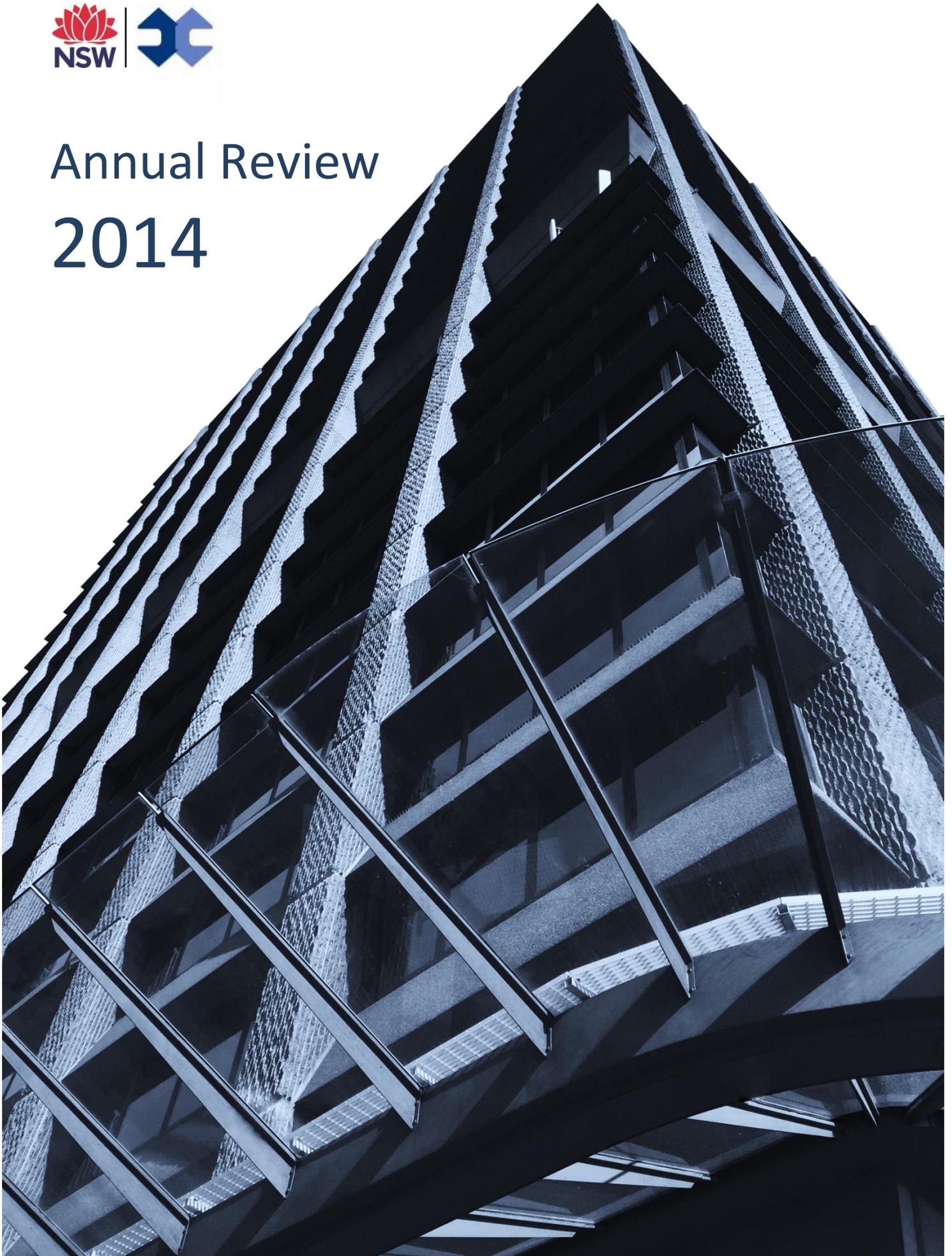




# Annual Review 2014



Workers Compensation Commission

## ONLINE VERSION

The online version of this Annual Review can be accessed at [www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au)



With the exception of the Workers Compensation Commission corporate logo and where otherwise noted, all material presented in this document is provided under a Creative Commons Attribution 3.0 Australia (<http://creativecommons.org/licenses/by/3.0/au/>) licence.

# CONTENTS

<b>PART 1</b>	<b>OVERVIEW</b>	<b>1</b>
Chapter 1:	President’s Foreword	2
Chapter 2:	Registrar’s Report	4
Chapter 3:	Year in Review	5
Chapter 4:	Priorities for 2015	6
Chapter 5:	About the Commission	7
<b>PART 2</b>	<b>PERFORMANCE</b>	<b>21</b>
Chapter 6:	Workload and Performance	22
Chapter 7:	Key Performance Indicators	28
Chapter 8:	Developments in the Law	29
Chapter 9:	Education and Collaboration	34
<b>PART 3</b>	<b>GOVERNANCE, PEOPLE AND CULTURE</b>	<b>37</b>
Chapter 10:	Governance and Accountability	38
Chapter 11:	People and Culture	42
<b>PART 4</b>	<b>APPENDICES</b>	<b>47</b>
Appendix 1:	Arbitrators	48
Appendix 2:	Approved Medical Specialists	49
Appendix 3:	Mediators	50



# PART 1

## OVERVIEW

Chapter 1: President's Foreword	2
Chapter 2: Registrar's Report	4
Chapter 3: Year in Review	5
Chapter 4: Priorities for 2015	6
Chapter 5: About the Commission	7

# PRESIDENT'S FOREWORD



In last year's annual review I reported on the Commission's management of a significant spike in applications filed as a consequence of the introduction of the 2012 legislative amendments. Throughout 2014 the Commission continued to concentrate on resolving the remainder of those matters. The Commission started the year with 5,987 matters on hand. By the end of December that number had been significantly reduced to 2,536 by utilising a range of case management strategies.

Not surprisingly, due to the additional and unexpected volume of work there were some delays in the resolution of matters. However, I am delighted to report that the Commission has now been successful in restoring its standard timeframes for the timely disposal of matters. For new applications, telephone conferences are being listed 35 days after registration in accordance with the key performance indicator set by the Commission in this regard. Conciliation and arbitration hearings are listed within 21 days from the telephone conference, extended to 56 days if directions for production of documents are issued.

It goes without saying that the realisation of the Commission's objectives can only be achieved through the collective contribution made by dedicated staff and members. In that regard the Commission is extremely fortunate.

I am pleased to report that at mid-year the majority of Arbitrators and Mediators were re-appointed for a further term, as was Deputy President Bill Roche. At that time a number of new appointments were announced. Former Deputy Registrar Rod Parsons was appointed as Registrar from 1 July 2014. Rod has an extensive history in court and tribunal administration, as well as a detailed knowledge of the workers compensation legislation and jurisprudence. I congratulate him on his appointment. I also congratulate Catherine McDonald on her appointment as a full-time Arbitrator and the appointments of Philip Carr, Gerard Egan, Philippa O'Dea and John Tancred as Mediators. Each appointee brings substantial skills and experience to the Arbitrator and Mediator ranks.

It is essential that our members are appropriately resourced to assist them to make informed and timely decisions. Given the rapid rate of change in the jurisprudence under which the Commission operates, we considered it timely to develop a new edition of the Arbitrator Practice Manual to assist Arbitrators source the latest information. In November I was delighted to launch the second edition of the Arbitrator Practice Manual at the Arbitrators' annual conference. The second edition enhances the original manual by incorporating commentary on the significant changes to the workers compensation legislation introduced by the 2012 amending Act. It is particularly gratifying to note that this edition, like the last, is exclusively the work of the Commission's members and staff and I thank those who contributed to its publication.

# PRESIDENT'S FOREWORD

In the second half of the year the Commission participated in an assessment of its performance under the International Framework for Tribunal Excellence. The framework is a tool for measuring a tribunal's performance against other tribunals within Australia and internationally, using standardised questions over eight areas of tribunal excellence. The assessment was undertaken by an independent consultant, Diacher Consulting. The catalyst for undertaking the assessment was not only to measure current performance but also to establish a benchmark for future assessment. The Commission's performance was rated in the top percentile when measured against the eight areas of performance surveyed.

There is understandably an expectation among the Commission's stakeholders that the Commission will continue to evolve and make the best possible use of its resources. In late November, the Commission settled its strategic plan for the next three years. The planning process provided an ideal opportunity to focus on emerging trends, particularly the trend in courts and tribunals to invest in the use of technology to improve efficiency. One of our major goals over the next three years will be to enhance the use of e-filing. The lodgment of applications and other documents by parties electronically will strengthen our case management processes and ensure more effective use of the Commission's resources.

During the year there were a number of significant decisions delivered by the High Court, New South Wales Court of Appeal and Commission Presidential members. Many of those decisions concerned issues of interpretation or application of provisions introduced by the 2012 amending Act. Some of

those decisions are discussed later in this review under the heading "Developments in the Law".

Finally, I take this opportunity to thank all members and staff of the Commission for their dedication and hard work throughout a particularly demanding year.



His Honour Judge G Keating  
**President**

# REGISTRAR'S REPORT

The significant increase in dispute lodgments following the 2012 legislative amendments has been well documented. Despite the initial increase, the full impact of the legislative amendments has resulted in a substantial reduction in the number of disputes lodged with the Commission.

For the most part, dispute lodgments in 2014 remained steady at about 65% of pre-2012 lodgment levels. Due to the backlog of cases carried forward from the previous year, it was not until the end of 2014 that the reduction in lodgments was fully appreciated.

As a result of the accumulated caseload, 2014 was always going to be a busy and challenging period. By year's end, the Commission had held 7,388 telephone conferences, 4,422 conciliation/arbitration hearings, 4,439 medical assessments and resolved over 9,300 workers compensation disputes. In addition, 1,189 work injury damages disputes were resolved.

To resolve over 10,000 disputes in the calendar year is a notable accomplishment particularly in the circumstances. It reflects well on the effectiveness of the Commission's dispute resolution model and the commitment and effort of our members, staff and service partners.

Although entitlement to legal costs was abolished in 2012, almost all parties to disputes were legally represented. Arbitrators and Presidential members were repeatedly called upon to determine disputes concerning the interpretation and operation of the 2012 legislative amendments. Disputes determined by Arbitrators in 2014 increased by one-third over the previous calendar year. The added complexity and number of determinations led

to a 58 per cent increase in appeals to Presidential members. Although the number of appeal applications increased substantially, the revocation rate for appealable Arbitrator decisions remained extremely low at five per cent.

Behind the scenes, the Commission continued to implement measures to realign its resources with its caseload. By the end of 2014, the Commission's staff establishment had reduced by approximately one-fifth. Further realignment of the Commission's establishment and resources will be necessary in 2015. It has been a difficult period for staff, with a short term, heavy caseload and a long term, uncertain future. The commitment of staff to the work and collegial support in the face of great uncertainty are to be commended.

Next year will mark a return to timeliness in the dispute resolution model. On the back of a strong finish to 2014, the Commission will have greater opportunity in 2015 to concentrate resources to developments in our strategic focus areas – our clients, our people and our operations – with particular attention and commitment to expanding the Commission's e-filing capability.

My first period of appointment as Registrar has been rewarding and I express my gratitude to the President, Deputy Presidents, Deputy Registrar, members, staff and service partners for their support.



Rodney Parsons  
**Registrar**

# YEAR IN REVIEW

## LOOKING BACK

In 2014 the Commission:

- held 7,388 teleconferences, 4,422 con/arbs and 4,439 medical assessments
- resolved 9,344 workers compensation disputes
- resolved 1,189 work injury damages disputes
- recruited and appointed 29 Arbitrators and 31 Mediators including inducting new appointees
- re-appointed Deputy President Bill Roche
- appointed Registrar Rod Parsons
- commenced a review of regional venues for suitability and fitness for purpose
- held annual training days for Arbitrators and Approved Medical Specialists
- conducted a training day for Arbitrators on Medical Appeal Panels
- held a series of training seminars for staff
- facilitated a workshop for Unions NSW regarding workplace injury management disputes
- held periodic user group meetings with legal representatives from The Law Society of NSW and 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 MAA and WIRO on Rule 57 requirements
- hosted a visit from the Department of Labor, Tapai City Government
- held quarterly Arbitrator practice meetings
- held bi-monthly management meetings and quarterly staff meetings
- held quarterly work health and safety meetings
- held periodic Joint Consultative Committee meetings with OFS, SRWS and union representatives
- participated in Legal Stakeholder Reference Group meetings
- participated in the WIRO Parkes project
- retained membership of the Council of Australasian Tribunals and committee membership of the NSW Chapter
- completed its three-year strategic plan for 2015-17
- facilitated a project to publish Presidential decisions by LexisNexis
- issued the 2<sup>nd</sup> edition of the Arbitrator Practice Manual
- completed the International Framework for Tribunal Excellence
- completed a Direction for Production review project
- completed a medical assessment template review project
- initiated an audit review project
- undertook a staff establishment review and realignment
- issued various external publications including *On Appeal*, *On Review*, *Decisions of Medical Appeal Panels* and e-Bulletins
- issued periodical bulletins to Arbitrators and Approved Medical Specialists
- facilitated use of Commission accommodation by MAA, LTCS and WIRO
- published 84 Presidential member decisions on AustLII and 28 decisions on LexisNexis
- published 494 Arbitrator decisions, 34 Medical Appeal Panel decisions and 31 costs assessment decisions on the Commission's website
- participated in the Harmony Day and NAIDOC celebrations

# PRIORITIES FOR 2015

## LOOKING FORWARD

In 2015 the Commission will:

- focus on the early resolution of disputes
- deliver timely and durable decisions
- continue to work collaboratively with SRWS, the legal profession and other stakeholders
- continue to deliver internal and external training and legal education seminars
- issue information and publications to educate the legal profession and others
- implement client and stakeholder surveys and deliver a customer service charter
- examine e-commerce options including e-screens for online lodgment, modify its website and improve accessibility of its website for workers
- continue second and third stages of its organisation realignment
- develop and implement a professional development program for Mediators
- implement operational risk and audit programs
- conduct city and regional road shows for the legal profession and insurers
- finalise the regional venue review project
- develop a Registrar Practice Manual

## STRATEGIC PLAN 2015-17

The Commission is committed to its vision, mission and values.

### Our Vision

To be recognised for excellence in dispute resolution.

### Our Mission

To provide a fair and independent forum for the efficient and just resolution of workers compensation disputes in New South Wales.

### Our Values

- Fairness
- Independence
- Accessibility
- Teamwork
- Respect
- Professionalism

The Commission's three-year Strategic Plan 2015-17 identifies three strategic focus areas to develop our operational capabilities:

### Exceptional Client Service

- Responsive, innovative and timely delivery of services

### Skilled and Committed People

- Foster a culture of excellence through leadership, learning, teamwork and effective communication

### Operational Excellence

- Targeted development of our business systems to strengthen performance

# ABOUT THE COMMISSION

## OUR ROLE

The Workers Compensation Commission is established under the *Workplace Injury Management and Workers Compensation Act 1998* and commenced operation on 1 January 2002. The 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 resolutions in work injury damages disputes through mediation.

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

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

The Hon. Dominic Perrottet MP, Minister for Finance and Services, is the Minister responsible for the administration of workers compensation legislation, except for the appointment and remuneration of members. Members of the Commission are appointed by the Attorney General.

## OUR OBJECTIVES

Set out in section 367 of the 1998 Act, the Commission's objectives are to:

- Provide a fair and cost effective system for the resolution of disputes;
- Reduce administrative costs;

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

## 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 the entitlement to compensation.

In-person conciliations and arbitration hearings (con/arbs) are conducted at various locations throughout New South Wales, usually where convenient to injured workers. Con/arbs are held at 20 different regions throughout New South Wales, from Albury to the south to Tweed Heads to the north and west to Broken Hill.

The Commission has proven to be effective in resolving disputes in a timely manner. It encourages dialogue and the early exchange of information between the parties. Most parties are legally represented. If required, an interpreter is provided without cost to a worker.

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.

# ABOUT THE COMMISSION

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

## 1. General 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

## 2. Medical Disputes

- The degree of permanent impairment as a result of an injury
- 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 \$8,512.10 (as at 1 October 2014)
- Work 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:

## 6. Arbitral Appeals

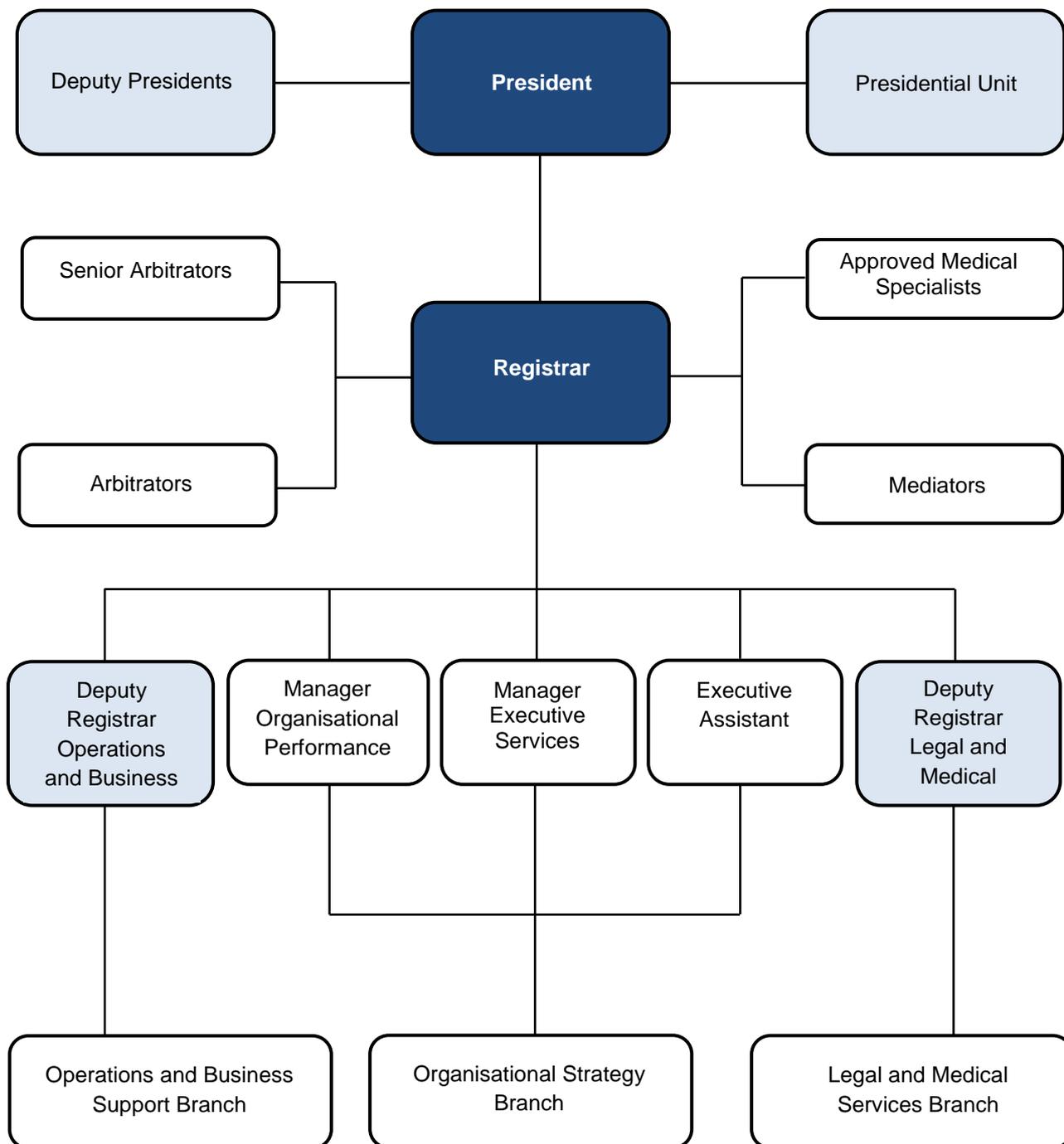
- A party to a dispute in connection with a claim for compensation may appeal to a Presidential member against a decision of an Arbitrator
- An appeal is limited to determination of whether the decision was or was not affected by any error of fact, law or discretion
- The amount of compensation at issue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

## 7. 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
  - Whether the degree of permanent impairment is fully ascertainable

# ABOUT THE COMMISSION

## ORGANISATION STRUCTURE



# ABOUT THE COMMISSION

## OUR MEMBERS

As at 31 December 2014, the Commission consisted of the following members:

- President: Judge Greg Keating
- Deputy Presidents: Bill Roche and Kevin O’Grady
- Acting Deputy President: Lorna McFee
- Registrar: Rod Parsons
- Senior Arbitrators: Deborah Moore and Michael Snell
- Arbitrators: 11 full-time, three part-time and 15 sessional (see Appendix 1)

### President and Deputy Presidents

The President is the head of jurisdiction and works closely with the Registrar in the overall 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, and applications to strike out pre-filing statements in work injury damages matters.

### 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 the 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 in two phases. The first is by way of telephone conference (teleconference). If the dispute cannot be resolved at teleconference, 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, an Arbitrator will commence a formal 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

# ABOUT THE COMMISSION

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 (discussed below). Decisions of Medical Appeal Panels are subject to judicial review by the Supreme Court of NSW.

In addition to 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 providing binding assessments of the degree of permanent impairment of a worker as a result of a work-related injury and non-binding opinions on whether proposed medical treatment is reasonably necessary.

Approved Medical Specialists are appointed by the President. In 2014, there were 129 Approved Medical Specialists who held appointments and who 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 WorkCover NSW to assess whole person impairment and ensure impartiality. Approved Medical Specialists appointed to assess general medical disputes must also be in clinical practice or teaching.

Medical disputes are referred to Approved Medical Specialists by the Commission or the Registrar.

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 2014)

### 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 conducted in the Commission's Oxford Street premises and in other 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 2014, there were 31 mediators appointed to mediate in work injury damages disputes.

(See Appendix 3 for the list of Mediators, as at 31 December 2014)

# ABOUT THE COMMISSION

## OUR BUSINESS UNITS

The Commission's staff establishment as at 31 December 2014 was 82 full-time equivalent positions across four business areas.

### Presidential Unit

The Presidential Unit is a small team comprising the President, two Deputy Presidents, an Acting Deputy President and legal and support staff.

The main functions of the unit concern the management and determination of arbitral appeals, questions of law and applications to strike out pre-filing statements.

The Presidential Unit exercises intermediate appellate jurisdiction in the determination of arbitral appeals. This function is intended to ensure that any identified error in an Arbitrator's determination can be rectified expeditiously and at minimal costs to the justice system.

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

The Presidential Unit prepares and publishes *On Appeal*, an electronic publication of summaries of Presidential, NSW Court of Appeal and High Court decisions.

The unit also coordinates and provides secretariat support for the Commission's User Group and organises the annual Inter-Jurisdictional Workers Compensation Dispute Resolution Organisations meeting.

### Organisational Strategy Branch

The Organisational Strategy Branch is responsible for planning, strategy and organisational development. The branch

comprises of [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, WorkCover NSW 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 six units: [Legal Unit](#), [Legal Administrative Support Unit](#), [Legal and Medical Support Unit](#), [Expedited Assessment 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 the ongoing professional

# ABOUT THE COMMISSION

development of Arbitrators, Mediators and Approved Medical Specialists.

The branch also maintains a number of publications, including the *Arbitrator Practice Manual*, *Approved Medical Specialist Practice Manual*, *On Review* and *Decisions of Medical Appeal Panels*.

The [Legal Unit](#) is mainly responsible for managing and determining applications regarding:

- Medical appeals;
- Costs orders and assessments;
- Defective pre-filing statements;
- Disputes regarding access to information and premises, and
- Determination of conduct money/production fees.

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

The [Expedited Assessment Unit](#) is responsible for resolving applications under the expedited assessment provisions, including workplace injury management disputes, interim payment directions and small claims. The unit also manages applications for certification of amounts to be paid for debt recovery in a court of proper jurisdiction.

Expedited assessments are conducted by telephone conference and are designed to be an informal process for resolving disputes. Where parties are unable to reach agreement, the officer convening the teleconference will provide a written decision with reasons. Presumptions operate in favour of issuing decisions for the payment of compensation.

The [Legal Administrative Support Unit](#) provides administrative support to the team of legal officers and expedited assessment 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 unit also circulates decisions of interest to Arbitrators and Approved Medical Specialists and facilitates discussions on novel, complex or interesting developments in the law.

The [Arbitrator Support Unit](#) provides legal and administrative support to full-time, part-time and sessional Arbitrators. Legal staff provide legal research and proofreading services to Arbitrators. Administrative staff distribute files, book travel arrangements, provide word processing and typing support, and deal with general enquiries from Arbitrators.

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 publishing Commission decisions on AustLII, LexisNexis and the Commission's website.

# ABOUT THE COMMISSION

## Operations and Business Support Branch

The Operations and Business Support Branch manages the 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, Darlinghurst premises.

[Dispute Services Unit](#) staff are responsible for providing administrative case management of applications for dispute resolution and applications for mediation, from the end of the information exchange period to closure of the matter, excluding appeals.

As delegates of the Registrar, Dispute Services staff refer medical disputes for assessment by Approved Medical Specialists and determine interlocutory applications in accordance with the Commission's rules. Dispute Services staff also draft Certificates of Determination for the Registrar in relation to permanent impairment compensation awards.

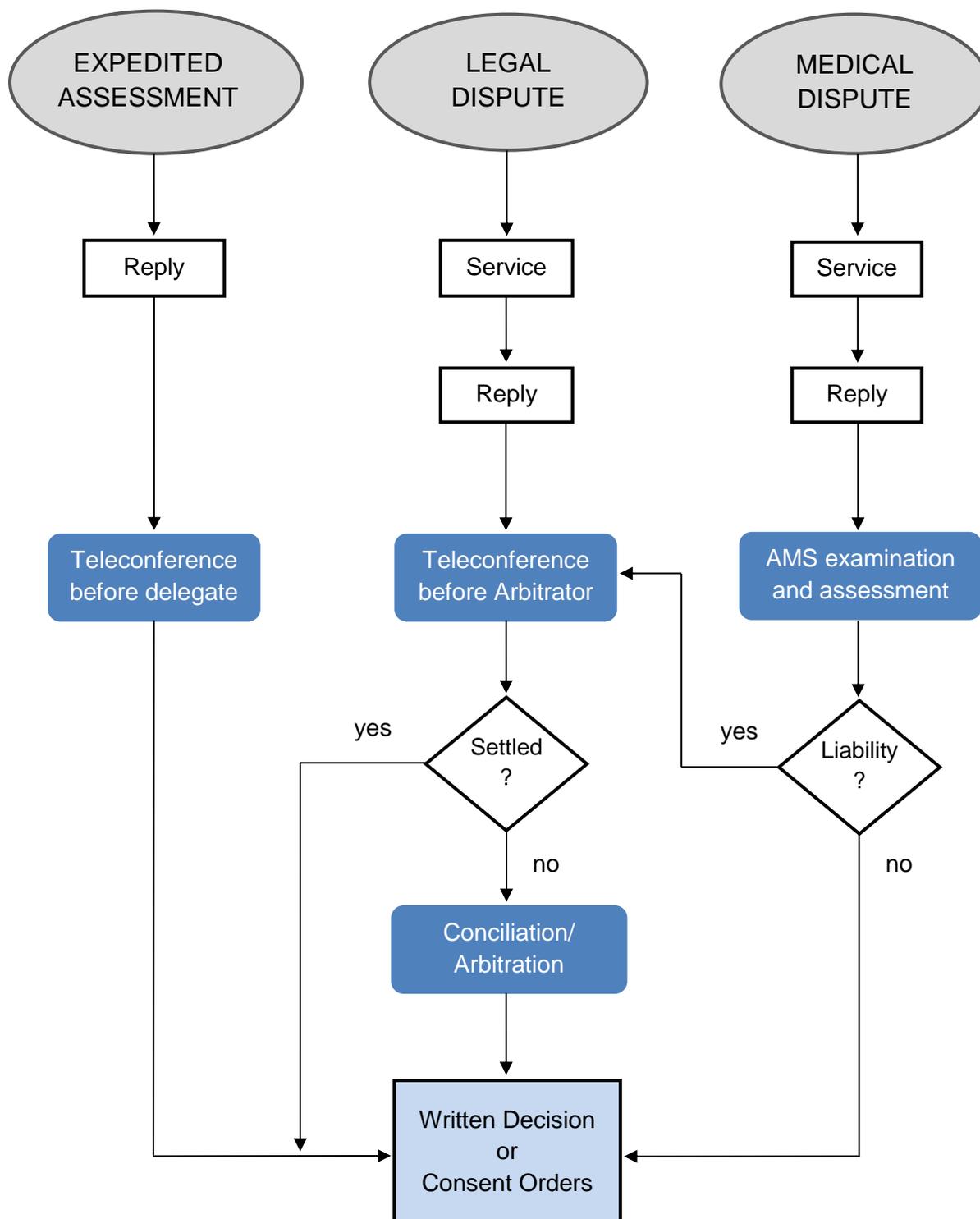
The [Operations Support Unit](#) initiates and undertakes service improvement projects across the Registry Services and Dispute Services Units. The unit develops and maintains business processes and procedures and manages audit and risk within the operational areas.

The [Business Services Unit](#) is responsible for purchasing and processing invoices, managing the Commission's archive and audio processes, managing facilities, including the Commission's premises in Sydney, and sourcing venues in regional and rural NSW for hearings.

The [Information Systems Unit](#) provides support for the Commission's case management system, other IT applications and equipment. The unit also operates a help desk facility for Commission members, staff and service partners and general assistance to the public for online lodgments.

# ABOUT THE COMMISSION

## WORKERS COMPENSATION DISPUTE - PROCESS FLOWCHART



# ABOUT THE COMMISSION

## WORKERS COMPENSATION DISPUTES

The Commission has a unique dispute resolution system for workers compensation disputes, which has been validated by the High Court of Australia and NSW Court of Appeal. The process for resolving a workers compensation dispute 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, where there is no dispute regarding liability, are referred directly to an Approved Medical Specialist most often 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 raised as a general medical dispute.

The Commission also provides an expedited assessment dispute resolution process, which fast tracks disputes to a conference and resolution.

### 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 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 Arbitrator 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, which will be subsequently issued to the parties in writing.

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 an in-person conciliation conference and arbitration hearing (con/arb);
- Refer the dispute to the Registrar for other action (e.g. to arrange a medical assessment by an Approved Medical Specialist)

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

### In-Person Conciliation Conference

If a dispute is not resolved at the teleconference stage, it will be set down for further conciliation, this time requiring the parties to attend in person with their legal representatives.

If the worker lives in Sydney, the meeting 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 conciliation conference in either Sydney or at one of its regional venues, according to the convenience of the worker and the Commission's venue policy.

# ABOUT THE COMMISSION

At the conciliation conference, the Arbitrator will work with the parties to negotiate an agreement in relation to 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.

## Arbitration Hearing

The arbitration hearing, which is open to the public, is the more formal phase of proceedings leading to a legally-binding decision issued by the Arbitrator. Proceedings are sound-recorded and evidence may be taken under oath or affirmation. Occasionally Arbitrators will direct the parties to provide written submissions following the hearing.

At the end of the proceedings, the Arbitrator will most commonly reserve their decision and issue a Certificate of Determination and Statement of Reasons within 21 days of the hearing.

Alternatively, an Arbitrator may give an oral decision immediately following the hearing or shortly thereafter. Oral decisions are sound recorded and a copy can be made available to the parties.

At any time before the Arbitrator makes a decision, the parties may settle the dispute.

The conciliation conference and arbitration hearing (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.

## Medical Assessments

Where liability is not in issue, medical disputes are referred by the Registrar, or delegate, to Approved Medical Specialists. Approved Medical Specialists provide independent medical assessments for the Commission.

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 by an Arbitrator or the Registrar including at the request of the parties.

Approved Medical Specialists will, in all but the rarest cases, examine each worker before issuing a Medical Assessment Certificate.

Where the dispute concerns a claim for permanent impairment, the following matters are certified by the Approved Medical Specialists and 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 medical and related treatment is reasonably necessary as a result of an injury, the dispute must be referred for the opinion of an Approved Medical Specialist. The resulting opinion of the Approved Medical Specialist is evidence, but not conclusive evidence, in proceedings.

# ABOUT THE COMMISSION

## 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 \$8,512.10 as at 1 October 2014);
- Small claims (generally for past claims of weekly compensation benefits for a period not exceeding 12 weeks); and
- Workplace injury management disputes.

The process is informal and is designed to resolve disputes quickly and efficiently. The insurer's claims manager is required to attend to encourage settlement, and the parties are almost always legally represented. Should the parties be unable to reach an agreed resolution of the dispute, a decision will be issued to the parties with reasons for the decision.

## 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 entitlement to 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 (discussed below).

In most cases, a claimant must refer a claim for work injury damages to the Commission for mediation before court proceedings 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 endeavors to negotiate agreement on the claim with the parties. If the parties fail to reach agreement, the Mediator will issue a certificate to that effect and the parties may then proceed to court.

## COSTS ASSESSMENTS

Costs in workers compensation and common law 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 as to apportionment between former and current legal representatives. Assessments are undertaken by delegates of the Registrar.

The Commission also retains jurisdiction to determine costs disputes 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 4 April 2013.

## APPEALS

### Arbitral Appeals

Where a party is aggrieved by the determination of a dispute by an Arbitrator, they may appeal against that decision. The President and Deputy Presidents hear and determine arbitral appeals.

Following formal registration of an Application

# ABOUT THE COMMISSION

to Appeal, a timetable for proceedings will be set down to provide the parties to the dispute with an opportunity to provide written submissions. Presidential members sit alone, and may determine matters 'on the papers', where the written submissions constitute sufficient information, or after a telephone conference or formal hearing.

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. An arbitral appeal is not a review of an Arbitrator's decision and is not a new 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.

After considering the parties' submissions and, where relevant, holding a telephone conference or formal hearing, the Presidential member will make a determination in the dispute, providing written reasons for the decision. The 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 section 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 or reasonably obtainable before the medical assessment);
- Incorrect criteria; and/or
- 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 refer the matter to an Approved Medical Specialist for further assessment, or reconsideration, as an alternative to an appeal.

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 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 Appeal Panel.

# ABOUT THE COMMISSION

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 in proceedings, subject to judicial review by the Supreme Court.

## PRE-FILING STATEMENTS

A defendant employer in common law proceedings may apply to have a worker's pre-filing statement struck out. The President hears and determines these applications but 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.

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

Under section 351 of the 1998 Act, the President may grant leave for a question of law to be referred for his opinion, either by the Arbitrator's own 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.

In most instances, WorkCover NSW will be joined in the proceedings before the President.

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

## **PART 2**

# **PERFORMANCE**

Chapter 6: Workload and Performance	<b>22</b>
Chapter 7: Key Performance Indicators	<b>28</b>
Chapter 8: Developments in the Law	<b>29</b>
Chapter 9: Education and Collaboration	<b>34</b>

# WORKLOAD AND PERFORMANCE

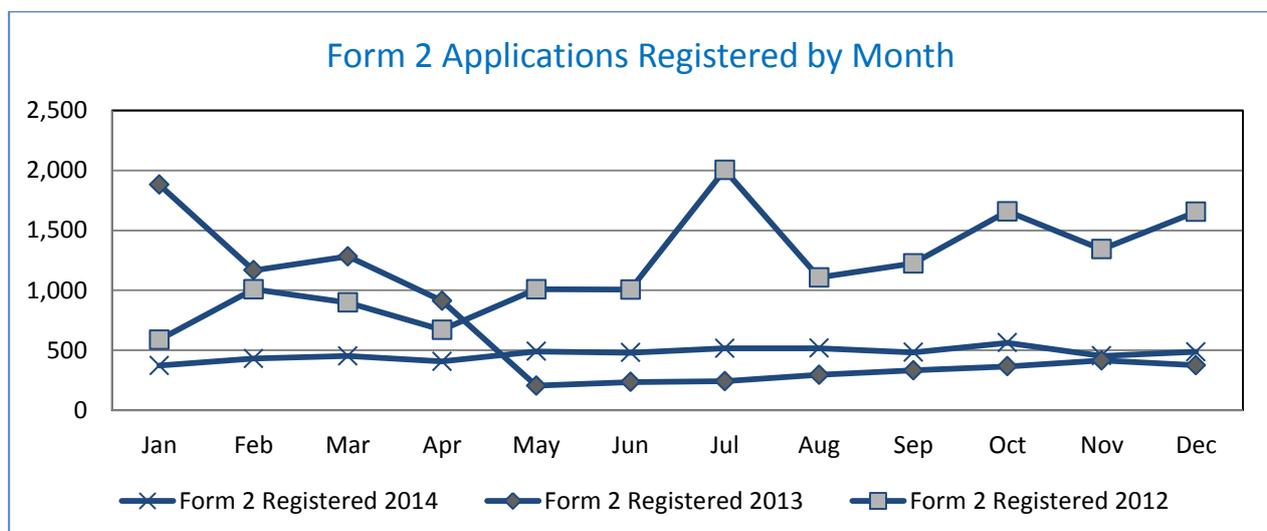
## WORKLOAD

### Total Registrations

Application Type	2012	2013	2014
Application to Resolve a Dispute (Form 2)	14,164	7,702	5,644
Application for Expedited Assessment (Form 1)	700	293	136
Workplace Injury Management Dispute (Form 6)	142	40	45
Application for Assessment of Costs (Form 15)	173	127	54
Registration of Commutation (Form 5A)	252	145	111
Application for Mediation (Form 11C)	1,266	1,280	1,192
Application to Cure a Defective Pre-filing Statement (Form 11B)	3	9	3
Application to Strike Out a Pre-Filing Statement (Form 11E)	7	11	9
Disputed Direction for Access to Information and Premises (Form 11)	4	11	10
Arbitral Appeal (Form 9)	80	72	114
Form 13 - Application for Leave to Refer a Question of Law	2	3	0
Medical Appeal (Form 10)	599	655	684
<b>TOTAL</b>	<b>17,392</b>	<b>10,348</b>	<b>8,002</b>

The Commission registered 8,002 applications in 2014, as detailed in the table above. Overall, registrations were down 23 per cent from 2013, with a decline in lodgments for most application types.

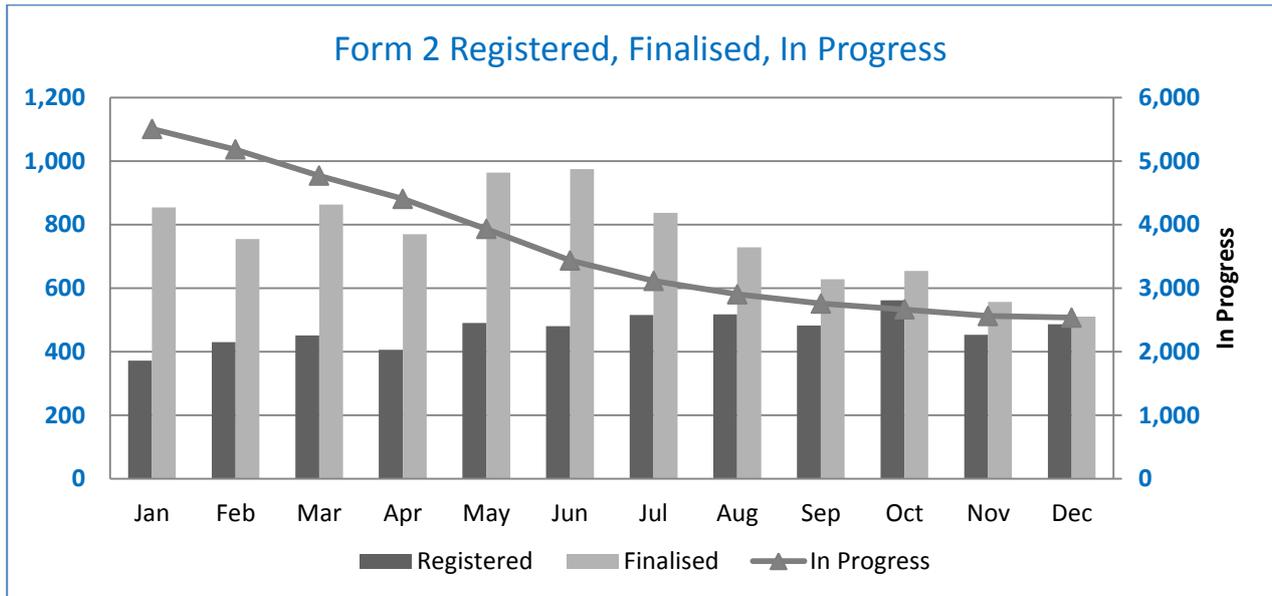
### Applications to Resolve a Dispute (Form 2)



# WORKLOAD AND PERFORMANCE

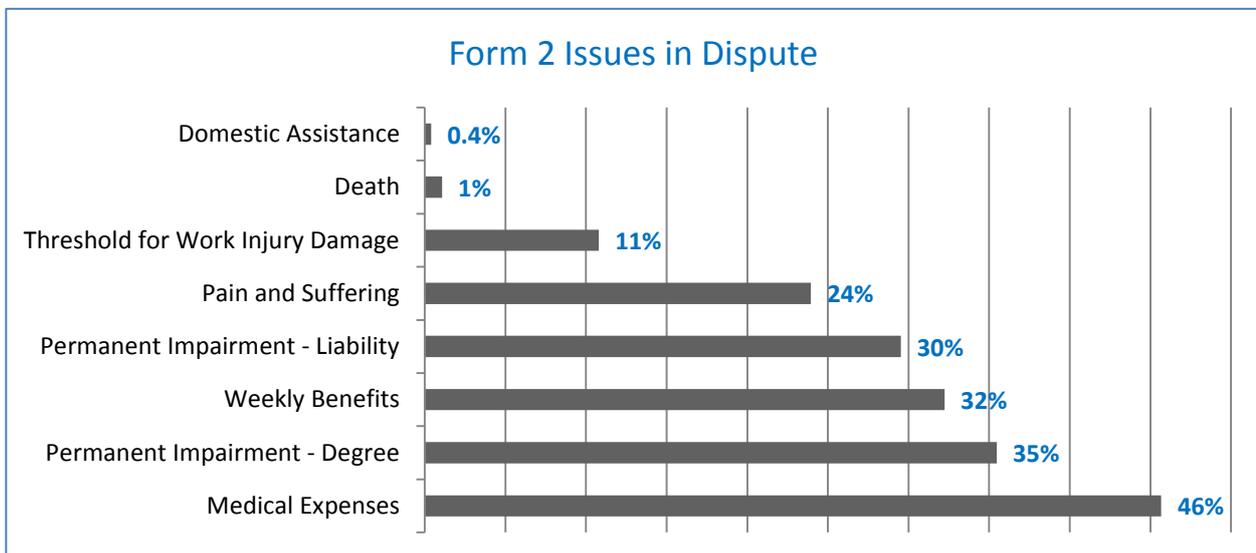
In 2014, Form 2 registrations returned to the more stable patterns experienced prior to the legislative amendments of 2012. The steady number of dispute lodgments has enabled the Commission to more effectively manage matters on hand and return to target listing timeframes by the last quarter of 2014.

During 2014, the Commission registered an average of 470 Form 2 Applications to Resolve a Dispute per month.



Work in progress continued to fall in 2014, as it did in the second half of 2013. The fall in work in progress was achieved by resolving more matters each month than were registered.

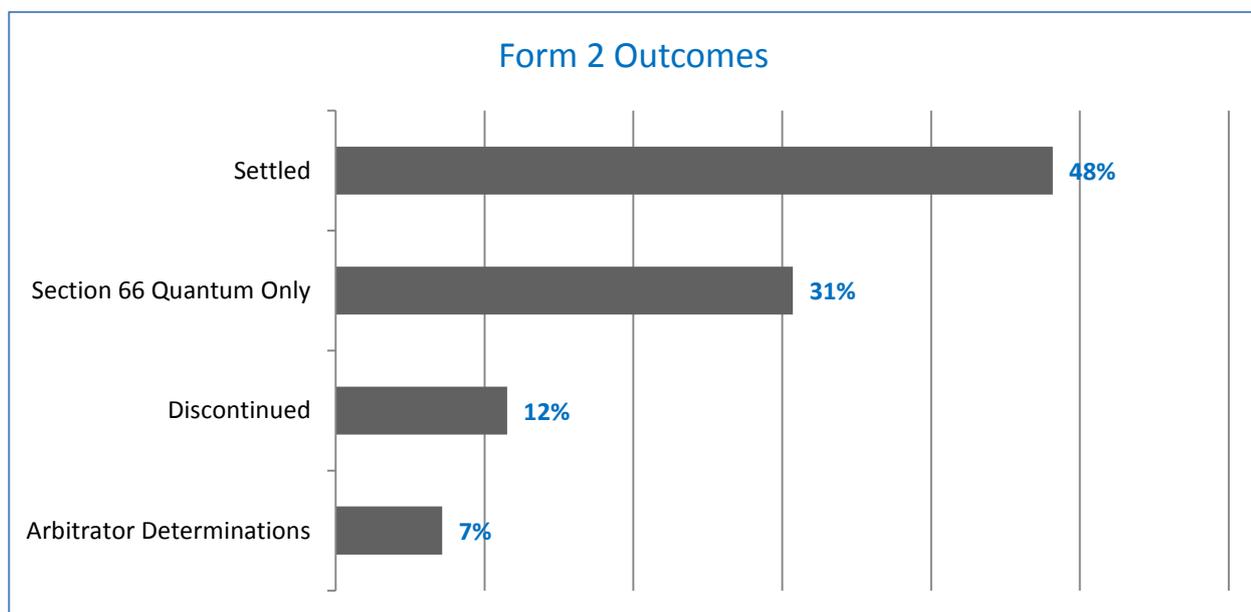
As at 31 December 2014, there were 2,536 Form 2 matters on hand, the lowest level of work on hand since 2010.



# WORKLOAD AND PERFORMANCE

In 2014, the proportion of matters that resolved without the need for determination was 62 per cent. The overall number of matters determined by Arbitrators increased in 2014 over the previous year however the proportion of determinations in 2014 remained relatively similar to 2013, viz. 7 per cent compared to six per cent in 2013.

In November 2013, the Commission amended its dispute resolution procedure for claims for lump sum compensation under section 67. Section 67 disputes are resolved separately to section 66 quantum only disputes. This has led to an increase in the proportion of matters that are finalised by a Certificate of Determination for section 66 quantum only (31 per cent in 2014 as compared to 21 per cent in 2013).



During 2014, the Commission held 4,422 con/arbs in 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

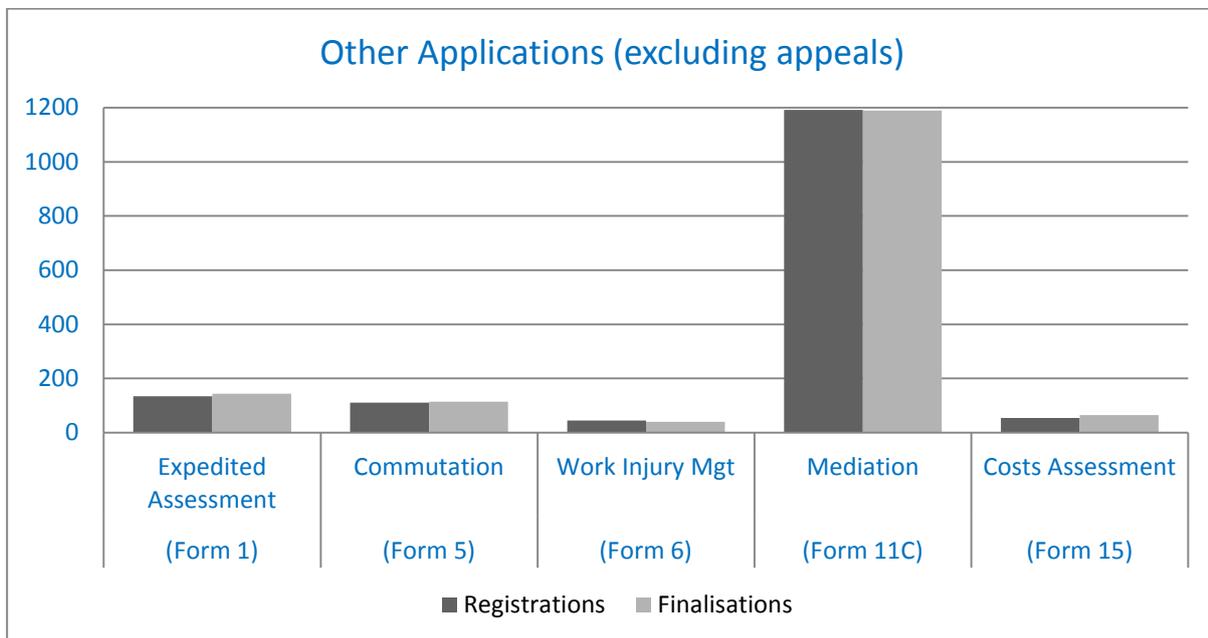
# WORKLOAD AND PERFORMANCE

## Other Applications (excluding appeals)

The number of applications for expedited assessment (Form 1) and cost assessments (Form 15) declined during 2014, continuing the trends that began in 2013.

These reductions resulted from the continuing impact of the 2012 legislative amendments on the workload of the Commission.

For the first time since 2008, Applications for Mediation to Resolve Work Injury Damages Claim (Form 11C) fell in 2014, down seven per cent from 2013 lodgments.



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

Form 6 - WIM Disputes	
% Recommendation Issued	50%
% Discontinued	15%
% Recommendation Refused	10%
% Other	25%

Form 1 - Expedited Assessments	
% Determination Issued	44%
% Settled	23%
% Discontinued	21%
% Refused	8%
% Other	3%

Form 11C - Mediations	
% Settled	56%
% Certificate of Final Offer	32%
% Wholly Denied Liability	7%
% Other	4%

Form 15 - Costs Assessments	
% Determination Issued	48%
% Discontinued	51%
% Other	2%

# WORKLOAD AND PERFORMANCE

## Arbitral Appeals

In the 2014 reporting year, there were 114 arbitral appeal applications (Form 9) registered in the Commission. This represented an increase of 58 per cent from 2013. This increase was in part a result of the operation of the 2012 legislative amendments and the need to interpret new provisions.

The number of appeal application finalised in the Presidential Unit in 2014 was 105, representing an increase of 40 per cent when compared to 2013.

Decisions by Arbitrators were revoked by Presidential members in 29 per cent of appeal applications and confirmed in 46 per cent of appeals. The overall revocation rate, expressed as the proportion of revoked decisions over the total appealable decisions, was five per cent compared to four per cent in 2013.

As at 31 December 2014, there were 30 appeals in progress.

## Medical Appeals

While there was a three per cent decrease in the number of Medical Assessment Certificates issued in 2014 (4,439), the number of medical appeal applications (Form 10) increased by four per cent, from 655 applications registered in 2013 to 684 registered in 2014.

There were 567 medical appeals finalised in 2014 with 190 Medical Assessment Certificates being overturned by a Medical Appeal Panel.

The overall revocation rate was four per cent.

## Judicial Review of Registrar and Medical Appeal Panel Decisions

Parties may seek judicial review of decisions of the Registrar and Medical Appeal Panels in the Supreme Court of NSW.

Ten judicial review applications were registered in the Supreme Court and one application was made to the Court of Appeal in 2014. The judicial review rate remains at less than one per cent of all decisions made.

In 2014, the Supreme Court handed down seven decisions and the Court of Appeal handed down three decisions. Of these decisions, three decisions were quashed, five matters were dismissed and two matters were set aside by consent.

## Appeals to the Court of Appeal from Presidential Decisions

In 2014, the Court of Appeal determined five appeals. Of the appeals that were determined, two were dismissed, one was upheld and leave was refused in one matter. In the fifth matter, leave to appeal was granted to the extent necessary to vary the answers given by the Commission, otherwise leave was refused.

As at the end of 2014, six matters were pending before the Court of Appeal.

## Appeals to the High Court of Australia

The matter of *ADCO Constructions Pty Ltd v Goudappel* [2014] HCA 18 was handed down by the High Court on 16 May 2014, overturning the Court of Appeal's decision.

# WORKLOAD AND PERFORMANCE

## INTERNATIONAL FRAMEWORK FOR TRIBUNAL EXCELLENCE

The Commission engaged independent consultant, Tony Lansdell, of Diacher Consulting to assess the Commission's dispute resolution performance against the International Framework for Tribunal Excellence and to identify areas for improvement. The results were incorporated into the Commission's 2015-17 planning process, undertaken in late 2014.

### Structure of the International Framework for Tribunal Excellence

The International Framework for Tribunal Excellence is a tool that assists tribunals to deliver quality services by providing a resource for assessing a tribunal's performance against eight areas of tribunal excellence and a model methodology for continuous evaluation and improvement. The eight areas are:

1. Independence
2. Tribunal leadership
3. Fair treatment
4. Accessibility
5. Professionalism and Integrity
6. Accountability
7. Efficiency
8. Client needs and satisfaction

The framework was developed by the Council of Australasian Tribunals, which relied heavily on the work of an international consortium that developed the "International Framework for Court Excellence". The international consortium was comprised of Australasian Institute of Judicial Administration (Australia and New Zealand), Federal Judicial Centre (USA), National Centre for State Courts (USA) and Subordinate Courts of Singapore.

The court framework has been applied by courts across Australia and overseas including Land and Environment Court of NSW and District Court of NSW.

Motor Accidents Authority (NSW), Victorian Civil and Administrative Tribunal and the Queensland Civil and Administrative Tribunal have applied the tribunal framework.

### Overall Results

The Commission scored the highest grading band of 6, from a possible grading of 1 to 6 used by the International Framework for Tribunal Excellence.

In his report, Mr Lansdell noted the following about the Commission:

"Level 6 as defined by the Framework provides the following insight:

- An exceptionally well-defined, innovative and strategic approach, which is fully integrated with organisational needs and implemented consistently in all areas.
- Performance levels are excellent in most key indicators and/or there are exceptional improvement trends in most areas; or there are exceptional comparisons and benchmarks in most areas; or results are recorded for all indicators.

This is a very strong first up result, and with the recent performance and operating pressures that the Commission has had to work through, this makes the results even more impressive."

# KEY PERFORMANCE INDICATORS

## 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 outcome.

The table below tracks the progress of timeliness in dispute resolution over the 2014 calendar year. During 2014, the Commission finalised more matters each month than were registered. The work in progress reduced from 5,987 at the end of 2013 to 2,536 at the end of 2014.

The high work in progress level at the end of 2013 resulted from the impact of the legislative changes of 2012. Each quarter in 2014 showed improvements in the percentage of disputes resolved in each bandwidth. By the third quarter of 2014, the Commission had returned to pre-2012 timetables for initial listing of matters for teleconference viz. 35 days from registration. By the last quarter of the year, con/arbs had returned to standard timeframes of three weeks from teleconference if no directions for production were issued and eight weeks if directions for production were issued.

Durability of decisions remained strong with revocations rates at five per cent.

<b>Timeliness</b>	<b>Target</b>	<b>Mar 2014</b>	<b>Jun 2014</b>	<b>Sep 2014</b>	<b>Dec 2014</b>
% of Form 2 resolved (no appeal):					
· 3 months	<b>45%</b>	4%	11%	17%	25%
· 6 months	<b>85%</b>	18%	31%	50%	68%
· 9 months	<b>95%</b>	24%	41%	65%	81%
· 12 months	<b>99%</b>	50%	47%	71%	85%
% of Form 2 resolved (with appeal):					
· 3 months	<b>40%</b>	4%	10%	16%	22%
· 6 months	<b>80%</b>	17%	29%	45%	61%
· 9 months	<b>94%</b>	23%	39%	60%	74%
· 12 months	<b>98%</b>	49%	45%	67%	79%
Average days to resolution for Dispute Applications with no appeal	<b>105</b>	335	327	269	200
	<b>Target</b>	<b>2014 Average</b>			
Average days to resolution of arbitral appeals (Form 9)	<b>112</b>	82			
Average days to resolution of medical appeals (Form 10)	<b>100</b>	98			
% of expedited assessments resolved within 28 days (Form 1 and Form 6)	<b>90%</b>	59%			
	<b>Target</b>	<b>% Revoked</b>			
% of Certificates of Determination revoked on appeal[1]	<b>&lt; 15%</b>	5%			
% of Medical Assessment Certificates revoked on appeal[2]	<b>&lt; 15%</b>	4%			

[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 s66 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

## WEEKLY PAYMENTS OF COMPENSATION

The scheme for the payment of weekly compensation benefits was substantially changed by the 2012 amending Act. The amendments introduced the concept of a work capacity decision. Under the amendments, the Commission has no jurisdiction to determine any dispute about a work capacity decision and may not make a decision, in respect of a dispute, which is inconsistent with a work capacity decision.

In 2014, the question arose as to the Commission's jurisdiction to determine claims for weekly payments of compensation before a work capacity decision has been made and the correct interpretations of the terms "current work capacity", "no current work capacity" and "suitable employment" in section 32A of the 1987 Act.

### *Inghams Enterprises Pty Ltd v Sok* [2014] NSWCA 217

The Court of Appeal dismissed an appeal from the decision of Deputy President O'Grady. In the proceedings before the Deputy President, the appellant employer argued that section 43 of the 1987 Act, which had effect under a transitional regulation from 1 January 2013, precluded the Commission from determining a dispute regarding weekly compensation payments when those payments were subject to a work capacity decision.

At the time of the proceedings in the Commission, a work capacity decision had not been made.

The appellant argued that the prohibition in section 43 extended to matters that could be the subject of a work capacity decision. Deputy President O'Grady, dismissing the appeal, held that in the absence of a work capacity decision, section 43 was not an obstacle to the Commission awarding weekly payments after 1 January 2013.

The Court of Appeal confirmed the decision of the Deputy President, holding that the Commission has jurisdiction to determine claims for weekly payments compensation where the insurer has not made a work capacity decision.

### *Wollongong Nursing Home Pty Ltd v Dewar* [2014] NSWCCPD 55

The employer challenged the Arbitrator's finding that Ms Dewar, whose treating general practitioner had certified her fit for suitable duties, had "no current work capacity" because, before employment can be viewed as "suitable employment", as defined by section 32A, there must be a capacity "which is at least potentially able to be realised for financial reward on the labour market".

Deputy President Roche held that the Arbitrator's approach was incorrect. The legislation merely required an assessment of whether Ms Dewar was able to return to work in either her pre-injury employment or in suitable employment. The definition of "suitable employment" requires the identification of whether there are any "real jobs" that the worker is able to do, regardless of whether those jobs are available to the worker or are of a type or nature generally available in the employment market.

# DEVELOPMENTS IN THE LAW

## LUMP SUM COMPENSATION

Section 66(1) of the 1987 Act, as amended by the 2012 amending Act, provides that only a worker who has received an injury that results in a degree of permanent impairment of more than 10 per cent is entitled to receive compensation for that impairment. The amended provision applies to claims for compensation made on or after 19 June 2012 (by operation of clause 15 of Part 19, Schedule 6 of the 1987 Act). Subsequent regulation provides the amended provision applies to claims for compensation made before 19 June 2012 but not to a claim that “specifically sought” compensation under section 66 or 67 (clause 11 of Schedule 8, 2010 Regulation). Appeals from decisions of the Commission regarding this provision have been determined in both the High Court of Australia and the NSW Court of Appeal. Below is a summary of some of the relevant decisions of 2014.

### *ADCO Constructions Pty Ltd v Goudappel* [2014] HCA 18

The Court of Appeal’s decision in *Goudappel v ADCO Constructions Pty Ltd* [2013] NSWCA 94 was the subject of an appeal to the High Court. The Court of Appeal had allowed an appeal from President Judge Keating and held the 2012 amendments did not apply to claims for lump sum compensation made on or after 19 June 2012 if a general claim only was made before that date.

On appeal, the High Court overturned the Court of Appeal’s decision and confirmed the President’s decision. It was held that the amendments enacted by the 2012 amending Act applied to claims for permanent impairment

compensation made on or after 19 June 2012 where the worker had not made a claim specifically seeking compensation under sections 66 and 67 of the 1987 Act before 19 June 2012.

### *Caulfield v Whelan Kartaway Pty Limited* [2014] NSWCCPD 34

This case was decided shortly after the High Court’s decision in *ADCO v Goudappel*.

Mr Caulfield injured his right knee on 9 August 2005. Unlike Mr Goudappel, Mr Caulfield made a claim before 19 June 2012 specifically seeking for lump sum compensation. In 2010, he was awarded lump sum compensation for 8 per cent whole person impairment.

Mr Caulfield underwent further knee surgery and was assessed by his specialist as having 17 per cent whole person impairment.

On 29 August 2012, he claimed 17 per cent whole person impairment (less the compensation previously paid to him). Liability was disputed on the basis that the worker had already claimed permanent impairment compensation and that, pursuant to section 66(1A), he was precluded from making a second claim in respect of the same injury.

Deputy President Roche found that the effect of clause 15 of Part 19H, Schedule 6 and clause 11, as interpreted by the High Court’s decision in *Goudappel*, was that the amendments introduced by the 2012 amending Act did not apply where the worker had specifically made a claim for permanent impairment compensation before 19 June 2012.

# DEVELOPMENTS IN THE LAW

## *Sukkar v Adonis Electrics Pty Ltd* [2014] NSWCA 459

Mr Sukkar claimed noise induced hearing loss in 1996. The parties entered into an agreement at that time that Mr Sukkar suffered 12.9 per cent binaural hearing loss; the deemed date of injury was the date of the agreement.

On 19 June 2012, Mr Sukkar claimed an additional 9 per cent whole person impairment. The deemed date of injury was agreed as 19 June 2012 (applying section 17(1)(a)(i) of the 1987 Act).

The insurer rejected the claim on the basis that the degree of permanent impairment of 9 per cent did not meet the threshold under section 66(1), as amended by the 2012 amending Act. At the arbitration, Mr Sukkar amended the claim to a claim for 16 per cent impairment resulting from injuries on or shortly before 29 August 1996 and on 19 June 2012, together with a claim under section 67.

A question of law was referred to the President as to whether Mr Sukkar was entitled to aggregate the impairments due to the same pathology to satisfy the section 66(1) threshold or whether there were two separate claims, with different dates of injury.

The President held that the further claim was in respect of a second injury, deemed to have happened on 19 June 2012, and the law applicable to calculating the quantum of the worker's entitlement to lump sum compensation for further loss of hearing was the law as amended by the 2012 amending Act. The Court of Appeal agreed with the reasoning of the President and held that Mr Sukkar's claim failed because the current claim (19 June 2012) did not satisfy the "greater than 10%" threshold. The claim for hearing loss in 1996 had been disposed

of and could not give rise to an entitlement to further compensation for hearing loss after August 1996.

## *Bindah v Carter Holt Harvey* *Woodproducts Australia Pty Ltd* [2014] NSWCA 264

Mr Bindah was injured when a waste bin door struck his face and right eye. At the time, Mr Bindah had a cataract in his right eye. He subsequently had cataract surgeries. As a result of complications, Mr Bindah suffered a giant retinal tear and retinal detachment and suffered total blindness in his right eye. In proceedings before the Commission, an Arbitrator determined by consent that Mr Bindah had suffered an injury to his right eye. Mr Bindah was referred to an Approved Medical Specialist to determine the degree of permanent impairment resulting from the injury.

An Approved Medical Specialist assessed that the blow to the right eye was minor and not substantial so as cause the cataract to progress more quickly. A Medical Appeal Panel confirmed the AMS's assessment. Mr Bindah was assessed to have no permanent impairment as a result of the injury. He unsuccessfully sought judicial review in the Supreme Court. Mr Bindah then appealed to the Court of Appeal.

The Court of Appeal held while it was common ground that Mr Bindah had suffered a personal injury it was for an Approved Medical Specialist to determine if any impairment suffered by the worker was the result of the injury.

It was not open to an Arbitrator to determine whether there was impairment or for the parties to consent that there was impairment. That is a matter wholly within the jurisdiction of an Approved Medical Specialist or Medical Appeal Panel.

# DEVELOPMENTS IN THE LAW

## EXEMPT WORKERS

The 2012 amendments do not apply to or in respect of an injury received by coal miners, police officers, paramedics or fire fighters, regardless of whether the injury was received before or after the commencements of the legislative amendments (refer to clauses 25 and 26 of Part 19H, Schedule 6 of the 1987 Act).

### *Ware v NSW Rural Fire Service* [2014] NSWCCPD 33

Mr Ware was employed by the Rural Fire Service as a motor mechanic. The vast majority of his employment was performed in a workshop but he was occasionally required to repair fire-fighting equipment on the fire front of an active bush fire. He suffered injury in the form of hearing loss while repairing fire-fighting equipment on the fire front. On 20 June 2012 Mr Ware made a claim for lump sum compensation in respect of six per cent whole person impairment due to boilermaker's deafness. By section 17 of the 1987 Act, the deemed date of injury was the date the claim was made.

If the 2012 amending Act applied, Mr Ware would not be entitled to compensation as his impairment was not "greater than 10%". The essential issue for determination was whether Mr Ware could be classified as a fire fighter and therefore be exempt from the amendments made by the 2012 amending Act.

Deputy President Roche held that the legal meaning of "fire fighter" corresponds with its normal grammatical meaning, being someone whose activity or employment is to extinguish fires, especially bushfires. Mr Ware was held to be a fire fighter when he was working at the fire front, to repair fire-fighting equipment. His work

on those occasions was incidental to the control or suppression of a fire.

Accordingly, at those times Mr Ware was held to be exempt from the amendments made by the 2012 amending Act.

### *Muscat v Parramatta City Council* [2014] NSWCC 406

Mr Muscat was employed by the Council as a ranger. As part of his role, he was required to become a "special constable", which involved completing a course at the Police Academy. The *Police Act 1990* contains a definition of "police officer", which it was agreed applied to claimants under the Workers Compensation Acts, as no contrary definition appears. Mr Muscat did not come under the definition of "police officer" as he was not employed by the NSW Police Force.

Mr Muscat argued that section 103 of the *Police (Special Provisions) Act 1901* (subsequently repealed on 30 November 2014) entitled him to the benefit of the exemption that applies to police officers pursuant to clause 25.

Section 103 provided:

Every special constable appointed under this Act shall have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities as any police officer of the rank of constable duly appointed now has or hereafter may have by virtue of the common law or of any Act or Imperial Act for the time being in force. [Emphasis added]

The issue for the Commission was whether the "advantage" of not being subject to the 2012 amending Act was afforded to constables and as such should be afforded to special constables and the worker.

# DEVELOPMENTS IN THE LAW

Senior Arbitrator Snell held that the worker was not entitled to the exemption in clause 25.

The Senior Arbitrator said it was an “overgeneralisation” to suggest that being exempt from the 2012 amending Act was an advantage. When construed in context, the “advantages” conferred on special constables were limited to matters necessary for the performance by a special constable of the duties of the office. It should not be construed as modifying the entitlement to workers compensation, which would otherwise apply to a person holding that office.

## JOURNEY CLAIMS

The entitlement to claim compensation for an injury received while on a journey as defined in section 10(3) of the 1987 Act was amended in 2012 to include the following restriction on entitlement:

(3A) A journey referred to in subsection (3) to or from the worker’s place of abode is a journey to which this section applies only if there is a real and substantial connection between the employment and the accident or incident out of which the personal injury arose.

Section 10(3A) provides that a journey referred to in subsection (3) is a compensable journey only if there is a “real and substantial connection” between the employment and the accident or incident out of which the personal injury arose.

Section 10(3A) applies to injuries received on or after 19 June 2012 but does not apply to an injury received before that date (clause 18 of Part 19H, Schedule 6 of the 1987 Act).

## *Dewan Singh and Kim Singh t/as Krambach Service Station v Wickenden* [2014] NSWWCPCD 13

Ms Wickenden worked as a casual at a service station. Her usual finish times were during daylight hours. On 5 July 2012 she was travelling home in darkness due to an employment requirement to work late to learn new tasks and duties. Ms Wickenden was injured while riding her motor bike home when a motor vehicle swerved to avoid cattle on the road and struck her.

Ms Wickenden was required to establish a real and substantial connection between her employment and the accident. An issue to consider was whether it was open to infer that darkness played a role in the accident, that is, whether there was at greater or increased peril.

For the worker to succeed, she had to prove that there was a real and substantial connection between her employment and the accident, not that the darkness was the sole cause of the accident.

Deputy President Roche held as a matter of commonsense and general human experience, the compelling conclusion was that the darkness reduced the time that both Ms Wickenden and the driver of the other vehicle had to react to cattle on the road and avoid a collision. It followed that it was open to the Arbitrator to conclude that the time of the journey was a factor that contributed to the accident.

# EDUCATION AND COLLABORATION

## COUNCIL OF AUSTRALASIAN TRIBUNALS

The Council of Australasian Tribunals (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.

The President and Registrar are committee members of the NSW Chapter of COAT.

## INTER-JURISDICTIONAL MEETING

Each year, the Commission's President convenes and chairs the Inter-jurisdictional Workers Compensation Dispute Resolution Organisations meeting. The forum promotes information-sharing and collaboration across the various tribunals in Australia and New Zealand managing workers compensation and related disputes.

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

## PRESENTATIONS

During 2014, members and staff delivered a number of presentations including:

### Judge Greg Keating, President

**17 May 2014** – Presented a paper at the Centre for Justice Innovation, Monash University Melbourne, on 'Timeliness in the Justice System'.

**5 June 2014** – Convened and chaired the Workers Compensation Inter-jurisdictional Dispute Resolution Forum in Auckland, NZ.

**June-July 2014** – Represented as a Judicial Delegate to the Sino-Australian Judicial Forum in Beijing/Shanghai China (self-funded).

### Bill Roche, Deputy President

**19 March 2014** – Presented a paper at the University of NSW, on 'Recent Developments in Workers Compensation'.

**2 September 2014** – Chaired the Psychological and Psychiatric Injury Seminar at the University of NSW.

### Rod Parsons, Registrar

**7 February 2014 and 12 March 2014** – Presentations to Office for Finance and Services staff seminars 'Rule 57 – Continuing Legal Education'.

**27 March 2014** – Presented a paper at the State Legal Conference, on 'Update on the experience of the Commission following the introduction of the 2012 legislative amendments'.

**27 March 2014** – Presented at The Law Society of NSW, on 'Workers Compensation Commission Update'.

**29 August 2014** – Presented at the WIRO Conference, on 'Workers Compensation Commission Update'.

**18 October 2014** – Presented at the Approved Medical Specialist Annual Conference, on 'Workers compensation update'.

### Annette Farrell, Deputy Registrar

**31 July 2014** – Presented a paper to postgraduate students at the University of Sydney, on 'Dispute resolution'.

# EDUCATION AND COLLABORATION

## Deborah Moore, Senior Arbitrator

**17 January 2014** – Presented at the East/West Medico-Legal Conference, Paris, on ‘Psychological injuries’.

**28 November 2014** – Presented at the Commission’s Arbitrator Professional Development Conference, on ‘The 2012 amendments: journey provisions and exempt workers’.

## Michael Snell, Senior Arbitrator

**28 November 2014** – Presented at the Commission’s Arbitrator Professional Development Conference, on ‘The 2012 amendments: weekly benefits’.

## Elizabeth Beilby, Arbitrator

**19 March 2014** – Chaired the University of NSW CLE Conference, on ‘Workers compensation’.

## John Harris, Arbitrator

**28 November 2014** – Presented at the Commission’s Arbitrator Professional Development Conference, on ‘The 2012 amendments: section 59A - medical expenses limitations’.

## Richard Perrignon, Arbitrator

**8 March 2014** – Presented a paper to the NSW Bar Association, Newcastle Conference, on ‘A brave new world of workers compensation - the 2012 amendments’.

**16 April 2014** – Presented at the Australian Institute of Judicial Administration, Sydney Conference: Assisting Unrepresented Litigants – A Challenge for Courts and Tribunals Conference, on ‘Tough love – dealing effectively with self-represented litigants in the courts and tribunals of NSW’.

## Carolyn Rimmer, Arbitrator

**18 October 2014** – Co-presented at the Approved Medical Specialist Conference, on ‘Injury and the disease provisions’.

## Paul Sweeney, Arbitrator

**28 November 2014** – Presented at the Commission’s Arbitrator Professional Development Conference, on ‘The 2012 amendments: lump sum compensation’.

## Stephen Lancken, Mediator

**28 November 2014** – Presented at the Commission’s Arbitrator Professional Development Conference, on ‘Conciliation skills and techniques: facilitating valuable conversations’.

## Dr James Bodel, Approved Medical Specialist

**18 October 2014** – Co-presented at the Approved Medical Specialist Conference, on ‘Injury and the disease provisions’.

**28 November 2014** – Presented at the Commission’s Arbitrator Professional Development Conference, on ‘Assessing whole person impairment’.

## Parnel McAdam, Solicitor

**18 October 2014** – Presented at the Approved Medical Specialist Conference, on ‘Overview of decisions of the Supreme Court that impact on the role of the AMS and procedures of the Appeal Panel’.

**28 November 2014** – Presented at the Commission’s Arbitrator Professional Development Conference, on ‘Lessons from judicial review’.

# EDUCATION AND COLLABORATION

## PUBLICATIONS

### Bulletins

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

- *e-Bulletin* – for the legal profession;
- *Arbitrator Bulletin* – for Arbitrators;
- *AMS Bulletin* – for Approved Medical Specialists; and
- *Medical Appeal Panel Bulletin* – for Arbitrators and Approved Medical Specialists who sit on Medical Appeal Panels.

### 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 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.

# **PART 3**

## **GOVERNANCE, PEOPLE AND CULTURE**

Chapter 10: Governance and Accountability **38**

Chapter 11: People and Culture **42**

# GOVERNANCE AND ACCOUNTABILITY

## OVERVIEW

The Commission has placed substantial emphasis on establishing a robust corporate governance framework.

The corporate governance framework includes:

- Supporting statutory requirements;
- Efficient and ethical use of resources; and
- 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.

## 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 several 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 meeting provides a collaborative forum to discuss the Commission's operations. 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

# GOVERNANCE AND ACCOUNTABILITY

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 WorkCover NSW. During 2014, the User Group consisted of the following members:

- Judge Greg Keating, President
- Bill Roche, Deputy President
- Kevin O'Grady, Deputy President
- Rod Parsons, Registrar
- Annette Farrell, Deputy Registrar
- Michael Snell, Senior Arbitrator
- Deborah Moore, Senior Arbitrator
- Elizabeth Wood, Bar Association representative
- Stephen Harris, Law Society representative
- Andrew Mulcahy, Law Society representative
- Roshana May, Law Society representative

- Shane Butcher, Law Society representative
- Gary Jeffery, Work Cover NSW representative
- Kathryn Camp, Presidential Unit Manager, Secretariat

### Arbitrator Practice Meeting

Bi-monthly practice meetings with Arbitrators, chaired by the Registrar, are open to all full-time, part-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 procedures.

### 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 2014 included the introduction and effects on staff of the *Government Sector Employment Act 2013* and the implementation of a Commission staff restructure.

The JCC meets quarterly and consists of representatives from:

- the Commission's management;
- Public Service Association of NSW representatives;
- the Commission's Public Service Association delegates;
- WorkCover NSW People and Culture representatives;
- Department of Finance and Services representatives.

# GOVERNANCE AND ACCOUNTABILITY

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

## Senior Arbitrator Meeting

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

## Workers Compensation Legal Stakeholder Reference Group

The Workers Compensation Legal Stakeholders Reference Group facilitates consultation with and feedback to legal stakeholders on issues relating to workers compensation in New South Wales. Membership of the group includes representatives of:

- The Law Society of NSW
- NSW Bar Association
- Australian Lawyer Alliance
- Law firms representing self-insurers
- WorkCover NSW
- Workers Compensation Commission
- WorkCover Independent Review Office
- Merit Review Service

The Commission is represented on the group by the Registrar and Senior Arbitrator Michael Snell.

## 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.

## 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; and
- 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 is not a matter that is dealt with through the complaint handling process. There are statutory rights of appeal for parties who are not satisfied with a decision of a Commission member or Approved Medical Specialist.

# GOVERNANCE AND ACCOUNTABILITY

During the reporting year, the Commission received a total of 12 complaints. Complaints lodged were 0.15 per cent of dispute applications registered.

Of these complaints, seven concerned medical assessments conducted by Approved Medical Specialists, three complaints concerned Arbitrators and two were regarding administrative protocols, including the publication of decisions.

## 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 August 2014, the Commission engaged KPMG to undertake an internal audit to provide assurance that its 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;
- Building security.

The field work was completed in late 2014, with reporting due in early 2015.

## GOVERNMENT INFORMATION (PUBLIC ACCESS)

*The Government Information (Public Access) Act 2009 (GIPA Act)* requires agencies to report on their obligations under the GIPA Act. In compliance with section 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 2014, the Commission received two applications to release information under the GIPA Act.

# PEOPLE AND CULTURE

## ESTABLISHMENT PROFILE

As at 31 December 2014, the Commission's staff consisted of 82 full-time equivalent positions. In addition to these positions, during 2014 there were the following members, Approved Medical Specialists and Mediators:

### Members

- Four Presidential members (President and three Deputy Presidents)
- Registrar
- 29 Arbitrators (See Appendix 1)

### Service Partners

- 129 Approved Medical Specialists (See Appendix 2)
- 31 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 New South Wales.

## WORKFORCE PLANNING, STAFF TURNOVER, RETENTION AND APPOINTMENTS

During 2014, the Commission imposed a staff recruitment freeze to help achieve the human resourcing efficiencies target following the 2012 workers compensation legislation changes. Administrative gaps in deliverables were filled by

existing staff and management, in addition to their own roles.

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

- Reappointment of Deputy President, Bill Roche.
- Appointment of Registrar, Rod Parsons.
- Appointment of 29 Arbitrators including new Arbitrator, Catherine McDonald.
- Appointment of 31 Mediators including new Mediators Philip Carr, Gerard Egan, Philippa O'Dea and John Tancred.

During 2014, the Commission had a separation rate<sup>[1]</sup> of 9.5 per cent of the 2013 administrative staffing level.<sup>[2]</sup> This is based on 95 employees with nine separations for the period.

<sup>[1]</sup>The separation data is for the period 21 June 2013 to 19 June 2014 as per the PSC Annual Workforce Profile collection period.

<sup>[2]</sup>The HR Statistics quoted for 2012-13 are headcount figures as at 20 June 2013 (being the census date for the PSC Annual Workforce profile data-collection).

## LEARNING AND DEVELOPMENT

In 2014, 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

- Medical Appeal Panel Training Day
- Unions NSW – Workplace Injury Management Information Session
- Arbitrator Professional Development Conference

# PEOPLE AND CULTURE

- Approved Medical Specialists Conference
- Approved Medical Specialist forums and Appeal Panel meetings
- Mandatory online training modules (see below)

## External

- St John's Ambulance First Aid Recertification
- Job Application Writing and Interview Skills
- COAT NSW Chapter Annual Conference
- Continuing legal education (see below).
- MAXXIA – Salary Sacrifice Seminar.

## 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 on the final quiz at the end of each module to pass. 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 2014, the following modules were completed:

- Module 5 – Safety in our workplaces;
- Module 6 – Hazardous manual tasks;
- Module 8 – Information Security Awareness.

All Commission employees completed the mandatory training modules by the end of 2014.

## Continuing Legal Education

Legal practitioners engaged by the Commission are required to participate in a number of professional development activities in order to retain their NSW Law Society Practising Certificate. In February/March each year the Commission organises a half-day session for legal staff to meet one part of this CLE requirement, specifically for Rule 57 of the *Legal Profession Regulation 2005*.

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 their daily practice.

In 2014, a session was organised by the Commission and delivered by Legalwise Seminars Pty Ltd. Legal staff from Motor Accidents Authority, WorkCover NSW and the WorkCover Independent Review Office were invited to attend. In total 38 participants attended the session held on 12 March 2014.

## Continuing Medical Education

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

The forums are chaired and have their agendas set 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 support the events by providing the facilities and supporting administration.

# PEOPLE AND CULTURE

## WORK HEALTH AND SAFETY

The Commission's work health and safety program is overseen by the Work Health and Safety Committee (See page 38).

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 WorkCover NSW;
- 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 2014, the Commission's three First Aid Officers undertook the St John's Ambulance First Aid training to maintain their first aid accreditation. All staff also completed the online WHS training modules on 'Safety in our workplace' and 'Hazardous manual tasks'.

## WELLNESS INITIATIVES

During 2014, Commission staff participated in a number of wellness initiatives. These included:

- SRWS Corporate Challenge;
- On-site Flu Vaccinations;
- Ergonomic assessment of workstations;
- Early detection initiative— aimed at preventing and better managing illness and disease;
- Nutrition seminars;
- Sleep well program;
- RU OK? Day – to raise awareness and participation among staff to regularly and meaningfully ask colleagues "R U OK?";
- 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 Salvation Army Christmas Appeal;
- Australia's Biggest Morning Tea – fundraising for the Cancer Council;
- WOW (Wear Orange Wednesday) – 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 Sydney Boulevard Hotel;
- Melbourne Cup festivities.

# PEOPLE AND CULTURE

## WORK/LIFE BALANCE

The Commission is committed to working with staff to develop and maintain work/life balance. We understand that managing life's priorities can be challenging, so we support our staff in balancing work/life commitments through flexible work arrangements, to meet individual needs.

During 2014, 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; and
- Study assistance.

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 needs, develop individual capabilities, review performance and recognise achievements. The RRD system helps equip staff and Arbitrators 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 2014, 100 per cent of 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. We recognise and embrace 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. We recognise the importance of providing equal employment opportunities in recruitment and staff development. The Commission's employee diversity is shown in the following table:

# PEOPLE AND CULTURE

## Workplace diversity 2014 workforce profile<sup>[1]</sup>

Male	48%
Female	52%
Aboriginal and Torres Strait Islander	1
Person with a disability	5
Person from a racial, ethnic or ethno-religious minority	20

<sup>[1]</sup> The workforce diversity statistics quoted are the 2013/14 headcount figures, as at 19 June 2014 (being the census date for the PSC Annual Workforce profile data-collection).

During 2014, 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 2012-2014* 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 the Motor Accidents Authority and the

Lifetime Care and Support Authority also use the Commission's meeting rooms. The Motor Accidents Authority and 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.
- 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 4**

# **APPENDICES**

Appendix 1: Arbitrators	<b>48</b>
Appendix 2: Approved Medical Specialists	<b>49</b>
Appendix 3: Mediators	<b>50</b>

# APPENDICES

## APPENDIX 1: ARBITRATORS

(As at 31 December 2014)

### SENIOR ARBITRATORS

Deborah Moore  
Michael Snell

The Registrar may exercise all the functions of an Arbitrator by operation of section 371(1) of the *Workplace Injury Management and Workers Compensation Act 1998*.

### ARBITRATORS

#### Full-Time

Brett Batchelor  
Elizabeth Beilby  
Garth Brown  
Glenn Capel  
Grahame Edwards  
Kerry Haddock  
Catherine McDonald  
Jane Peacock  
Paul Sweeney

The Deputy Registrars also hold Arbitrator appointments.

#### Part-Time

Marshal Douglas  
Richard Perrignon  
Josephine Snell

#### Sessional

Linda Ashford A/J  
Ross Bell  
Robert Caddies  
William Dalley  
Gerard Egan  
Robert Foggo  
John Harris  
John Hertzberg  
Michael McGrowdie  
Bruce McManamey  
Peter Molony  
Annemarie Nicholl  
Jeffrey Phillips SC  
Carolyn Rimmer  
John Wynyard

# APPENDICES

## APPENDIX 2: APPROVED MEDICAL SPECIALISTS

(As at 31 December 2014)

Dr Robert Adler	Dr Michael Gliksman	Dr Paul Christopher Myers
Dr Tim Anderson	Dr Nicholas Glozier	Dr Steven Ng
Dr John Ashwell	Dr David Gorman	Dr Paul Niall
Dr Mohammed Assem	Dr John Moore Greenaway	Dr Brian Noll
Dr John Baker	Dr Richard Haber	Dr Chris Oates
Dr Michael Baldwin	Dr Scott Harbison	Dr David Daniel O'Keefe
Dr John Beer	Dr Henley Harrison	Dr John O'Neill
Dr Neil Berry	Dr John Harrison	Dr Kim Ostinga
Dr Trevor Best	Dr Philippa Harvey-Sutton	Dr Julian Parmegiani
Dr Graham Blom	Dr Mark Hermann	Dr Brian Parsonage
Dr James Bodel	Dr Robin Higgs	Dr Robert Payten
Dr Kenneth Brearley	Dr Yiu-Key Ho	Dr Roger Pillemer
Dr Robert Breit	Dr Peter Holman	Dr Stuart Porges
Dr Frank Breslin	Dr Alan Home	Dr Thandavan B Raj
Dr David Bryant	Dr Nigel Hope	Dr Loretta Reiter
Dr Mark Burns	Dr Kenneth Howison	Dr Michael Robertson
Dr Gregory Burrow	Dr Murray Hyde Page	Dr Michael Rochford
Dr William Bye	Dr Peter L Isbister	Dr Norman Robert Rose
Dr Lionel Chang	Dr Anthony Johnson	Dr Tom Rosenthal
Dr Christopher W Clarke	Dr Lorraine Jones	Assoc Prof Michael Ryan
Assoc Prof W Bruce Conolly	Dr Mark Jones	Dr Avtar Sachdev
Dr Richard Crane	Dr Sornalingam Kamalaharan	Dr Edward Schutz
Dr David Crocker	Dr Hari Kapila	Dr Joseph Scoppa
Dr Michael Davies	Dr Gregory Kaufman	Dr James Scougall
Dr Thomas Davis	Dr Peter Klug	Dr Andrew Singer
Dr Michael Delaney	Dr Edward Korbel	Dr John H Silver
Dr Drew Dixon	Dr Lana Kossoff	Dr John Sippe
Dr John Dixon-Hughes	Dr Damodaran Prem Kumar	Dr David Sonnabend
Dr Hugh English	Dr Sophia Lahz	Dr Gregory Steele
Dr Donald Kingsley Faithfull	Dr Michael Long	Dr Michael Steiner
Assoc Prof Michael Fearnside	Dr David Macauley	Dr Phillip Truskett
Dr Antonio E L Fernandes	Dr Nigel Marsh	Dr John P H Stephen
Dr Sylvester Fernandes	Dr Tommasino Mastroianni	Dr J Brian Stephenson
Dr Robin B Fitzsimons	Dr Andrew McClure	Dr Harry Stern
Dr John F W Garvey	Dr Gregory McGroder	Dr Geoffrey Stubbs
Dr Robert Gertler	Dr John D McKee	Dr Stanley Styllis
Dr Peter Giblin	Dr Ross Mellick	Dr Nicholas A Talley
Dr Margaret Gibson	Dr Roland Middleton	Dr Stuart Taylor
Dr John Glass	Dr Frank Machart	Dr Harold Waldman
	Dr Michael McGlynn	Dr William Walker
	Dr David McGrath	Dr Tai-Tak Wan
	Dr Ian Meakin	Dr George Weisz
	Dr Allan Meares	Dr Kalev Wilding
	Prof George Mendelson	Dr Brian Williams
	Dr Patrick John Morris	Assoc Prof Siu Wong

# APPENDICES

## APPENDIX 3: MEDIATORS

(As at 31 December 2014)

Robyn Bailey  
Ross Bell  
Jak Callaway  
Philip Carr  
Geoff Charlton  
Janice Connelly  
Marshal Douglas  
Gerard Egan  
Geri Ettinger  
Robert Foggo  
David Flynn  
David Francis  
Nina Harding  
John Hertzberg  
John Ireland  
Katherine Johnson

James Kearney  
John Keogh  
Stephen Lancken  
Margaret McCue  
John McDermott  
Ross MacDonald  
John McGruther  
Garry McIlwaine  
Janice McLeay  
Chris Messenger  
Dennis Nolan  
Philippa O’Dea  
Jennifer Scott  
John Tancred  
John Weingarth





Level 21, 1 Oxford Street, Darlinghurst NSW 2010  
PO Box 594 Darlinghurst NSW 1300 Australia  
[www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au)

