cent to be characterised as a 'seriously injured worker' they would be entitled to receive additional benefits in terms of medical expenses and entitlement to weekly payments.

Following the 2015 Amendment Act, 'seriously injured worker' was removed and replaced with 'worker with highest needs' and 'worker with high needs'. A 'worker with highest needs' means a worker whose injury has resulted in permanent impairment of more than 30 per cent and a 'worker with high needs' means a worker whose injury has resulted in permanent impairment of more than 20 per cent (s 32A of the 1987 Act).

Merchant v Shoalhaven City Council [2015] NSWWCCPD 13

This appeal concerned the construction of the phrase 'seriously injured worker' in s 32A of the 1987 Act. In particular, the issue concerned whether it is permissible to aggregate impairments that have resulted from injuries to different body parts, in a series of unrelated incidents, to meet the required permanent impairment threshold of more than 30 per cent to be characterised as a 'seriously injured worker'.

The worker argued that the presumption created by s 8(b) of the *Interpretation Act 1987* (which provides that words in the singular will include the plural) when read with s 32A permitted the aggregation of impairments from multiple unrelated compensable injuries to satisfy the relevant threshold.

The President found that any presumption created by s 8(b) was displaced by the contrary intention which was evident from the legislation when read as a whole. Accordingly, permanent impairments caused by multiple unrelated incidents to different body parts, involving different pathology, could not be aggregated to meet the 30 per cent threshold under s 32A. It followed that the worker did not succeed.

Trustees of the Roman Catholic Church for the Diocese of Parramatta v Barnes [2015] NSWWCCPD 35

The worker injured her lower back in three separate work incidents. She claimed that as a result of those incidents she had suffered one impairment for which she was entitled to lump sum compensation. The issue on appeal concerned whether the phrase 'an injury' in s 66(1) of the 1987 Act was restricted to a single injury or whether it included more than one injury.

In the circumstances of the case, the Deputy President found that ‘injury’ in s 66(1) can include ‘injuries’ and is not confined to a single injurious incident or single injury. It did not matter whether ‘an injury’ in s 66(1) meant ‘injurious event’ or ‘pathology’. He added that apportioning liability for a single impairment is not the same as determining the degree of impairment that has resulted from each event or incident. It followed that in a claim for permanent impairment compensation under s 66 a single impairment can result from more than one injury.

As the worker made only ‘one claim’ for permanent impairment in respect of one pathology which arose from three work incidents, she was entitled to the compensation claimed.

SECTION 59A

Section 59A was inserted into the 1987 Act by the 2012 Amendment Act and commenced operation on 1 October 2012. It provides a time limit on the liability to pay medical, hospital and rehabilitation expenses, which is linked to the period in which weekly payments of compensation are or have been paid or are payable to the worker. The uncertainty surrounding the application of s 59A was addressed in the decision summarised below.

Flying Solo Properties Pty Ltd t/as Artee Signs v Collet [2015] NSWCCPD 14

The worker injured his cervical spine in the course of his employment and as a result needed surgery. The insurer disputed liability for the surgery on the basis of s 59A of the 1987 Act and cl 5 of Sch 8 to the 2010 Regulation.

Section 59A, as it then stood, limited the payment of medical expenses to a period of 12 months after a claim for compensation is made or 12 months after weekly payments of compensation cease. Clause 5 provided that the 12-month period was to commence on 1 January 2013, regardless of when the claim was made prior to that date and regardless of when weekly payments ceased prior to that date. Therefore, the earliest time that medical expenses could cease after a claim was made or after weekly compensation payments ceased was 31 December 2013.

The worker’s claim was made prior to 2013 and payment ceased prior to 2013. Therefore, the worker was entitled to medical expenses compensation incurred up to 31 December 2013. The proposed surgery for the worker was scheduled to take place after 31 December 2013. By operation of s 59A, the worker would not be entitled to payment of that treatment as it fell outside the 12-month time limit.

On appeal, a Deputy President held that weekly compensation is payable when the worker has an entitlement to receive actual weekly compensation. As the worker would have to stop work to have the proposed surgery, and would be entitled to weekly compensation while recovering from that surgery, he would be entitled to the cost of treatment during that period including the cost of the surgery.

Note: Section 59A was amended by the 2015 Amendment Act, consistent with the decision in *Flying Solo Properties Pty Ltd t/as Artee Signs v Collet*, and now has three compensation periods depending on the degree of permanent impairment.

IN THE COURSE OF OR ARISING OUT OF EMPLOYMENT

A worker is entitled to workers compensation if he or she suffers a personal injury ‘arising out of or in the course of employment’.

Whether a worker’s personal injury is ‘arising out of’ or ‘in the course of’ employment is a matter of degree to be considered on the facts in each case. If the employer induced or encouraged the worker to engage in the activity that the worker was engaged in at the time of the injury will be important.

Collins v Signature Blend Pty Ltd t/as Alira [2015] NSWCCPD 22

The worker was the manager and sole director of the respondent company. He took his employees to a Christmas lunch at a restaurant, where he consumed alcohol and cocaine. It was conceded that the lunch at the restaurant was in the course of employment. After lunch the worker and some of his employees went by taxi to the worker’s apartment, where the worker consumed further alcohol and cocaine.



The worker later fell (or possibly jumped) from his balcony to the ground and sustained serious injuries. An Arbitrator found that those injuries were not sustained in the course of employment. The worker appealed.

On appeal, the Deputy President held that the worker was injured during an interval between two discrete periods of work, and that at the time of the injury the accepted work function had ended and a separate social function had begun. The fact that the worker, as manager of the respondent, had attended the social function did not mean that the respondent induced or encouraged the worker to attend.

The relevant question as to causation was not whether the alcohol and cocaine ‘caused’ the worker to act impulsively but whether the employer induced or encouraged the worker to engage in the activity that he was engaged in at the time of injury. The Deputy President held that it did not. It followed that the appeal failed.

CAN A CLAIM BE AMENDED?

When a claim for permanent impairment compensation is made and whether it can be amended has significant ramifications for a worker’s recovery of permanent impairment compensation, particularly in view of the ‘one claim’ limitation in s 66(1A). The decision summarised below addresses these issues.

Woolworths Ltd v Stafford [2015] NSWCCPD 36

The worker received a head injury in the course of his employment and was paid compensation. He later made a claim for whole person impairment of seven per cent. This claim was made at a time when workers were entitled to recover permanent impairment compensation below the 11 per cent threshold introduced by the 2012 Amendment Act.

The insurer declined liability, following the High Court's decision in *ADCO Constructions Pty Ltd v Goudappel* [2014] HCA 18 (*Goudappel*). In *Goudappel*, the High Court found that no permanent impairment compensation is payable for a degree of permanent impairment of 10 per cent or less, unless the worker had "specifically sought" permanent impairment compensation prior to 19 June 2012. Accordingly, the worker was not entitled to lump sum compensation for permanent impairment of seven per cent.

Following a further medical assessment, the worker's solicitors wrote to the employer "amending" the claim from seven to 12 per cent whole person impairment. The employer declined liability on the basis that the worker had made his one claim (for seven per cent) and therefore was caught by the 'one claim' limitation in s 66(1A) of the 1987 Act.

On appeal, the Deputy President undertook a beneficial construction of the meaning of 'claim'. He found that a 'claim' in s 66(1A) imports more than a "mere demand for payment but rather is to be read as referring to a claim made in accordance with the 1987 and 1998 Acts". The Deputy President added that a 'claim for compensation' means a claim for compensation that is capable of payment in accordance with the 1987 Act. Therefore, the claim for seven per cent whole person impairment did not constitute a claim for the purposes of s 66(1A) and the worker was entitled to amend his claim for lump sum compensation.

APPLICATION OF THE WORKERS COMPENSATION GUIDELINES

Medical disputes are assessed in accordance with workers compensation guidelines issued under s 376 of the 1998 Act.

In 2015, a number of decisions of the Supreme Court of New South Wales considered the interaction between Approved Medical Specialists using clinical judgment and adhering to the workers compensation guidelines.

Jenkins v Ambulance Service of New South Wales [2015] NSWSC 633

The worker suffered a psychological injury in the course of her employment with the Ambulance Service of NSW. She was assessed by an Approved Medical Specialist as suffering six per cent whole person impairment, which was confirmed by a Medical Appeal Panel.

The worker sought judicial review of the Medical Appeal Panel decision.

After reviewing the specific paragraphs of the guidelines, Garling J dismissed the proceedings. His Honour held that while the guidelines require the Approved Medical Specialist to assess the worker using the tables, graphs and methodology given, that does not mean that clinical judgment has no role to play. His Honour observed that clinical judgment is an important part of the assessment of permanent impairment.

His Honour also held that activities in the guidelines are examples only, and are not the only basis, or the minimum basis, for a rating.

Woolworths Limited v Howarth [2015] NSWSC 1624

The worker made a permanent impairment claim for her left shoulder and cervical spine. The Approved Medical Specialist assessed the worker's whole person impairment at 17 per cent. The employer appealed against the Approved Medical Specialist's assessment however the Registrar's delegate found that none of the grounds of appeal were made out and did not allow the appeal to proceed.

The employer sought judicial review of the Approved Medical Specialist's assessment and the delegate's decision.

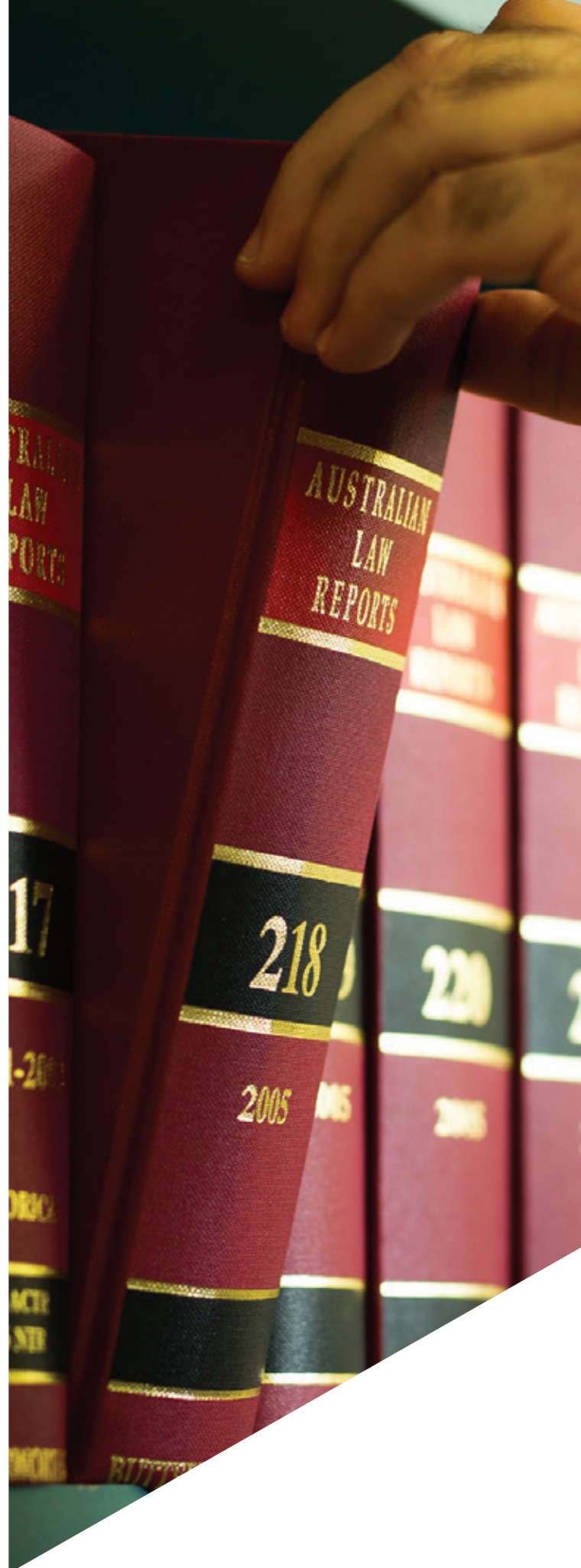
Justice Hamill dismissed the appeal. His Honour noted that the primary subject of the dispute was whether the Approved Medical Specialist conducted the medical assessment in accordance with the law and it was not necessary to address the review against the decision of the delegate. As regards the medical assessment, his Honour found that the Approved Medical Specialist did not exceed the terms of the referral when he assessed

loss of movement in the worker's right shoulder as the Approved Medical Specialist assessed the right shoulder to consider whether the assessment of the worker's left shoulder should be reduced by reference to a 'normal' contralateral joint in accordance with AMA 5. This approach was consistent with that adopted by the medical expert qualified by the employer. His Honour noted that it was not appropriate to parse the language of the Medical Assessment Certificate or to examine the Approved Medical Specialist's reasons with a critical eye attuned to error.

Kuzet v The Registrar of the Workers Compensation Commission [2015]
NSWSC 4

The worker suffered an injury to her lumbar spine, cervical spine and right shoulder while employed as a kitchen hand. The matter proceeded to an Approved Medical Specialist for an assessment, which was subsequently confirmed by a Medical Appeal Panel. The Approved Medical Specialist made a finding that the worker displayed abnormal illness behaviour.

In the Supreme Court, McCallum J found that considering whether abnormal illness behaviour was a feature of impairment was a matter of clinical judgement, not legal analysis, as was the consideration of whether the worker had reached maximum medical improvement. The proceedings were dismissed.



EDUCATION AND COLLABORATION

COUNCIL OF AUSTRALASIAN TRIBUNALS

The President and Registrar are committee members of the NSW Chapter of the Council of Australasian Tribunals (COAT).

COAT is a peak body that facilitates liaison and discussion between tribunals throughout Australia and New Zealand. COAT supports the development of best practice models and model procedural rules, standards of behaviour and conduct for members, and training and support for members.

INTER-JURISDICTIONAL MEETING

The Commission's President convenes and chairs the annual Inter-jurisdictional Workers Compensation Dispute Resolution Organisations Meeting. The meeting facilitates and promotes information-sharing and collaboration between the various tribunals in Australia and New Zealand that manage workers compensation and related disputes.

The meeting precedes COAT's national annual conference and is attended by a range of senior decision-makers and staff from State, Territory, Commonwealth and New Zealand tribunals.

PRESENTATIONS

During 2015, members and staff delivered a number of presentations, including:

2015 Seminar Series

November 2015

In November the Commission held a series of seminars on legal, practice and procedural issues. The seminars provided an avenue for senior members of the Commission to interact and discuss topics of interest with legal and insurance professions practicing in the workers compensation jurisdiction.

There were over 600 registrations for the event which was held at eight locations across the greater Sydney area and regional New South Wales. A session was also held for staff and agencies associated with the Commission.

Judge G Keating, President

4 June 2015

"Workers compensation update"

Inter-jurisdictional Workers Compensation Dispute Resolution Organisations Meeting

Bill Roche, Deputy President

12 November 2015

"Notice of injury and the making of a claim for compensation"

University of NSW

30 November 2015

"Who is a 'worker' or 'deemed worker'; fresh evidence or additional evidence; expert evidence"

College of Law Annual Workers Compensation Update 2015

Kevin O'Grady, Deputy President

22 May 2015

"Workers compensation update"

College of Law Specialist Legal Conference

Rod Parsons, Registrar

24 March 2015

"Workers compensation update"

The Law Society of NSW

27 March 2015

"Workers compensation update"

NSW State Legal Conference



8 December 2015

"Workers compensation scheme outline, legal requirements and dispute handling"

NSW Nurses and Midwives' Association

Marshal Douglas, Senior Arbitrator

27 November 2015

"Interpretations emerging from the 2012 amendments – suitable employment"

Arbitrator Annual Conference

Catherine McDonald, Senior Arbitrator

27 November 2015

"Interpretations emerging from the 2012 amendments – seriously injured workers"

Arbitrator Annual Conference

Michael Snell, Senior Arbitrator

27 November 2015

"Interpretations emerging from the 2012 amendments – section 9B"

Arbitrator Annual Conference

Elizabeth Beilby, Arbitrator

25 March 2015

"Workers compensation"

Chair, University of NSW CLE Conference

23-24 November 2015

"Recent changes to workers compensation law"

Inaugural Whale Beach Conference

Ross Bell, Arbitrator and Mediator

27 November 2015

"Medical appeals – reaching a consensus and avoiding minority decisions"

Arbitrator Annual Conference

John Wynyard, Arbitrator

27 November 2015

"Medical appeals – writing medical appeal decisions efficiently"

Arbitrator Annual Conference

Parnel McAdam, Solicitor

22 August 2015

"General medical disputes – the past, present, and future of expressing a non-binding opinion"

Approved Medical Specialist Annual Conference

27 November 2015

"Medical appeals – a refresher on the law"

Arbitrator Annual Conference

Margot Undercliffe, Solicitor

22 August 2015

"General medical disputes – the past, present and future of expressing a non-binding opinion"

Approved Medical Specialist Annual Conference

Dr Mark Burns, Approved Medical Specialist

27 November 2015

"Medical appeals – an AMS perspective"

Arbitrator Annual Conference

Dr David Crocker, Approved Medical Specialist

27 November 2015

"4th edition permanent impairment guidelines"

Arbitrator Annual Conference

PUBLICATIONS

Bulletins

The Commission publishes a number of bulletins to disseminate information periodically to members, service partners and stakeholders, including:

- *e-Bulletin* – for legal and insurance professionals
- *Arbitrator Bulletin* – for Arbitrators
- *AMS Bulletin* – for Approved Medical Specialists
- *Mediator Bulletin* – for Mediators.

On Appeal

On Appeal is a publication that summarises decisions of Presidential members delivered during the preceding month and provides a brief overview of relevant High Court and Court of Appeal decisions.

The publication is issued monthly to Arbitrators and key stakeholders, and is also published on the Commission's website.

On Review

On Review provides a summary of all decisions of the Court of Appeal and Supreme Court in relation to judicial review applications against decisions of the Registrar, Approved Medical Specialists and Medical Appeal Panels. It consists of two publications. The first document contains a list of all decisions and case summaries by chronological order. The second document contains the same resources, but grouped by subject matter. Each document contains a hyperlink to the decision and a hyperlink to a summary of the decision.

On Review is available on the Commission's website.

Decisions of Medical Appeal Panels

This publication summarises decisions of Medical Appeal Panels on specific areas of the medical assessment process. It is a resource provided for Medical Appeal Panel members and Registrar's delegates undertaking the gatekeeper function for medical appeals.

Arbitrator Practice Manual

The *Arbitrator Practice Manual* provides guidance to Commission members on a range of procedural and ethical issues. The manual also contains extensive discussion on substantive legal issues relevant to the Commission. The first practice manual was developed for members of the Commission in 2009. That publication proved to be a great success and was widely used by all members.

In November 2014, the second edition of the manual was published, including the changes made by the 2012 amendments, further enhancing the consistency of the dispute resolution process and the durability of the Commission's determinations.

Approved Medical Specialist Practice Manual

The *Approved Medical Specialist Practice Manual* helps Approved Medical Specialists to understand the dispute resolution model and the relationship between their functions and those of Arbitrators.

The manual includes chapters on practical issues; including best practice for conducting examinations, and legislative issues, such as the deduction for previous injuries or pre-existing conditions.

A photograph of a man with a beard and short brown hair, wearing a dark blue suit, a light blue striped shirt, and a purple patterned tie. He is smiling and looking towards the camera. He is seated at a wooden table with several clear glasses and papers in front of him. The background is a plain, light-colored wall. A diagonal blue line runs from the top left corner of the image towards the bottom right, separating the photograph from the text area.

PART THREE: GOVERNANCE, PEOPLE AND CULTURE

GOVERNANCE AND ACCOUNTABILITY
PEOPLE AND CULTURE

GOVERNANCE AND ACCOUNTABILITY

OVERVIEW

The Commission maintains a robust corporate governance framework.

The corporate governance framework includes:

- supporting statutory requirements
- efficient and ethical use of resources
- sound administrative and financial practices and protocols.

The Commission incorporates best practice governance into its service delivery model. This ensures that the Commission manages risk appropriately and uses resources efficiently and with accountability, to provide quality dispute resolution outcomes.

ACCESS AND EQUITY

The Commission's Access and Equity Service Charter sets out standards to ensure all members of the community are provided accessible and equitable services. To achieve these standards, the Commission has developed a range of practices, policies and procedures including:

- free dispute resolution services for all parties
- information resources on the internet
- outreach services for self-represented workers
- interpreter services at no charge
- hearings in regional and rural locations
- codes of conduct for Arbitrators and Approved Medical Specialists
- ongoing education and training seminars.

COMPLAINT HANDLING

The Commission's complaint handling policy and procedure is outlined in Part 5 of the Access and Equity Service Charter.

Complaints can be made about the actions of Commission members, staff, Approved Medical Specialists and Mediators.

Dissatisfaction with the outcome of a dispute application is not a matter that is dealt with through the complaint handling process. There are statutory rights of appeal and review for parties who are not satisfied with a decision of a Commission member, Approved Medical Specialist, Medical Appeal Panel and Registrar's delegate.

During the reporting year, the Commission received a total of nine complaints. Complaints lodged were 0.11 per cent of total dispute applications registered.

Of these complaints, five concerned medical assessments conducted by Approved Medical Specialists, two complaints concerned Arbitrators and two were regarding administrative protocols.

RISK MANAGEMENT

The nature of the Commission's business operations exposes it to a wide range of risks. As such, in line with good governance, the Commission has developed and implemented a risk management framework, compliant with the Australian Standard AS/NZS ISO 31000:2009 – Risk management – Principles and guidelines.

The risk management framework incorporates:

- management documentation,
- communication and training,
- risk assessment and review, and
- monitoring and reporting.

The framework helps the Commission to identify, assess and mitigate risks in line with its risk tolerance. Risk tolerance is determined by developing a matrix that incorporates operational risks, financial risks, reputation, fraud, legal and people impact criteria.

The Commission's risks are evaluated and managed by the Risk Management Committee which meets quarterly.

AUDIT AND ASSURANCE

In February 2015, KPMG reported on the results of an internal audit to provide assurance that the Commission's internal controls were effective to manage risks within the Commission's administrative and financial processes.

The audit's scope included:

- service level agreements,
- budget monitoring and financial reporting (relating to administrative and financial processes),
- policies and procedures,
- purchasing and payments, and
- building security.

The Auditors made a number of minor recommendations for improvement all of which were accepted and were implemented.

GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

The *Government Information (Public Access) Act 2009* (GIPA Act) requires agencies to report on their obligations under the GIPA Act. In compliance with s 7(3) of the GIPA Act, the Commission reviewed the information released to the public through the design and implementation of a new website.

During 2015, the Commission received seven applications to release information under the GIPA Act.

GOVERNANCE COMMITTEES AND FORUMS

The Commission utilises a range of committees and forums to assist with decision-making and governance arrangements. The various committees and forums comprise a mixture of Commission members, staff, service partners and external stakeholders. They provide opportunities for information sharing, consultation and the development of options in relation to the operations of the Commission.

A brief summary of the forums is outlined below.

EXECUTIVE COMMITTEE

The Executive Committee is the strategic and management decision-making forum in the Commission. The Committee, chaired by the President, meets weekly and includes the Registrar and Deputy Registrars.

UNIT MANAGERS' MEETING

The Registrar meets bi-monthly with the Deputy Registrars and Unit Managers. The meetings are an interactive information and communication channel involving discussion of key events within each unit. The forum also provides a conduit for the Registrar to share over-arching strategic issues for discussion on how to assimilate into business operations and how to manage associated implications.

WORK HEALTH AND SAFETY COMMITTEE

As required under the *Work Health and Safety Act* 2011, the Commission has a Work Health and Safety Committee to oversee its health and safety program. The Committee is chaired by a nominated staff member, selected from six staff representatives, and includes a management representative.

The Committee reviews work health and safety issues in the Commission and makes recommendations on these issues to management.

The Work Health and Safety Committee:

- facilitates cooperation between management and staff to instigate, develop and carry out measures designed to ensure workers' health and safety at work, and
- assists with the development of standards, rules and procedures that detail health and safety responsibilities and obligations, for the Commission and its staff in the workplace.

The Committee meets bi-monthly. Urgent committee meetings may be called at any time, if required. Committee members conduct quarterly health and safety inspections of the Commission's workplace.

RISK MANAGEMENT COMMITTEE

The Risk Management Committee evaluates and manages the Commission's risks, which supports a 'risk-aware' culture across the organisation. The Committee members are:

- Registrar (Chair)
- Deputy Registrar, Operations & Business Support
- Deputy Registrar, Legal & Medical Services
- Manager, Executive Services
- Manager, Operations Support
- Manager, Business Services

CONSULTATIVE COMMITTEES AND FORUMS

User Group

The User Group, chaired by the President, meets quarterly. The group includes senior Commission representatives and representatives from the NSW Bar Association, The Law Society of NSW and SIRA NSW. During 2015, the User Group consisted of the following members:

- Judge G Keating, President
- Bill Roche, Deputy President
- Kevin O'Grady, Deputy President
- Rod Parsons, Registrar
- Annette Farrell, Deputy Registrar
- Michael Snell, Senior Arbitrator
- Catherine McDonald, Senior Arbitrator
- Marshal Douglas, Senior Arbitrator
- Elizabeth Wood, NSW Bar Association
- Shane Butcher, Law Society of NSW
- Ross Everett, Law Society of NSW
- Stephen Harris, Law Society of NSW
- Andrew Mulcahy, Law Society of NSW
- Petrina Casey, SIRA

Secretariat: Kathryn Camp, Presidential Unit Manager

Arbitrator Practice Meeting

Bi-monthly practice meetings with Arbitrators, chaired by the Registrar, are open to all full-time and sessional Arbitrators. The meetings promote professional collegiality within the Commission, enhance competency and provides opportunities for Arbitrators to collectively discuss issues related to their work. The practice meetings also provide regular up to date information to Arbitrators on the Commission's workload, practice and procedure.



Joint Consultative Committee Meeting

Joint Consultative Committee (JCC) meetings are held between the Commission's management and the Public Service Association of NSW (PSA), specifically to discuss staffing issues within the Commission. Topics discussed in 2015 included ongoing workload issues and the implementation of the Commissions' staff restructure.

The JCC meets quarterly and consists of representatives from:

- the Commission's management
- PSA officers
- PSA workplace delegates
- SIRA People and Culture
- Department of Finance, Services and Innovation.

Staff members of the Commission who are members of the PSA are encouraged to email issues or concerns to their workplace delegates, or union representatives, prior to meetings. Union representatives and delegates may also organise meetings with staff prior to a JCC meeting to discuss comments and concerns.

Senior Arbitrator Meeting

Senior Arbitrator Meetings are quarterly consultative forums held to discuss current issues between Senior Arbitrators and the President, Registrar and Deputy Registrars.

In-House Government Lawyers Forum

The In-House Government Lawyers Forum provides an opportunity for all lawyers across government to exchange information and ideas regarding legal practice within the NSW public service and offers effective learning opportunities for government lawyers. The Commission's legal staff participate in the forum.

PEOPLE AND CULTURE

ESTABLISHMENT PROFILE

As at 31 December 2015, the Commission's staff consisted of 68 full-time equivalent positions. In addition to these positions, there were the following members, Approved Medical Specialists and Mediators.

Members

- Four Presidential members (President, two Deputy Presidents and one acting Deputy President),
- Registrar, and
- 22 Arbitrators (See Appendix 1).

Service Partners

- 146 Approved Medical Specialists (see Appendix 2), and
- 27 Mediators (see Appendix 3).

AWARD PROVISIONS

The Commission's employees are employed under the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009. This award contains the current common conditions of employment, as negotiated by the Secretary of the Treasury and the Public Service Association and Professional Officers' Association Amalgamated Union of NSW.

WORKFORCE PLANNING, STAFF TURNOVER, RETENTION AND APPOINTMENTS

During 2015, the Commission completed the first phase of an organisational review that was driven by the impact of the 2012 workers compensation legislation changes. Under this phase of the review, over a three year period, the Commission reduced its operational staff from 102 persons to 68.

The second stage of the review, which involves reviewing the roles and functions of staff engaged in corporate and support services, has been commenced. It is due for completion in 2016.

Workforce planning efforts focused on building capability to deliver the Commission's objectives. This included the following retention activities:

- re-appointment of Deputy President, Bill Roche,
- re-appointment of Registrar, Rod Parsons,
- re-appointment and appointment of 22 Arbitrators, and
- re-appointment and appointment of 146 Approved Medical Specialists.

LEARNING AND DEVELOPMENT

In 2015, the Commission conducted a range of forums to provide its workforce with learning and development opportunities. Listed below are the internal and external learning and development activities undertaken by the Commission's staff and specialists.

Internal

- Approved Medical Specialists Annual Conference,
- Approved Medical Specialist bi-monthly forums and Appeal Panel meetings,
- Arbitrator Professional Development Annual Conference,
- Mediator Professional Development Annual Conference, and
- Mandatory online training modules (discussed below).

External

- Moderate and Minor Traumatic Head Injury Seminar (discussed below),
- Decision Making for Tribunal Members and Judicial Officers,
- COAT NSW Chapter Annual Conference, and
- Continuing Legal Education (discussed below).

Mandatory Online Training

The Commission requires all employees, including hired employees and contractors employed for greater than three months, to complete mandatory training modules. The modules were developed with input from topic experts to address identified knowledge gaps across the organisation, and to build organisational and individual capabilities. Existing employees are required to complete refresher modules every two years.

The modules take approximately 30 minutes to complete and a score greater than 70 per cent must be achieved. The modules have actors simulating realistic workplace incidents. The images include simulated workplace accidents which illustrate the potential consequences of failing to comply with health and safety obligations.

In 2015, the following modules were completed:

- Module 2 – Drug and Alcohol Awareness
- Module 7 – WHS Risk Management.

All Commission employees completed the mandatory training modules by the end of 2015.

Moderate and Minor Traumatic Head Injury Seminar

This conference was a joint venture with SIRA. The conference was designed to provide a short, focused seminar on one aspect of medical assessments conducted by medical professionals in both agencies.

Held on 28 November 2015, the conference was attended by 47 medical specialists in moderate and minor head injury trauma from the Commission and SIRA. The conference attracted continuing professional development points for those who attended.

Continuing Legal Education

Legal practitioners engaged by the Commission are required to participate in mandatory continuing legal education to retain their NSW Law Society Practising Certificates. In February/March each year the Commission organises a half-day session for legal staff to meet CLE requirements in:

- ethics and professional responsibility,
- practice management and business skills, and
- professional skills.

The programs are designed to be both informative and interactive, with opportunity for staff to participate in group discussions. The participants are fully involved in the learning process, so that the knowledge and skills can be quickly integrated into daily practice.

In 2015, a session was organised by the Commission and delivered by Legalwise Seminars Pty Ltd. Legal staff from the Motor Accidents Authority, Safety Return to Work and Support, and the WorkCover Independent Review Office were invited to attend. In total, 46 participants attended the session held on 19 March 2015.

Continuing Medical Education

Approved Medical Specialists are required to participate in ongoing professional development activities. The Commission organises bi-monthly forums and seeks accreditation from the relevant medical colleges to enable Approved Medical Specialists who attend these events to claim continuing medical education credit points for attending.

The forums are chaired by Approved Medical Specialists. The events provide an opportunity for Approved Medical Specialists to interact and discuss best practice for their specialised fields. The Commission supports the events by providing the facilities and supporting administration.

WORK HEALTH AND SAFETY

The Commission's work health and safety program is overseen by the Work Health and Safety Committee.

The Commission has a systematic approach to managing health and safety in the workplace, as required by the *Work Health and Safety Act 2011*. The Commission actively works to minimise risks and improve safety in the workplace through the following strategies and procedures:

- establishment of a Work Health and Safety Committee,
- regularly reviewing and evaluating premises through workplace inspections, carried out by the Work Health and Safety Committee,
- mandatory online training modules, designed with input from topic experts,
- continually promoting work health and safety and training staff on the requirements of health and safety in the workplace,
- communicating and consulting with staff, management and SIRA,
- injury and hazard management, including promptly reporting safety issues and taking immediate and appropriate preventative and corrective action,
- ensuring management and staff responsibilities are clearly defined, and
- ensuring workstations are correctly set-up and used, including engaging the expertise of ergonomic specialists.

In 2015, all staff completed the online WHS training modules on 'Drug and Alcohol Awareness' and 'WHS Risk Management'.

WELLNESS INITIATIVES

During 2015, Commission staff participated in a number of wellness initiatives. These included:

- on-site flu vaccinations,
- ergonomic assessment of workstations,
- early detection initiative – aimed at preventing and better managing illness and disease,
- RU OK? Day – to raise awareness and participation among staff to regularly and meaningfully ask colleagues "R U OK?", and
- fitness passport.

The following social events were organised in recognition of the efforts by some of the State's community groups and of the Commission's workforce:

- annual Christmas raffles – fund-raising for the Salvation Army Christmas Appeal,
- Wear Orange Wednesday (WOW) – raising awareness and acknowledgement of the work done by the NSW State Emergency Service,
- Christmas party – informal function for members, staff and service partners at The Pullman Hotel, and
- Melbourne Cup festivities.

WORK/LIFE BALANCE

The Commission is committed to working with staff to develop and maintain a healthy work/life balance including providing flexible work arrangements to meet individual needs.

During 2015, the Commission provided access to a range of flexible working arrangements, including:

- part-time work and job sharing,
- flex-time and other flexible working hour arrangements,
- flexible leave arrangements and the option of purchasing additional leave or taking leave at half pay,
- study assistance, and
- temporary employment assignments.

The Commission also supports flexible working arrangements through its health and wellbeing program.

STAFF REVIEW, REWARD AND DEVELOPMENT

The Commission's Review, Recognition & Development (RRD) strategy aims to assist the organisation and its staff to improve performance. The RRD provides a clear process to identify training and skills development requirements, develop individual capabilities, review performance and recognise achievements. The RRD system helps equip staff with the relevant skills to meet the challenges of their work.

There are three stages in the RRD cycle which are in synchronisation with the organisation's business and corporate planning cycle:

July/August:

Planning involves setting objectives and developing a plan to build individual capabilities.

December/January:

Mid-Cycle Review involves reviewing objectives (and if necessary amending them), assessing progress and discussing future performance.

July/August:

Annual review involves reviewing results and discussing the appraisal outcomes.

In August 2015, 100 per cent of eligible staff completed a new plan. The Commission approved relevant training for all staff with agreed development requirements.

WORKPLACE DIVERSITY

The Commission's workplace diversity policy emphasises valuing and respecting the diversity of our workforce and the contributions of our employees. The Commission recognises and embraces the important skills and experiences of people from different cultures and backgrounds.

In line with best practice and legislative requirements, the Commission actively engages a strategy of attracting a diverse workforce free of discrimination and recognises the importance of providing equal employment opportunities in recruitment and staff development. The Commission's employee diversity is shown in the following table:

Workplace diversity 2015 workforce profile ^[1]	
Male	45%
Female	55%
Aboriginal and Torres Strait Islander	1
Person with a disability	4
Person from a racial, ethnic or ethno-religious minority	17

[1] The workforce diversity statistics quoted are the 2014/15 headcount figures, as at 18 June 2015 (being the census date for the PSC Annual Workforce profile data-collection).

During 2015, staff participated in Harmony Day and NAIDOC celebrations, as part of the Commission's diversity recognition.

NATIONAL DISABILITY STRATEGY

The Commission supports the *National Disability Strategy NSW Implementation Plan* and is committed to enhancing opportunities available to people with a disability in the workplace. Commission staff who have a disability have access to:

- adjustments to the workplace,
- targeted skills development and training,
- support networks,
- awareness raising sessions for staff around disability, and
- career development opportunities.

The Commission's disability policy also extends beyond our workforce to ensure visitors are provided safe and appropriate access to the Commission's meeting venues. In addition to the Commission's visitors, other bodies including SIRA, also use the Commission's meeting rooms. SIRA and the WorkCover Independent Review Office also have access to the Commission's library.

EMPLOYEE CONSULTATION

The Commission is committed to workplace relations that value consultation, communication, cooperation and input from employees on matters that affect the workplace.

There are formal and informal opportunities for employee consultation including:

- quarterly staff meetings – formal structured information sharing, followed by an opportunity for informal networking,
- Joint Consultative Committee – meetings are a formal forum with representatives from the Commission's management, Public Service Association of NSW and other government agencies,
- staff surveys – online surveys available for staff to provide feedback on workplace issues, such as work health and safety, and
- email and 'open door' policy – in addition to formal consultation arrangements, the Commission's management welcome employee comments through email and they also practise an open door policy to encourage an inclusive workplace environment.



PART FOUR: APPENDICES

APPENDIX 1: ARBITRATORS

APPENDIX 2: APPROVED MEDICAL
SPECIALISTS

APPENDIX 3: MEDIATORS

APPENDIX 1 – ARBITRATORS

(AS AT 31 DECEMBER 2015)

SENIOR ARBITRATORS

Marshal Douglas

Catherine McDonald

Michael Snell

ARBITRATORS

Full-Time

Brett Batchelor

Glenn Capel

John Harris

Josephine Snell

Paul Sweeney

Tim Wardell

Sessional

Linda Ashford A/J

Elizabeth Beilby

Ross Bell

Anne Britton

Garth Brown

William Dalley

Grahame Edwards

Gerard Egan

Deborah Moore

Jane Peacock

Richard Perrignon

Carolyn Rimmer

John Wynyard

The Registrar may exercise all the functions of an Arbitrator by operation of s 371(1) of the 1998 Act.

The Deputy Registrars also hold Arbitrator appointments.

APPENDIX 2 – APPROVED MEDICAL SPECIALISTS

(AS AT 31 DECEMBER 2015)

SENIOR APPROVED MEDICAL SPECIALISTS

Dr Mark Burns

Dr Drew Dixon

Assoc Prof Michael Fearnside

Dr John F W Garvey

Dr Henley Harrison

Dr Julian Parmegiani

APPROVED MEDICAL SPECIALISTS

Dr Robert Adler

Dr Peter Anderson

Dr Tim Anderson

Dr Douglas Andrews

Dr John Ashwell

Dr Mohammed Assem

Dr John Baker

Dr Michael Baldwin

Dr John Beer

Dr Christopher Bench

Dr Neil Berry

Dr Trevor Best

Dr Graham Blom

Dr James Bodel

Assoc Prof Geoffrey Boyce

Dr Kenneth Brearley

Dr Robert Breit

Assoc Prof David Bryant

Dr Gregory Burrow

Dr William Bye

Dr Beatrice Byok

Prof John Carter

Dr Edward Cassidy

Dr Lionel Chang

Dr Christopher W Clarke

Dr Richard Crane

Dr David Crocker

Dr Paul Curtin

Dr Michael Davies

Dr Thomas Davis

Dr Michael Delaney

Dr John Dixon-Hughes

Dr Catherine Drummond

Dr Hugh English	Dr Murray Hyde-Page
Prof Paul Fagan	Dr Robert Ivers
Dr Donald Kingsley Faithfull	Dr Caron Jander
Dr Antonio E L Fernandes	Dr Lorraine Jones
Dr Sylvester Fernandes	Dr Mark Jones
Dr Robin B Fitzsimons	Dr Sornalingam Kamalaharan
Dr Robert Gertler	Dr Nalayini Kanagaratnam
Dr Peter Giblin	Dr Hari Kapila
Dr Margaret Gibson	Dr Gregory Kaufman
Dr John Giles	Dr Edward Korbel
Dr John Glass	Dr Lana Kossoff
Dr Michael Gliksman	Dr Damodaran Prem Kumar
Prof Nicholas Glozier	Dr Sophia Lahz
Dr David Gorman	Dr David Lewington
Dr Richard Haber	Dr Monica Ling
Dr Ian Hamann	Dr Edmund Lobel
Dr Scott Harbison	Dr Michael Long
Dr John Harrison	Dr Frank Machart
Dr Philippa Harvey-Sutton	Dr Nigel Marsh
Dr Mark Herman	Dr Wayne Mason
Dr Roland Hicks	Dr Tommasino Mastroianni
Dr Yiu-Key Ho	Dr Andrew McClure
Dr Peter Holman	Dr Michael McGlynn
Dr Alan Home	Dr David McGrath
Dr Michael Hong	Dr Gregory McGroder
Dr Nigel Hope	Dr John D McKee
Dr Kenneth Howison	Dr Ian Meakin

Dr Allan Meares

Dr Ross Mellick

Prof George Mendelson

Dr Patrick John Morris

Dr Paul Christopher Myers

Dr Bradley Ng

Dr Steven Ng

Dr Paul Niall

Dr Brian Noll

Dr Chris Oates

Dr David Daniel O'Keefe

Dr John O'Neill

Dr Brian Parsonage

Dr Robert Payten

Dr Roger Pillemer

Dr Stuart Porges

Dr Thandavan B Raj

Dr Anne-Marie Rees

Dr Loretta Reiter

Dr Samson Roberts

Assoc Prof Michael Robertson

Dr Michael Rochford

Dr Norman Robert Rose

Dr David Rosen

Dr Tom Rosenthal

Assoc Prof Michael Ryan

Assoc Prof Anthony Samuels

Dr Edward Schutz

Dr Joseph Scoppa

Dr Wasim Shaikh

Dr Tarra Shaw

Dr John Silver

Dr Andrew Singer

Dr John Sippe

Prof David Sonnabend

Dr Michael Steiner

Dr John P H Stephen

Dr J Brian Stephenson

Dr Harry Stern

Dr Geoffrey Stubbs

Dr Stanley Stylis

Dr Ash Takyar

Dr Nicholas A Talley

Dr Stuart Taylor

Dr Phillip Truskett

Dr William Walker

Dr Tai-Tak Wan

Dr Ian Wechsler

Dr George Weisz

Dr Gregory White

Dr Kalev Wilding

Dr Brian Williams

Assoc Prof Siu Wong

APPENDIX 3 – MEDIATORS

(AS AT 31 DECEMBER 2015)

Robyn Bailey

Ross Bell

Jak Callaway

Philip Carr

Janice Connelly

Gerard Egan

Geri Ettinger

Robert Foggo

David Flynn

Nina Harding

John Hertzberg

John Ireland

Katherine Johnson

James Kearney

John Keogh

Stephen Lancken

Margaret McCue

Ross MacDonald

John McDermott

John McGruther

Garry McIlwaine

Chris Messenger

Dennis Nolan

Philippa O'Dea

Jennifer Scott

John Tancred

John Weingarth

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