

ANNUAL REVIEW 2016-17



Workers
Compensation
Commission



 WORKERS
COMPENSATION
COMMISSION

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Online Version

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

Overview

PRESIDENT'S FOREWORD

It is my pleasure to report that the Commission has fared well this year against a range of quantitative performance indicators that courts and tribunals are traditionally measured against.

The Commission has finalised more than 7,200 disputes in the financial year, with the vast majority being resolved through the parties reaching their own resolution, aided by the skill and expertise of the Commission's staff, Arbitrators and Mediators.

Resolving disputes in the shortest time frame is, and always will be, a priority for the Commission. I am pleased to report that in the past year, 58 per cent of all disputes over statutory benefits were resolved within three months or less where there was no appeal. This is a significant improvement in the timeliness of the disposal of matters over the previous year. I am also pleased to report that three-quarters of expedited assessment disputes were resolved within 14 days of lodgment.

Also during the year, 69 per cent of work injury damages cases that proceeded to mediation were resolved, obviating the need for lengthy and expensive litigation in the courts. This is one of the highest settlement rates achieved in the Commission's history.

The number of successful appeals against decisions of Arbitrators remained low at 4 per cent and medical appeal applications at 9 per cent.

Quantitative measures are of course not the only measure of an effective tribunal. The processes for resolving disputes described in this report focus on direct engagement with all parties at every step of the way, empowering them to be involved in the outcome of their dispute. We are as committed to the accessibility, openness and fairness of our processes as we are with the outcomes.

Readers will note that during the course of the year the Commission undertook an extensive refurbishment of its facilities. Unlike the fit-out it replaced, the current fit-out is purpose-built. It is designed and constructed to provide more spacious hearing rooms and state of the art audio visual facilities. The redesign also enhances the access and security for members, staff and the public.

The Commission's e-commerce initiatives are now well advanced, with Certificates of Determination, Medical Assessment Certificates, Presidential Decisions, Orders, Directions and Medical Appeal Panel Decisions now issued electronically to parties. This has resulted in significant savings in time and resources and has been well received by all parties.

Our commitment to embrace the use of technology to further improve the efficiency of our lodgment and file management systems has been enhanced through the implementation of a pilot program that allows members to access files electronically from the Commission's database.



This initiative allows our Approved Medical Specialists, for example, to access the medical information from a worker's file while undertaking an examination of the worker in their surgeries. Previously that could not occur without a paper file being physically sent to the doctor's office. Similarly, our Arbitrators and Mediators can access files while working in rural and regional areas. As work continues on enhancing the Commission's electronic database, the Commission will inevitably move more towards a fully electronic system for the lodgment of disputes and file management.

Finally, I wish to extend my personal thanks to all the Commission's members and staff who have contributed to the work of the Commission throughout the year. This review is evidence of their unfailing hard work and commitment, which I have no doubt will continue into the future.

A handwritten signature in black ink, appearing to read 'Greg Keating', written in a cursive style.

Judge Greg Keating
President

REGISTRAR'S REPORT

It has been another productive year for the Workers Compensation Commission. It is pleasing to report that the time taken to resolve disputes has improved across all areas of first-instance applications, and KPIs were met for each quarter of the reporting year.

The Commission consistently listed telephone conferences before Arbitrators at 35 days from the date of lodgment of the dispute and mediations were listed within 35 days of allocation to a Mediator. A new initiative has been the allocation of medical assessments at 35 days from lodgment of the dispute. The reduction in time from lodgment to a medical assessment has been achieved by the introduction of a pre-booking system for Approved Medical Specialist appointments and has been a key contributor to the Commission's improved timeliness.

The refurbished facilities have not only provided improvements for conciliations/arbitration hearings onsite but have provided greater scope to conduct conferences by video. This is particularly beneficial for workers who are either incapacitated or otherwise unable to travel to a conference/arbitration hearing. It has been used to great effect recently for a worker who was in hospital and another worker who was overseas. The use of video conferencing is a focus for the Commission in the coming year.

The Commission further expanded its electronic operating environment. A full upgrade of our e-commerce capability is a priority in the next financial year.

A fully-integrated, electronic case management system will provide greater access to the Commission and will benefit users throughout New South Wales. The advancement of the Commission's e-services capability is in keeping with the State Government's priority to increase the level of online government transactions to 70 per cent by 2018-19.

The Commission continued its commitment to training and education. Members and staff presented at external seminars, by invitation. Closer to home, the Commission delivered on its commitment to present a seminar series for insurance personnel, following the success of the seminar series presented to the legal profession the previous year. More than 360 insurance staff registered for the seminars, which were conducted in greater Sydney and regional New South Wales.

The Commission again collaborated with the State Insurance Regulatory Authority to deliver specialist medical seminars on spinal injuries and cognitive impairment injuries. The Commission also delivered annual conferences for Arbitrators, Mediators and Approved Medical Specialists.

In the last annual review, I reported that the Commission had completed the first stage of an organisational realignment. The full realignment has now been completed, with the Commission's staff establishment compliant with the *Government Sector Employment Act 2013*. Our workforce has reduced to 59 full-time, non-executive staff and two senior executive staff.



The realignment provides opportunities for staff and the capability for the Commission to further improve its performance. To ensure this is achieved, the Commission has introduced the 'CoNext' initiative. CoNext (derived from Commission Next) focusses on a range of activities across the Commission to more fully and positively engage staff in shaping our work environment.

The Commission has continued to achieve outstanding results in dispute resolution, particularly negotiated outcomes between the parties. I wish to acknowledge the outstanding contributions and dedication of all staff, members and service partners. I am personally grateful for the support I have received.

A handwritten signature in black ink that reads "Rodney Parsons".

Rodney Parsons
Registrar

HIGHLIGHTS

IN 2016-17, THE COMMISSION:

- Registered 7,046 dispute applications
- Held 3,898 telephone conferences, 2,018 conciliation conferences/arbitration hearings (con/arbs) and 2,253 medical assessments
- Finalised 5,832 workers compensation disputes
- Finalised 1,375 work injury damages disputes
- Resolved 69% of work injury damages cases that proceeded to mediation, obviating the need for lengthy and expensive litigation in the courts
- Recruited and appointed 26 Mediators and two additional Arbitrators
- Published 56 Presidential member decisions on AustLII, LexisNexis and BarNet Jade
- Published 288 Arbitrator decisions, 133 Medical Appeal Panel decisions and nine costs assessment decisions on the Commission's website
- Held two conferences for medical specialists entitled *Injuries to the Spine* and *Cognitive Impairment: Determining the Cause*
- Held a seminar series for workers compensation insurance staff, in seven locations in greater Sydney and regional New South Wales, with more than 360 registered delegates
- Delivered better services and improved security through refurbishment of conference and hearing facilities
- Improved timeliness from lodgment of a dispute to assessment by an Approved Medical Specialist through pre-booking medical assessment appointments
- Expanded e-Services to improve timeliness for service of outcome documents to parties and piloted use of electronic briefs
- Developed a comprehensive Business Continuity Plan
- Completed an organisational realignment and staff restructure to comply with the *Government Sector Employment Act 2013*
- Commenced CoNext initiative, to enhance the quality and effectiveness of the workplace for staff and clients

STRATEGIC PLAN

2015-17



ABOUT THE COMMISSION

Our Role

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

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

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

The Hon Victor Dominello MP, Minister for Finance, Services and Property, is the Minister responsible for the administration of Workers Compensation legislation, except for the appointment of members, which falls to the Attorney General.

Our Objectives

The Commission's objectives are:

- To provide a fair and cost-effective system for the resolution of disputes;
- To reduce administrative costs;
- To provide a timely service;
- To provide an independent dispute resolution service that is effective in settling disputes and leads to durable agreements;

- To create a registry and dispute resolution service that meets expectations in relation to accessibility, approachability and professionalism; and
- To establish effective communication and liaison with interested parties.

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

Our Functions

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

When required to decide a dispute, the Commission aims to provide fast, consistent and durable outcomes. A summary of significant disputes in 2016-17 is set out in Appendix 4,

Developments in the Law.

In-person conciliations and arbitration hearings, referred to as con/arbs, are held at various locations throughout New South Wales. Con/arbs will usually be held at locations convenient to injured workers in Sydney and 19 other locations throughout New South Wales.

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

RELEVANT LEGISLATION

- *Workers Compensation Act 1987* (1987 Act)
- *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act)
- *Workers Compensation Regulation 2016* (2016 Regulation)
- *Workers Compensation Commission Rules 2011* (2011 Rules)

OUR PEOPLE



Our Members

As at 30 June 2017, the Commission was comprised of:

- Judge Greg Keating, President;
- Michael Snell, Deputy President;
- Larry King SC and Geoffrey Parker SC, Acting Deputy Presidents;
- Rod Parsons, Registrar;
- Catherine McDonald and Glenn Capel, Senior Arbitrators; and
- 5 full-time and 14 sessional Arbitrators (see Appendix 1).

President and Deputy Presidents

As head of the Commission, the President works closely with the Registrar in a strategic leadership role and is responsible for the

general direction and control of the Deputy Presidents and the Registrar.

Presidential members hear appeals in relation to errors of fact, law or discretion against decisions made by Arbitrators. Appeals against Presidential members in point of law go to the NSW Court of Appeal.

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

Registrar

The Registrar manages the Commission's operations and is responsible for the general direction and control of Commission staff, Arbitrators, Mediators and Approved Medical Specialists.

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.

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

Senior Arbitrators and Arbitrators

Through conciliation, Arbitrators work with parties to explore settlement options and outcomes and attempt to find an acceptable solution for all. If a dispute is not settled through conciliation, the Arbitrator can make a binding determination following a formal arbitration hearing.

Medical Appeal Panels, comprising up of by one Arbitrator and two Approved Medical Specialists, determine appeals against assessments by Approved Medical Specialists.

Senior Arbitrators also have strategic responsibilities and are involved in the professional development and mentoring of Arbitrators.

Our Staff

The Commission has two senior executives — Director, Operations and Director, Legal Services — and 59 non-executive staff across four business areas:

- Operations;
- Legal Services;
- Registrar’s Office;
- Presidential Unit.

Operations Branch

The Director, Operations, strategically leads the Operations Branch staff across four business areas: Registry Services, Dispute Services, Operations Improvement and Administrative Support. The branch provides registry services, case management services, Arbitrator, Mediator and Approved Medical Specialist support, and process improvement initiatives.

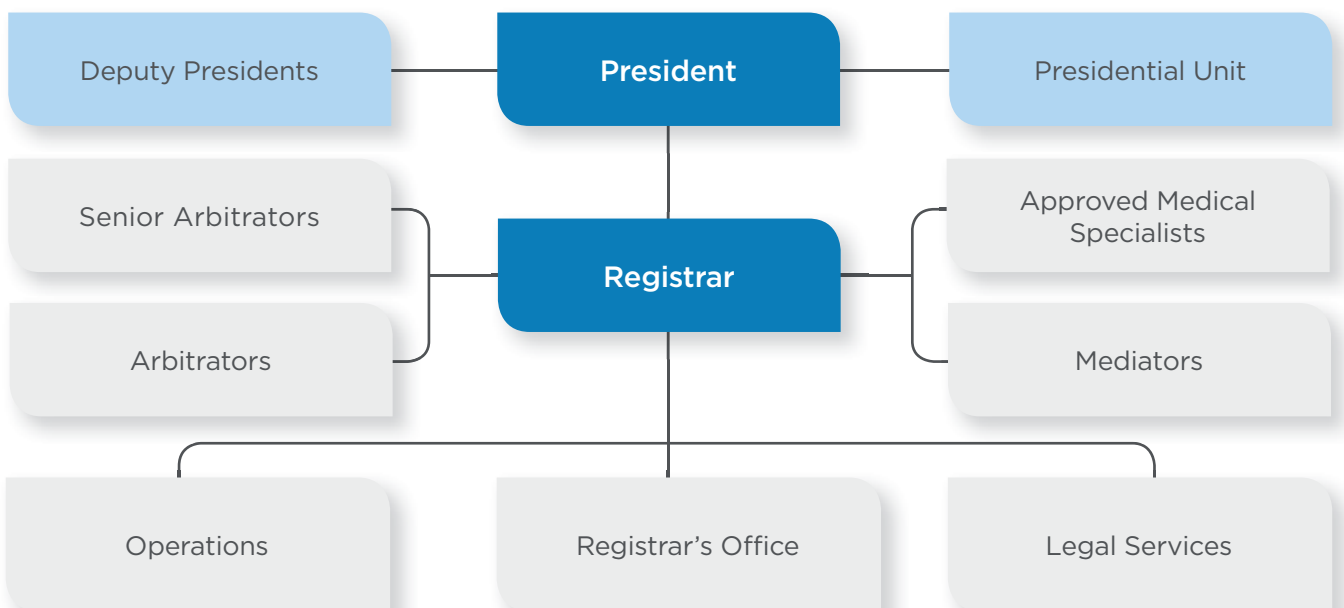
Registry Services staff are the first point of contact for workers, insurers, legal representatives and the public. The unit manages the call centre, mailroom, registration of dispute applications and information exchange processes, and concierge functions for the Commission’s hearing rooms in its Darlington premises. The unit is also responsible for maintaining the Commission’s research library and managing file archives and audio processes.

Dispute Services staff are responsible for case management of workers compensation disputes, medical appeals and work injury damages disputes. The unit refers medical disputes for assessment by Approved Medical Specialists and makes interim decisions to efficiently progress matters in the Commission. Dispute Services staff also draft Certificates of Determination for the Registrar for permanent impairment compensation awards.

Operations Improvement staff are responsible for service improvement projects across registry and dispute services, maintains business processes and procedures, and manages audit and risk within the operational areas.

Administrative Support staff work closely with the Director Operations and Arbitrators to provide high-level administrative support and proofreading.

Organisation structure



Legal Services Unit

The Director, Legal Services strategically leads a team of legal staff providing professional services to the Commission and stakeholders.

Legal services includes statutory decision-making functions of the Registrar, providing legal advice to members and staff, responding to legal inquiries from the public and legal profession, updating the Commission's Arbitrator Practice Manual and Approved Medical Specialist Practice Manual, and issuing the external publications **On Review** and **Decisions of Medical Appeal Panels**.

Statutory decision-making functions include:

- Expedited assessments;
- Assessing the merit of medical appeal applications;
- Costs assessments;
- Curing defective pre-filing statements;
- Disputes regarding access to information and premises, and conduct money/production fees.



Registrar's Office

The Registrar's Office, comprising the Office of the Registrar and the Service Delivery Unit, is responsible for planning, strategy, organisational development and corporate services.

Office of the Registrar staff provide general support to the Registrar, including coordinating responses to Ministerial correspondence, government agency and stakeholder inquiries, managing complaints, and coordinating presentations to internal and external stakeholders and other interested groups.

The unit is also responsible for managing the budget cycle, providing timely and accurate organisational data, risk and audit management.

Service Delivery staff provide corporate support services including delivery of information services, data analysis of performance, people capability development, project management and facilities management.

Presidential Unit

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

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



OUR PARTNERS



Approved Medical Specialists

Approved Medical Specialists are highly-experienced medical practitioners from across a range of medical specialties. They assess workers in relation to medical disputes, including assessments of the degree of permanent impairment that result from work-related injuries.

Medical assessments are conducted throughout New South Wales and by video in appropriate circumstances.

Approved Medical Specialists also sit on Medical Appeal Panels.

As at 30 June 2017, there were 140 Approved Medical Specialists who held appointments with the Commission (see Appendix 2).

Mediators

Mediation of work injury damages disputes by Commission-appointed Mediators is mandatory before an injured worker can commence court proceedings.

Mediators will attempt to bring the parties to agreement through mediation conferences which are conducted in Sydney and regional New South Wales locations.

If the parties are unable to reach an agreement, the injured worker may then commence court proceedings.

As at 30 June 2017, there were 26 Mediators who held appointments with the Commission (see Appendix 3).



OUR FACILITIES

Most face-to-face hearings take place in our main office in Darlinghurst, Sydney, which is also home to the Registry.

In response to a site inspection, risk assessment and feedback from members, staff and clients, the Commission engaged an architectural firm to review the premises, with design objectives to:

- Increase the size of conference rooms and reduce the risk of trip/fall hazards;
- Provide separate and secure entrances and exits to conference rooms for members to reduce the risk of harm in the event of incidents;
- Improve acoustic privacy;
- Update technological infrastructure, including sound recording, audio/visual and room booking/display systems.

The upgrade began in late December 2016. During construction, room availability was halved and the Commission needed a temporary reception/concierge area.

Stage one was completed in late March, with the refurbished concierge desk, library, and new conference and meeting rooms available.

Stage two, completed in mid-May, saw the construction of the remaining new conference rooms, meeting rooms and the training room.

On 5 June 2017, the Hon Victor Dominello MP, Minister for Finance, Services and Property officially opened the refurbished floor. Guests included members of the legal profession, representatives from the Department of Finance, Services and Innovation, icare, Commission members, staff and service partners.

In total, the new fit-out has three formal hearing rooms and 11 conference rooms, each with a breakout meeting room and a training room capable of configuring into an additional three conference rooms.

A secure corridor provides for safe access to and from conference rooms for members and service providers, and a hot-desk area and library are also provided.

Slab-to-slab insulated walls, door seals and thickened glass provide improved sound proofing. Enhanced sound recording equipment, using beam-forming microphones, makes for clearer sound recording and eliminates unwanted noise.

A number of rooms are fitted with the latest video technology to provide alternate service delivery options via the web and all rooms are wired for future technological fit-out.

Wireless infrared hearing assistance systems are fitted in hearing rooms and the training room.

Digital signage boards allow for customised messaging and hearing lists.

The Commission also holds face-to-face hearings in 19 regional locations in NSW, using courts and various conference facilities.



The Hon Victor Dominello MP



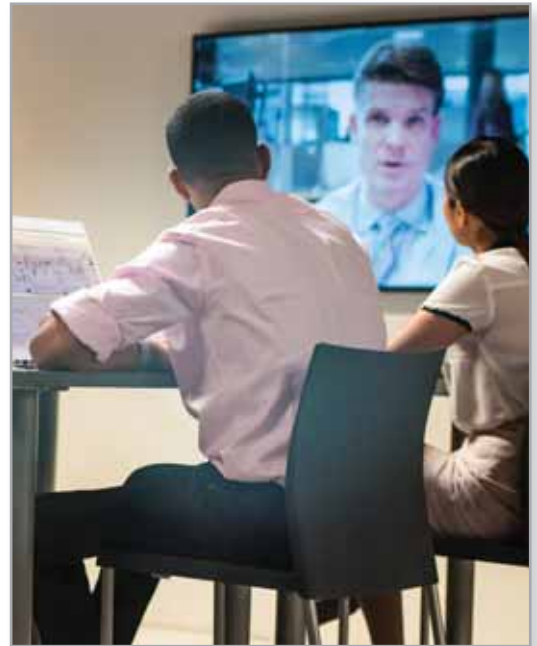
*The Hon Victor Dominello MP,
Martin Hoffman, Secretary DFSI,
Judge Greg Keating, Commission President*

OUR FACILITIES – MAKING USE OF TECHNOLOGY

The Commission usually requires workers to attend dispute proceedings in person. Sometimes, however, this is not possible due to illness or absence from New South Wales.

As a worker's absence can significantly affect the efficient resolution of a dispute, the Commission is committed to exploring all options for workers to attend.

For example, Ivan had a disputed work injury damages claim listed for mediation. Due to an unrelated illness, Ivan was hospitalised on the date of the mediation conference. Rather than delay the proceedings, the Commission arranged for Ivan to attend by video conference from hospital. The matter settled on the day.



OUR DISPUTE PATHWAYS

Each day, the Commission deals with a wide range of disputes including:

- Legal issues regarding whether a worker is entitled to compensation
- Entitlement, and the extent of entitlement, to:
 - weekly compensation payments
 - medical, hospital, rehabilitation and related expenses
 - lump sum compensation for permanent impairment or death
 - domestic assistance
 - damage to artificial aids and clothing
 - whether compensation benefits should be paid if a worker no longer lives in Australia
- Workplace injury management disputes
- Entitlement to interest on compensation benefits
- Apportionment of compensation payments if more than one injury
- Review of weekly compensation entitlements (exempt workers only)
- Refund of weekly compensation
- Whether compensation is to be reimbursed to Nominal Insurer
- Disputes regarding return to work, including education and training
- Applications to strike out pre-filing statements
- Applications to cure defective pre-filing statements
- Applications for access to information and premises
- Applications for order for costs (exempt workers only)
- Question of law applications
- Applications for certificates of amount ordered to be paid
- Assessments of legal costs entitlements and apportionments

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

- Expedited assessments
- Legal disputes
- Medical disputes
- Work injury damages disputes

CASE STUDY - OUR DISPUTE PATHWAYS

NON-LEGAL REPRESENTATION IN WORK INJURY MANAGEMENT

In most proceedings, workers are represented by legal practitioners; at times, they may be assisted by non-legal representatives.

Tara had a dispute about her employer's management of her injury and return-to-work plan. The duties assigned by her employer on Tara's return-to-work required an overnight absence from her home. As Tara was sole carer for a child with disabilities, she was unable to complete the assigned duties.

With the assistance of an industrial officer from her trade union, Tara lodged a dispute with the Commission.

A Registrar's delegate held a conference with the parties. He found that it was reasonably practicable for the employer to provide suitable duties that took into account Tara's carer responsibilities and made a recommendation to that effect. The employer implemented the recommendation.



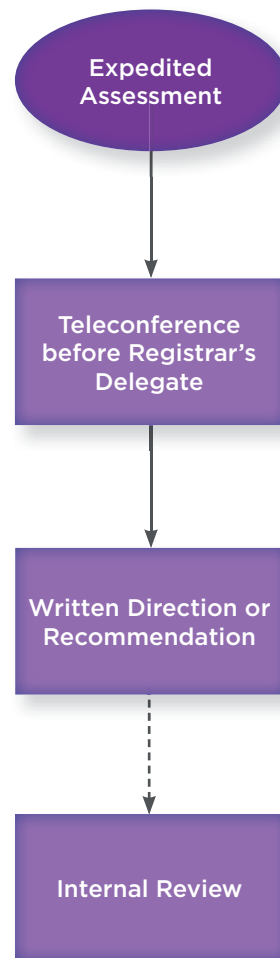
EXPEDITED ASSESSMENTS

This dispute resolution process is designed to resolve disputes quickly and efficiently. Disputes for weekly compensation benefits up to 12 weeks and/or medical expenses compensation up to \$8,990.10 are fast-tracked to a teleconference before a delegate of the Registrar. Disputes regarding injury management are also expedited this way. The teleconference is held 14 days from the date of lodgement of the dispute and most are resolved at this stage.

The parties are almost always legally represented in expedited assessments and insurers are encouraged to attend. Workplace injury management disputes allow the parties to openly discuss appropriate steps to return an injured worker to meaningful employment.

If a dispute is not resolved at the teleconference, the delegate issues a binding decision or an interim payment direction or a recommendation within 14 days.

Either party can apply for a review of a delegate's decision, and in some cases, may be able to make an internal appeal to a Presidential member.



CASE STUDY – EXPEDITED ASSESSMENTS

EXPEDITING THE SETTLEMENT

Lily's legal representative lodged a dispute with the Commission. The dispute was dealt with under the expedited assessment provisions and a teleconference was listed in 14 days. At the start of the teleconference, Lily's legal representative and the insurer indicated that they had previously discussed the matter and that neither party would settle.

The Registrar's delegate conducted a conciliation conference at which opportunities to resolve the impasse were explored. The delegate was able to establish that Lily was back at work, that the employer was happy with her commitment and both parties were positive about their ongoing work relationship. Following conciliation by the delegate, a compromise agreement was reached at the teleconference.

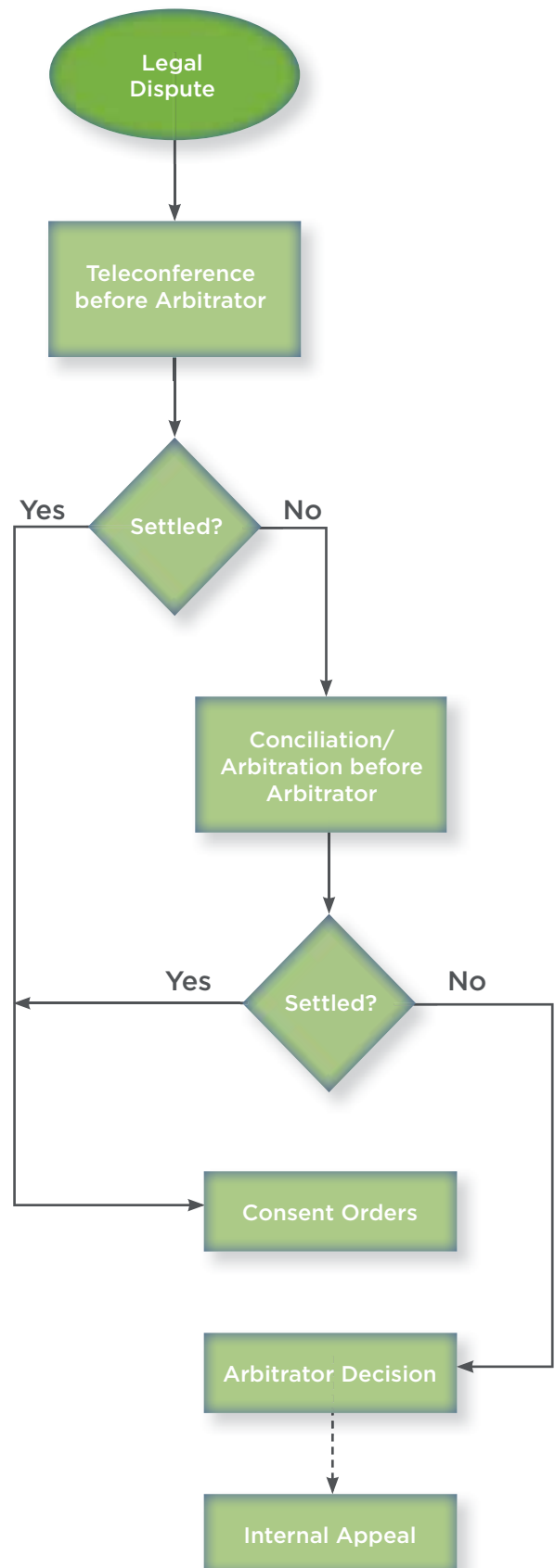


LEGAL DISPUTES

Disputes for weekly compensation exceeding 12 weeks, medical and related expenses compensation exceeding \$8,990.10, and all other compensation types are listed for teleconference, before an Arbitrator, 35 days from the date the dispute is lodged. If the matter does not resolve at teleconference, the Arbitrator will list the matter for a combined in-person conciliation conference and arbitration hearing, within three weeks if the matter is ready to go ahead, or eight weeks if third-party documents (e.g. medical records) are required.

An Arbitrator will attempt to resolve the dispute during the in-person conciliation phase. If the matter does not resolve during conciliation, the Arbitrator will begin an arbitration hearing. The arbitration hearing is sound recorded and a written or oral decision will be issued within 21 days.

Either party may appeal to a Presidential member against an Arbitrator’s decision.

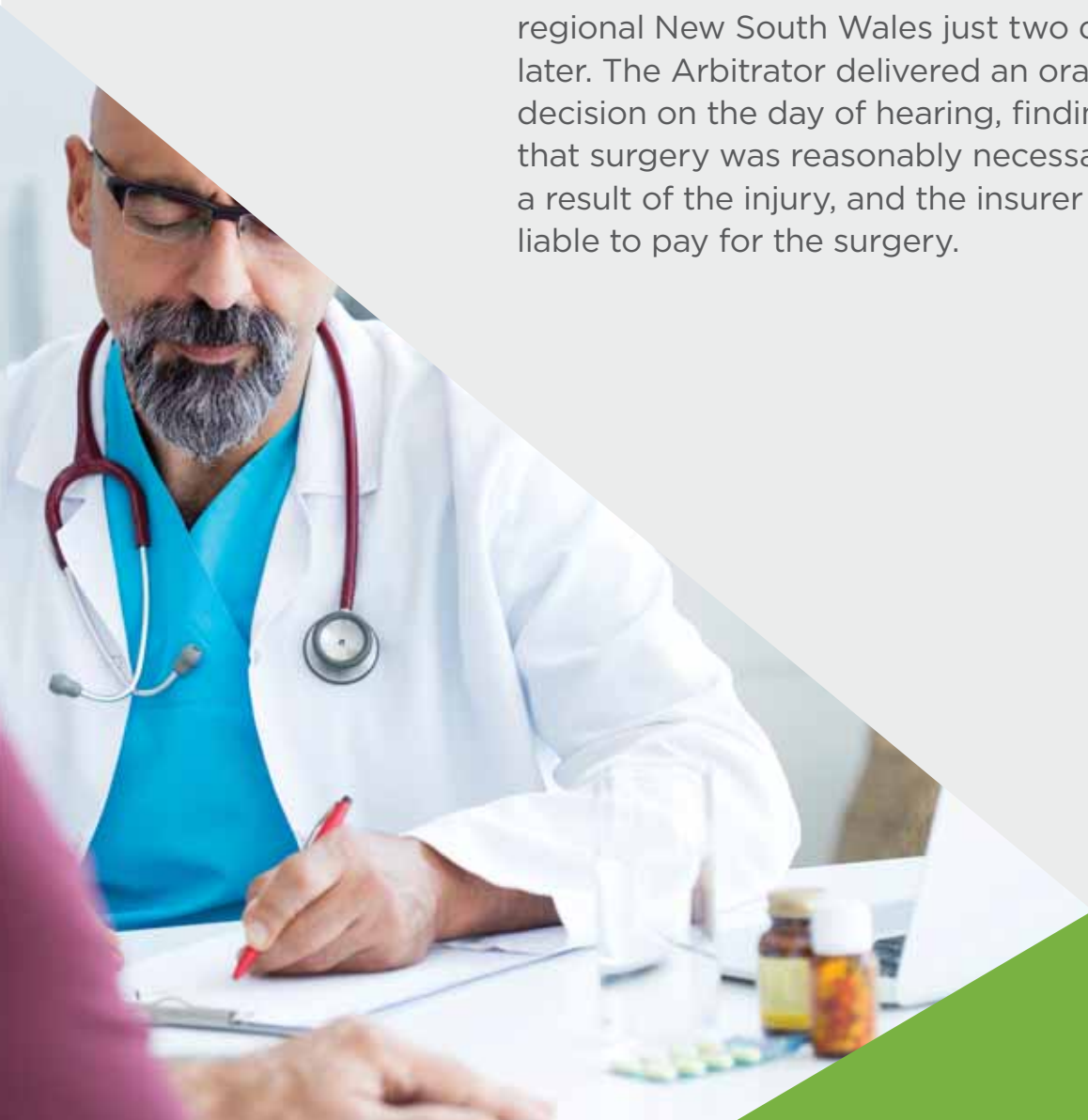


CASE STUDY – LEGAL DISPUTES

FAST TRACKING TREATMENT

Despite Stephano's treating specialist recommending that he undergo shoulder surgery, the insurer advised that it would not pay for the surgery.

Following lodgment of a dispute in the Commission, the matter went before an Arbitrator for conciliation. As the parties were unable to agree on a resolution, the Arbitrator listed the matter for hearing in regional New South Wales just two days later. The Arbitrator delivered an oral decision on the day of hearing, finding that surgery was reasonably necessary as a result of the injury, and the insurer was liable to pay for the surgery.



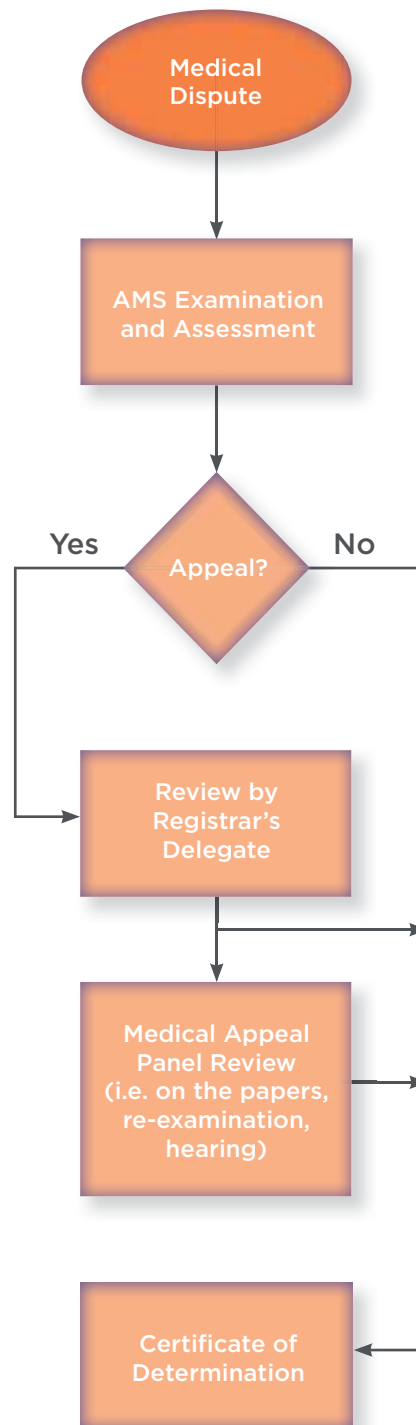
MEDICAL DISPUTES

Medical disputes, mostly concerning the degree of permanent impairment resulting from an injury, are referred to Approved Medical Specialists for assessment.

Medical assessments are held approximately 35 days from the date of lodgment of the dispute, with assessment certificates issued within 14 days.

A party may appeal against an assessment through an internal appeal to a Medical Appeal Panel (constituted by an Arbitrator and two Approved Medical Specialists) only if the Registrar’s delegate is satisfied, on the face of the application and any submissions, that at least one of the grounds for appeal has been made out.

Certificates of Determination are issued after the expiry of 28 days, to allow sufficient time for appeal applications to be lodged.



CASE STUDY – MEDICAL DISPUTES

MAKING USE OF TECHNOLOGY

Tim developed a psychological injury working in a small business in country NSW. Due to his injury, he was unable to travel outside of his local area.

The employer's insurer disputed Tim's claim for permanent impairment compensation and he lodged an application in the Commission to resolve the dispute.

The dispute resolution required an independent assessment by a Commission-appointed Approved Medical Specialist. Unfortunately, none could travel to Tim's town.

The Commission appointed an Approved Medical Specialist to do the assessment by video conference. Tim attended a local medical centre and was able to communicate with the Approved Medical Specialist via the internet.



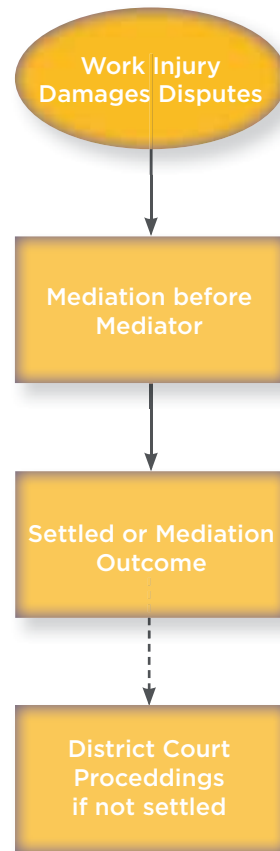
WORK INJURY DAMAGES DISPUTES

Workers must participate in mediation in the Commission before court proceedings can be started for work injury damages. Mediators must use their 'best endeavours' to bring the worker and employer to agreement.

Work injury damages disputes are listed before Mediators within 35 days of allocation of the dispute.

If the parties fail to reach agreement at mediation, the Mediator will issue a certificate of final offers within two days, and the worker may then begin court proceedings.

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



CASE STUDY – WORK INJURY DAMAGES DISPUTES MEETING THE PARTIES’ JOINT REQUEST

Conferences for work injury damages claims are usually listed for mediation within 35 days of allocation to a Mediator. This allows for parties to exchange information relevant to the dispute and for the Mediator and legal representatives to find a date in common to schedule the conference.

In Louisa’s matter, however, both parties had agreed on the mediation date before Louisa’s legal representative lodged the dispute. As a result, the mediation was able to go ahead just eight days after the dispute was registered.





APPEALS

Arbitral Appeals

A party to a dispute about compensation may appeal against an Arbitrator's decision. The appeal is referred to the President or a Deputy President for determination.

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

An arbitral appeal must be made by application to the Registrar and will not go ahead unless the Registrar is satisfied that it complies with relevant procedural requirements. Leave must be sought to appeal against a decision that is not a final decision in the dispute.

Presidential members may determine appeals 'on the papers', if the written submissions constitute sufficient information, or after a telephone conference or formal hearing.

An Arbitrator's decision may be confirmed or revoked. If revoked, a new decision may be made in its place or, alternatively, the dispute may be allocated to a new Arbitrator for re-hearing.

Determinations by Presidential members may be appealed in point of law to the Court of Appeal.

Medical Appeals

A party may appeal against medical assessment concerning permanent impairment on four grounds:

- Deterioration of the worker's condition;
- Availability of additional relevant information;
- Incorrect criteria;
- Demonstrable error.

The Registrar, or delegate, must be satisfied that a ground of appeal is made out before referring the matter to a Medical

Appeal Panel, comprised of an Arbitrator and two Approved Medical Specialists. The Registrar may also refer the matter to an Approved Medical Specialist for further assessment or reconsideration.

The Medical Appeal Panel determines whether further submissions are required, whether the worker needs to be re-examined by a panel member, and/or whether an assessment hearing is required to allow the parties to make oral submissions to the Appeal Panel. Alternatively, appeals may be dealt with 'on the papers', without further submissions from the parties.

The Medical Appeal Panel may confirm the original medical assessment or revoke the assessment and issue a new Medical Assessment Certificate in its place.

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

Our Performance

KEY PERFORMANCE INDICATORS

The Commission has two critical statutory objectives: the timeliness with which disputes are finalised and the durability of the outcomes. Both these key performance indicators are closely monitored.

There has been improvement in the percentage of disputes resolved in three, six, nine and 12 months over the past two years and a return to target timeframes for disputes resolved without an appeal.

Decisions made by Arbitrators and assessments performed by Approved Medical Specialists continue to be durable.

Timeliness	Target	2015-16	2016-17
% of Dispute Applications resolved (no appeal):			
▪ 3 months	45%	44%	58%
▪ 6 months	85%	87%	94%
▪ 9 months	95%	96%	99%
▪ 12 months	99%	99%	100%
% of Dispute Applications resolved (with appeal):			
▪ 3 months	40%	36%	51%
▪ 6 months	80%	74%	84%
▪ 9 months	94%	86%	93%
▪ 12 months	98%	92%	96%
Average days to resolution for Dispute Applications with no appeal	105	115	93
	Target	2016-17 Average	
Average days to resolution of Arbitral Appeals	112	122	
Average days to resolution of Medical Appeals	100	96	
Durability	Target	% Revoked	
% of determined Dispute Applications revoked on appeal ^[1]	< 15%	4%	
% of Medical Assessment Certificates revoked on appeal ^[2]	< 15%	9%	

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

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

WORKLOAD AND PERFORMANCE

Total Registrations

The table below shows the number of applications registered by the Commission for the past two financial years. Overall, registrations have reduced by approximately 7.5%.

Application Type	2015-16	2016-17
Application to Resolve a Dispute (Form 2)	5,278	5,014
Application for Expedited Assessment (Form 1)	117	86
Workplace Injury Management Dispute (Form 6)	51	41
Application for Assessment of Costs (Form 15)	7	12
Registration of Commutation (Form 5A)	47	54
Application for Mediation (Form 11C)	1,384	1,313
Application to Cure a Defective Pre-filing Statement (Form 11B)	0	0
Application to Strike Out a Pre-Filing Statement (Form 11E)	9	6
Disputed Direction for Access to Information and Premises (Form 11)	5	4
Arbitral Appeal (Form 9)	70	58
Application for Leave to Refer a Question of Law (Form 13)	0	0
Medical Appeal (Form 10)	647	458
TOTAL	7,615	7,046

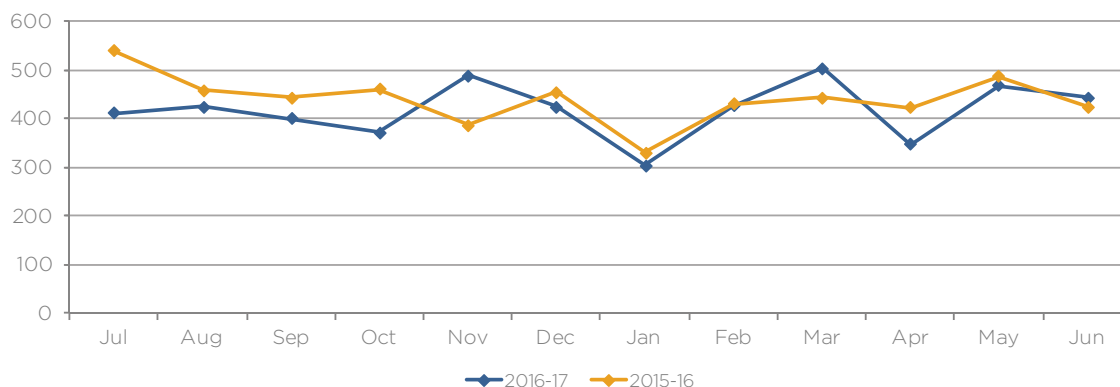
Applications to Resolve a Dispute (Form 2)

Most of the compensation dispute applications lodged in the Commission are Applications to Resolve a Dispute (Form 2).

The graph below compares Form 2 dispute registrations over the past two financial years and shows a decrease of 5% in 2016-17.

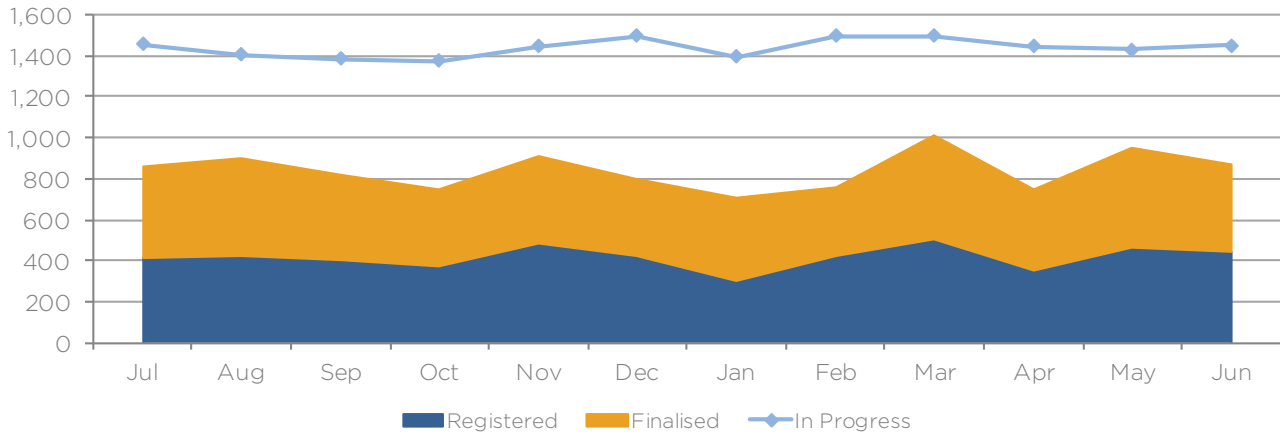
In 2016-17, an average of 418 Form 2 dispute applications were lodged each month, compared to 440 per month in the previous financial year.

Form 2 - Comparison of Registrations



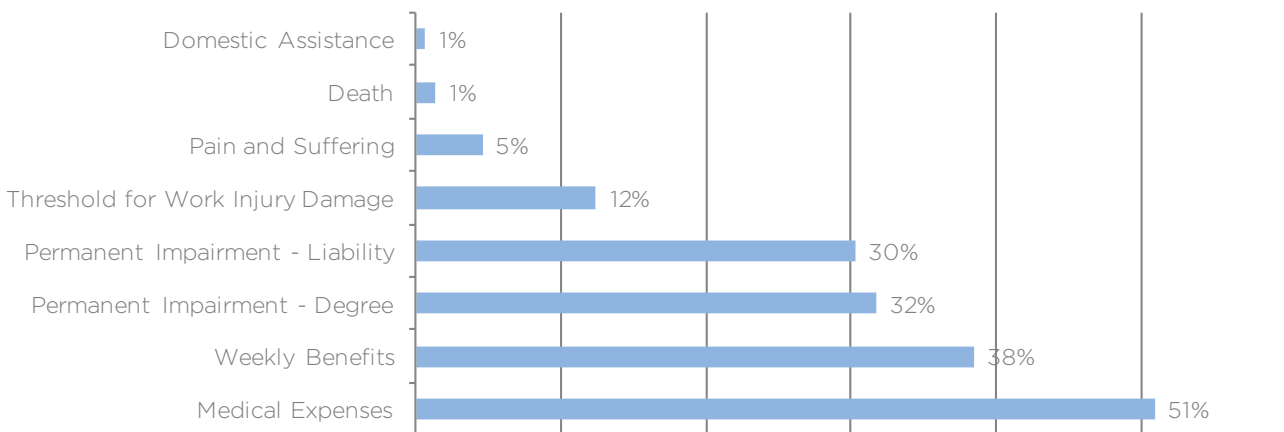
A monthly comparison of Form 2 disputes lodged and finalised in 2016-17 is below. The graph also indicates the Commission’s active Form 2 dispute applications at any given time, which was maintained below 1,500 matters for the whole of the year. As at 30 June 2017, there were 1,453 active Form 2 dispute applications on hand. The active case load has reduced by about 20% over the previous reporting period.

Form 2 - Registered, Finalised and In Progress



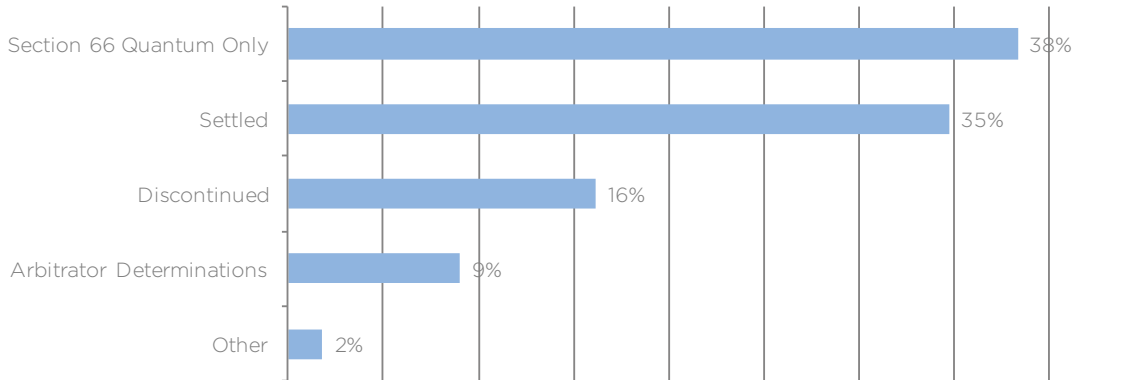
Most Form 2 dispute applications involve claims for more than one type of compensation benefit. Weekly payments compensation, medical and related expenses compensation and permanent impairment compensation make up the majority of disputed compensation types.

Form 2 - Compensation in Dispute 2016-17



In 2016-17, disputes limited to the degree of permanent impairment (section 66 quantum only) made up 38% of all resolutions for Form 2 dispute applications. Settlements throughout the year remained strong and Arbitrators were only required to determine 9% of disputes in the reporting period. The profile of outcomes has remained essentially the same over the past two financial years.

Form 2 - Outcomes

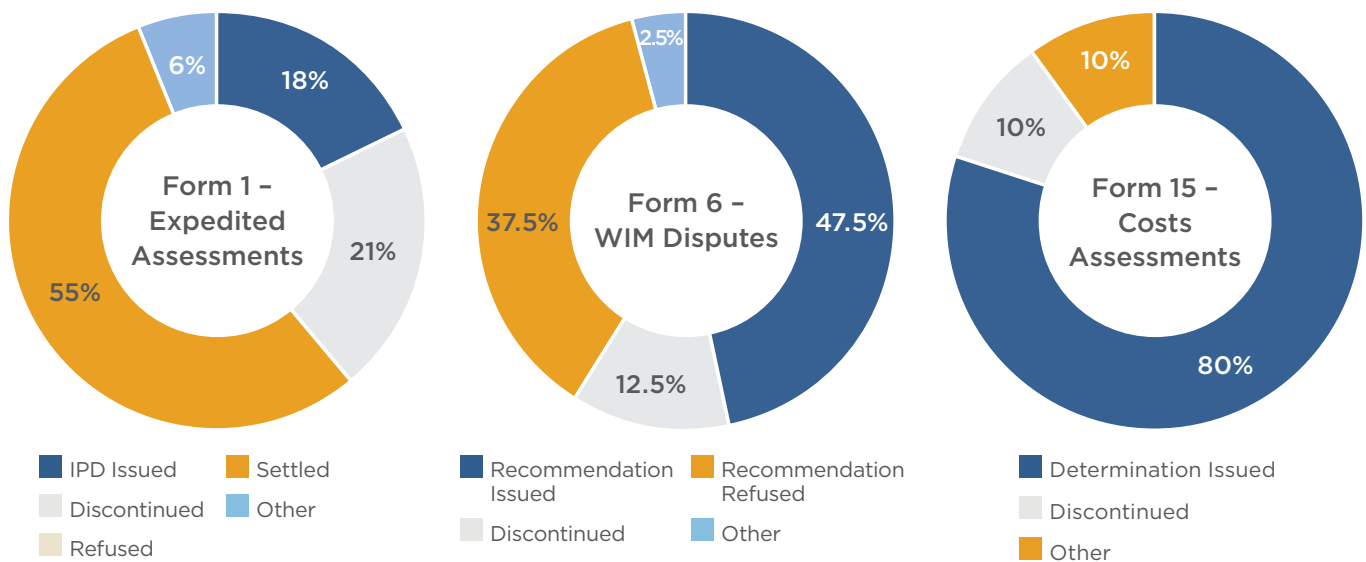


OTHER COMPENSATION DISPUTE APPLICATIONS

Other Compensation Dispute Applications (excluding appeals) included:

- Application for Expedited Assessment (Form 1)
- Application to Resolve a Workplace Injury Management Dispute (Form 6)
- Application for Assessment of Costs (Form 15)

The charts below show outcomes for expedited assessments, workplace injury management and assessment of costs.



LOCATIONS

During 2016-17, the Commission held 2,018 con/arbs at 20 locations

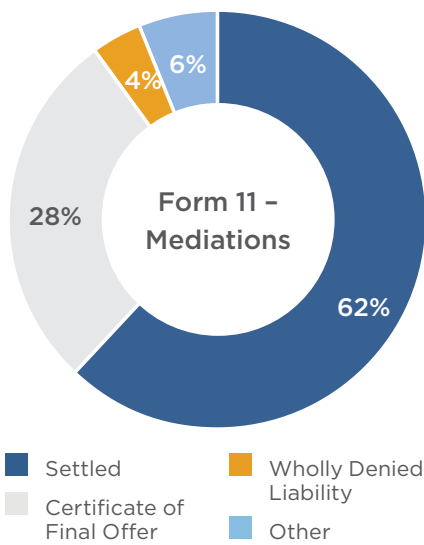
Albury	Ballina	Bathurst	Broken Hill
Bourke	Coffs Harbour	Dubbo	Gosford
Griffith	Newcastle	Orange	Penrith
Port Macquarie	Queanbeyan	Sydney	Tamworth
Taree	Tweed Heads	Wagga Wagga	Wollongong

Work Injury Damages Dispute Applications

The Commission plays a significant role in resolving work injury damages claims through pre-trial case management and mediation services.

In 2016-17 the Commission registered 1,313 Applications for Mediation to Resolve a Work Injury Damages Claim (Form 11C). In the same period, it finalised 1,375 mediation disputes.

The table below shows the breakdown of outcomes.



The Commission held a total of 1,230 mediations, with 849 (69%) reaching settlement.

The Commission also resolved Applications to Strike Out a Pre-filing Statement (Form 11E) and disputes related to Access to Information and Premises (Form 11).

Arbitral Appeals

In 2016-17, the Commission received 58 Applications to Appeal Against a Decision of an Arbitrator (Form 9). During the same period, Presidential members determined 53 appeals and one was discontinued.

Overall, 4% of appealable decisions by Arbitrators were revoked on appeal.

Medical Appeals

There were 2,265 Medical Assessment Certificates issued in 2016-17, representing a 24% decrease compared with 2015-16. Application to Appeal Against Decision of Approved Medical Specialist (Form 10) lodgments similarly decreased, by 29%, from 647 appeals lodged in 2015-16 to 458 in 2016-17.

There were 518 medical appeals finalised in 2016-17. Approximately 9% of Medical Assessment Certificates issued were overturned on appeal.

Judicial Review of Registrar and Medical Appeal Panel Decisions

Seven judicial review applications were lodged in the Supreme Court of New South Wales in 2016-17. Of those matters, six were against the decisions of Medical Appeal Panels and one against a decision of a delegate of the Registrar. Overall, the judicial review rate was less than 1.5% of all decisions made by Medical Appeal Panels and Registrar’s delegates, and 58% fewer than last year.

In 2016-17, the Supreme Court determined 12 judicial review applications, dismissing five applications and quashing seven Medical Appeal Panel decisions.

Appeals to the Court of Appeal from Presidential Decisions

In 2016-17, the Court of Appeal determined and dismissed two appeals from Presidential decisions. A third appeal was discontinued before determination.

As at 30 June 2017, two Presidential decisions were pending appeal before the Court of Appeal.

EDUCATION AND COLLABORATION

User Group

The User Group, comprised of Commission representatives and representatives from State Insurance Regulatory Authority, NSW Bar Association and The Law Society of NSW meets quarterly to raise issues relevant to practice and procedure in the Commission. As at 30 June 2017, the User Group membership was:

- Judge Greg Keating, President (Chair)
- Michael Snell, Deputy President
- Rod Parsons, Registrar
- Annette Farrell, Director Operations
- Catherine McDonald, Senior Arbitrator
- Glenn Capel, Senior Arbitrator
- Petrina Casey, State Insurance Regulatory Authority
- Elizabeth Wood, NSW Bar Association
- Shane Butcher, The Law Society of NSW
- Kristi McCusker, The Law Society of NSW
- Stephen Harris, The Law Society of NSW
- Andrew Mulcahy, The Law Society of NSW

Council of Australasian Tribunals

The Commission is a member of the Council of Australasian Tribunals (COAT), the national body through which tribunals come together to examine and compare ideas, working methods, organisation and management, member training and support programs.

The President and Registrar are committee members of the NSW Chapter of COAT, while the Registrar is also a member of the Australasian Tribunal Administrators' Group.

On 26 August 2016, the NSW Chapter held its annual conference and on 12 October 2016, the Hon Justice Margaret Beazley AO delivered the annual Whitmore Lecture. On 8 and 9 June 2017, COAT NSW, in conjunction with COAT National, also held a two-day annual conference.

Workers Compensation Inter-Jurisdictional Meeting

The Commission's President convenes and chairs the annual meeting of Inter-Jurisdictional Workers Compensation Dispute Resolution Organisations. This facilitates and promotes information-sharing and collaboration between Australian and New Zealand tribunals that manage workers compensation and related disputes.

The group met before the COAT National and NSW Chapter joint conference and discussed:

- General practice and procedure;
- Medical panels and issues with independent medical examiners;
- Publication of decisions;
- Use of technology.



CONFERENCES AND SEMINARS

Insurer Seminars

Commission representatives, including the Registrar, Arbitrators, Mediators, the Director, Operations and a senior solicitor presented a series of free seminars to insurers throughout November and December 2016. More than 360 delegates registered for seminars in Sydney, Wollongong, Parramatta, Newcastle and Lismore.

Topics included:

- The Commission's dispute resolution model;
- Mediation in the Commission — a Mediator's view;
- Conciliation/arbitration in the Commission — an Arbitrator's view;
- When to come to the Commission — liability vs work capacity decisions;
- Section 74 notices — tips and traps;
- Thresholds and the medical assessment process.

Specialist Medical Seminars

The Commission and the State Insurance Regulatory Authority again joined forces to present two specialist medical seminars in which leading specialists delivered engaging presentations on a range of topics.

In October 2016, 43 medical specialists from fields such as neurosurgery, psychiatry and orthopaedic surgery attended a seminar on injuries to the spine to hear presentations on pain, biomechanics, surgery, psychosocial risk factors and neuromodulation.

In November 2016, 31 medical specialists, including psychiatrists, rehabilitation physicians, orthopaedic surgeons, occupational therapists and physiotherapists attended a seminar on cognitive impairment. The diverse program content covered topics relevant to the treatment and assessment of cognitive impairment including brain vulnerability, neuropsychological testing, psychiatric disorders and cognitive changes.



The Hon Justice Ian Harrison SC



Professor Adam Elshaug

In-house Conferences and Forums

Each year the Commission holds targeted professional development conferences for Arbitrators, Mediators and Approved Medical Specialists. These conferences feature a blend of internal and external presenters. This year, the Commission was delighted to have esteemed guest speakers at each of its conferences.

The Arbitrator Annual Conference was opened by the Hon Victor Dominello MP. Keynote speaker, the Hon Keith Mason AC QC, former Solicitor-General and President of the NSW Court of Appeal, gave an intriguing history of the characters and events that have shaped our legal landscape. A focus of the conference was decision making, and the Hon Justice Ian Harrison SC took valuable time out from his duties on the Supreme Court bench to share his experience and insights into the discipline of delivering durable written decisions.

Ever attempting to continue to improve the mediation experience in the Commission, the Mediator Annual Conference explored techniques and practices to achieve greater success. Laurence Boulle AM gave the keynote address and discussed what makes for successful mediations in compulsory environments. Campbell Bridge SC considered the influence of culture in negotiation and mediation, drawing widely on his vast mediation experience, particularly through his work in Asia and his interest in Asian culture.

The Approved Medical Specialist Annual Conference delegates were privileged to hear from keynote speaker, Professor Adam Elshaug. Professor Elshaug shared his research in the area of low-value health care and its associated outcomes.

The Commission also continued its commitment to professional development through regular practice meetings and forums for Arbitrators and Approved Medical Specialists.

External Presentations by Invitation

Commission members and staff regularly presented at conferences and seminars hosted by other government agencies and private sector organisations.



The Hon Keith Mason AC QC



Mr Campbell Bridge SC



Senior Arbitrator Catherine McDonald



PUBLICATIONS

Bulletins

The Commission published several periodic bulletins for members, service partners and stakeholders, including:

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

The Commission also published a monthly staff newsletter, **WCC Watch**.

On Appeal

On Appeal summarises decisions of Presidential members, delivered during the previous month, and provides a brief overview of relevant High Court and Court of Appeal decisions.

The publication was issued monthly to Arbitrators and key stakeholders, and is 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 contains a list of all decisions and case summaries by chronological order, while the second contains the same resources grouped by subject matter. Each includes hyperlinks to both the decision and a summary. **On Review** was regularly updated during the year.

On Review is available on the Commission's website (www.wcc.nsw.gov.au).

Weekly Summaries

The Commission published a short weekly summary of relevant Arbitral and Medical Appeal Panel decisions.

Arbitrator Practice Manual

The **Arbitrator Practice Manual** provides guidance to Commission members on a range of procedural and ethical issues. It also contains extensive discussion on substantive and relevant legal issues. The first practice manual was developed in 2009; a second edition was released in November 2014 and included the changes made by the 2012 amendments. The manual was regularly updated in 2016-17. It helps to enhance 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 understand the dispute resolution model and the relationship between their functions and those of Arbitrators.

It 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. The manual was updated in 2016-17.



Governance and Accountability

OVERVIEW

The Commission maintains a robust corporate governance framework that includes:

- Strategic planning;
- Corporate and business unit planning; and
- Governance and consultative committees and forums.

To ensure risk is managed appropriately and resources used ethically and efficiently, the Commission incorporates best practice governance into its service delivery model.

Governance Committees and Forums

A range of committees and forums, comprising a mixture of staff, service partners and external stakeholders, helps the Commission to make decisions and meet governance arrangements. They provide opportunities for information sharing, consultation and the development of options in relation to the Commission's operations.

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, Director Operations and Director Legal Services.

Unit Managers' Meeting

The Registrar meets monthly with the Director Operations and Director Legal Services and Unit Managers. The meetings are an interactive information and communication channel involving discussion of key events, issues and emerging trends within each unit.

Access and Equity

The Commission's Access and Equity Service Charter sets out standards for accessible and equitable services. To achieve this, the Commission has developed a range of practices, policies and procedures including:

- Free dispute resolution services;
- Information resources on the internet;
- Outreach services for self-represented workers;
- Interpreter services at no charge;
- Hearings in regional and rural locations;
- Codes of conduct for Arbitrators and Approved Medical Specialists;
- Ongoing education and training seminars.

Complaint Handling

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

During the reporting year, the Commission received a total of eight complaints. Two concerned medical assessments conducted by Approved Medical Specialists, two concerned Mediators, four concerned proceedings held by Arbitrators and one was about administrative issues.

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

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;
- Monitoring and reporting.

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

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 currently has a focus on improving the Commission's operational risk processes and register. Key strategic risks are reviewed on at least an annual basis by the Commission's Executive.

Audit and Assurance

In January 2017, KPMG reported on the results of an internal audit to provide assurance that the Commission's internal controls were effective to manage risks within the Commission's administrative and financial processes.

The audit's scope included:

- Service level agreements;
- Budget monitoring and financial reporting (relating to administrative and financial processes);
- Policies and procedures;
- Purchasing and payments;
- Building security.

The Auditors only found one Moderate level risk and one Low level risk.

GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

The *Government Information (Public Access) Act 2009* (GIPA Act) requires agencies to report on their obligations under the GIPA Act. In compliance with 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 2016-17, the Commission received nine applications to release information under the GIPA Act.

PEOPLE AND CULTURE

Employment Provisions

The Attorney General, in consultation with the Minister for Finance, Services and Property appoints Members of the Commission, while the President appoints Approved Medical Specialists and Mediators.

Staff are employed under the *Government Sector Employment Act 2013*, supported by its regulation and rules.

Workforce Planning, Staff Turnover, Retention and Appointments

The Commission completed the final phase of an organisational review, reducing its operational staff from 66 to 59. The two Deputy Registrar roles became Directors as part of the Senior Executive Service reform.

Appointments and re-appointments for 2016-17 included:

- Re-appointment of Acting Deputy President, Larry King SC;
- Appointment of Acting Deputy President, Geoffrey Parker SC;
- Appointment of Senior Arbitrator, Glenn Capel;
- Appointment of two new sessional Arbitrators; and
- Re-appointment and appointment of 26 Mediators.

Learning and Development

In addition to the conferences and seminars set out on pages 31-33, Education and Collaboration, Commission staff and members completed a range of internal and external learning and development activities, including:

- COAT NSW Chapter Annual Conference;
- Resolution Institute accredited mediator course;
- Various Continuing Legal Education seminars;
- Mandatory online training:
 - Code of Ethics and Conduct;
 - Fraud and Corruptions Control;
 - Introduction to Health and Safety at Work;
 - Work Health Safety Due Diligence.

Work Health and Safety and Wellbeing

The Work Health and Safety Committee has oversight of the Commission’s work health and safety program. The Commission has a number of strategies to minimise risk and ensure the health and safety of its people:

- Regular site inspections;
- Consultation with staff;
- Injury and hazard management;
- Risk assessment and mitigation;
- Workstation set-up checklists;
- Engagement of ergonomic specialists.

The workplace supports wellness initiatives, such as on-site flu-vaccinations and fitness passports.

Staff can access a range of work-life balance initiatives, including flex-time, flexible working hours, part-time work and job sharing.

The Commission recognises the efforts of community groups such as the Salvation Army through its annual Christmas Appeal.

Social events held during the year include a Christmas party and informal morning teas and lunches.

Workplace Diversity

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

Consultation Mechanisms

The Commission is committed to workplace relations that value consultation, communication, cooperation and input from staff 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: a formal forum with representatives from the Commission’s management, Public Service Association of NSW and other government agencies;
- Reference group meetings for Arbitrators, Approved Medical Specialists and Mediators: provide a forum for information sharing and input to practice and procedure;
- Staff surveys: online surveys for staff to provide feedback on workplace issues, such as work health and safety.



WORKERS COMPENSATION COMMISSION

(excellent) 10

DIATOR ANNUAL CONFERENCE
Thursday 25 August 2016
PROGRAM
Hotel, World Square

Appendices

APPENDIX 1 – ARBITRATORS

(As at 30 June 2017)

SENIOR ARBITRATORS

Glenn Capel
Catherine McDonald

ARBITRATORS

Full-Time

Josephine Bamber
Brett Batchelor
John Harris
Paul Sweeney
Tim Wardell

Sessional

Linda Ashford A/J
Elizabeth Beilby
Ross Bell
Garth Brown
William Dalley
Grahame Edwards
Gerard Egan
Deborah Moore
Jane Peacock
Richard Perrignon
Carolyn Rimmer
Anthony Scarcella
John Wynyard
Philip Young

Under section 371 (1) of the 1998 Act, the Registrar may exercise all the functions of an Arbitrator.

The Director, Operations, is also an Arbitrator.

APPENDIX 2 – APPROVED MEDICAL SPECIALISTS

(As at 30 June 2017)

Dr Robert Adler
Dr Peter Anderson
Dr Tim Anderson
Dr Douglas Andrews
Dr John Ashwell
Dr Mohammed Assem
Dr John Baker
Dr John Beer
Dr Christopher Bench
Dr Neil Berry
Dr Trevor Best
Dr Graham Blom
Dr James Bodel
Assoc Prof Geoffrey Boyce
Dr Kenneth Brearley
Dr Robert Breit
Assoc Prof David Bryant
Dr Mark Burns
Dr Gregory Burrow
Dr William Bye
Dr Beatrice Byok
Prof John Carter
Dr Edward Cassidy
Dr Lionel Chang
Dr Christopher W Clarke
Dr Richard Crane
Dr David Crocker
Dr Paul Curtin
Dr Michael Davies
Dr Thomas Davis
Dr Michael Delaney
Dr Drew Dixon
Dr John Dixon-Hughes
Dr Hugh English
Prof Paul Fagan
Dr Donald Kingsley Faithfull
Assoc Prof Michael Fearnside
Dr Antonio E L Fernandes
Dr Sylvester Fernandes
Dr Robin B Fitzsimons
Dr John F W Garvey
Dr Robert Gertler
Dr Peter Giblin
Dr Margaret Gibson
Dr John Giles
Dr John Glass
Dr Michael Gliksman
Prof Nicholas Glozier
Dr David Gorman
Dr Richard Haber
Dr Ian Hamann
Dr Scott Harbison
Dr Henley Harrison
Dr John Harrison
Dr Philippa Harvey-Sutton
Dr Mark Herman
Dr Roland Hicks
Dr Yiu-Key Ho
Dr Peter Holman
Dr Alan Home
Dr Michael Hong
Assoc Prof Nigel Hope
Dr Kenneth Howison
Dr Murray Hyde-Page
Dr Robert Ivers
Dr Caron Jander
Dr Lorraine Jones
Dr Mark Jones
Dr Sornalingam Kamalaharan
Dr Nalayini Kanagaratnam
Dr Hari Kapila
Dr Gregory Kaufman
Dr Edward Korbel
Dr Lana Kossoff
Dr Damodaran Prem Kumar
Dr Sophia Lahz
Dr David Lewington
Dr Monica Ling
Dr Edmund Lobel
Dr Michael Long
Dr Frank Machart
Dr Nigel Marsh
Dr Wayne Mason
Dr Tommasino Mastroianni
Dr Andrew McClure
Dr Michael McGlynn
Dr David McGrath
Dr Gregory McGroder
Dr John D McKee
Dr Ian Meakin

Dr Allan Meares
 Dr Ross Mellick
 Prof George Mendelson
 Dr Patrick John Morris
 Dr Bradley Ng
 Dr Paul Niall
 Dr Brian Noll
 Dr Chris Oates
 Dr David Daniel O'Keefe
 Dr John O'Neill
 Dr Julian Parmegiani
 Dr Brian Parsonage
 Dr Robert Payten
 Dr Roger Pillemer
 Dr Thandavan B Raj
 Dr Anne-Marie Rees
 Dr Loretta Reiter
 Dr Samson Roberts
 Assoc Prof Michael Robertson
 Dr Michael Rochford
 Dr Norman Robert Rose
 Dr David Rosen
 Dr Tom Rosenthal
 Assoc Prof Michael Ryan
 Assoc Prof Anthony Samuels
 Dr Edward Schutz
 Dr Joseph Scoppa
 Dr Wasim Shaikh
 Dr Tarra Shaw
 Dr John Silver
 Dr Andrew Singer
 Prof David Sonnabend
 Dr Michael Steiner
 Dr John P H Stephen
 Dr J Brian Stephenson
 Dr Harry Stern
 Dr Geoffrey Stubbs
 Dr Stanley Stylis
 Dr Ash Takyar
 Dr Nicholas A Talley
 Dr Stuart Taylor
 Dr Phillip Truskett
 Dr William Walker
 Dr Tai-Tak Wan
 Dr Ian Wechsler
 Dr George Weisz
 Dr Gregory White
 Dr Kalev Wilding
 Dr Brian Williams
 Assoc Prof Siu Wong

APPENDIX 3 – MEDIATORS

(As at 30 June 2017)

Robyn Bailey
 Ross Bell
 Jak Callaway
 Philip Carr
 Janice Connelly
 Gerard Egan
 Geri Ettinger
 Robert Foggo
 David Flynn
 Nina Harding
 John Ireland
 Dr Katherine Johnson
 James Kearney
 Dr John Keogh
 Stephen Lancken
 Margaret McCue
 Ross MacDonald
 John McDermott
 John McGruther
 Garry McIlwaine
 Chris Messenger
 Dennis Nolan
 Philippa O'Dea
 Jennifer Scott
 John Tancred
 John Weingarh

APPENDIX 4 – DEVELOPMENTS IN THE LAW

Jakmax Pty Ltd v Taylor [2017] NSWCCPD 24

The issue in this appeal related to whether the worker was usually based in New South Wales for the purposes of his employment and, therefore, whether the NSW legislation applied to his claim.

The worker was a sales representative for a Victorian-based company. He re-located from Victoria to Casino, NSW, and was receiving some smaller work-related stock at home. His employer sent larger stock items to other locations for the worker to collect.

The day after his employment ended, he was loading the work van with the remaining stock so his employer could collect the van and the stock. The worker claimed that whilst he was loading the van he injured his back. In the alternative, he claimed that he had injured his back by lifting, carrying, loading and unloading heavy stock over time.

Arbitrator Bamber found that the worker sustained an injury to his back as alleged and found that the worker was “usually based” in the State of New South Wales pursuant to s 9AA(3)(b) of the 1987 Act. She also found that the worker had no current capacity for employment. The employer appealed.

The President confirmed the Arbitrator’s determination that the worker was usually based for the purposes of his employment in New South Wales. The Arbitrator based her conclusion on the fact that the worker had re-located to Casino from his home in Victoria; he not only lived in Casino, but also stored work stock there, and his sales journeys started and ended from his residence. Although there was evidence that stock was sent to his residence, and to a retailer in Ballina for him to collect, there was no evidence that stock was forwarded to the worker at locations outside of New South Wales. Although there was evidence that the worker also worked for half of his time in Queensland, the evidence as a whole overwhelmingly supported the conclusion that the worker’s employment was connected to the state of New South Wales and, therefore, the New South Wales legislation applied to him.

State of New South Wales v Stockwell [2017] NSWCA 30

Mr Stockwell was a front-line paramedic who injured his back in the course of his employment, rendering him unfit for front line duties. He was allocated alternative duties managing emergency calls at the Operations Centre. While working in the Operations Centre he suffered a psychological injury and ceased work. He sought weekly payments of compensation on the basis that he was totally incapacitated as a result of his psychological injury.

Whilst working in the Operations Centre there was a temporary lapse in Mr Stockwell’s reaccreditation as a paramedic. The Ambulance Service argued that because of the lapse in his accreditation, Mr Stockwell was not a ‘paramedic’ and therefore not exempt from the effects of the *Workers Compensation Legislation Amendment Act 2012* and the restrictions in the suite of Workers Compensation benefits it introduced.

The President Judge Keating held that notwithstanding the temporary lapse in reaccreditation, Mr Stockwell continued to satisfy the classification of paramedic. The evidence established that the Ambulance Service accepted temporary lapses in accreditation even for front-line officers. The Ambulance Service managed the reaccreditation process and instructed workers where and when to attend for instruction and testing.

The Ambulance Service appealed to the Court of Appeal. Upholding the President’s decision, the Court of Appeal held that Mr Stockwell’s failure to successfully complete the reaccreditation within the timeframe specified did not mean that he did not have the status of a paramedic at the deemed date of injury. McColl JA noted that in this case, the failure to comply with the proviso was because the Ambulance Service failed to make arrangements for the worker to comply with the proviso.

E-Dry Pty Ltd v Ker [2017] NSWWCCPD 26

The challenge in this appeal was whether the worker's employment was a substantial contributing factor to his injury.

The worker was a carpet cleaner. His employer had instructed him not to remove his shoes when attending residences. On a rainy day in March 2016, he was running late for an appointment and did not want to enter the house with wet or muddy shoes. In his hurry to cross the street he lunged across the gutter that was full of running water. This caused a previous anterior cruciate ligament reconstruction in his right knee to rupture. He suffered from a congenital abnormality of the knee and had two previous knee reconstructions in 2011 and 2013.

The worker claimed compensation for the costs of, and incidental to, surgery to further reconstruct the anterior cruciate ligament in his right knee. In accordance with s 9A of the 1987 Act, the Arbitrator found that the worker's employment was a substantial contributing factor to his right knee injury. The employer was ordered to pay the costs of and incidental to the surgery. The employer appealed, arguing that the injury would have happened anyway if the worker had not been at work and his employment was not a substantial contributing factor.

A dispute as to whether the worker lunged over the gutter was found in his favour. It followed that the employer's doctor's opinion, which assumed that he was walking normally at the time of the injury, could not be accepted.

The President confirmed the Arbitrator's determination. The President was comfortably satisfied that the worker's employment was a substantial contributing factor to the injury. The factors which supported the finding included: the injury occurred during normal work hours; he took a direct route to the customer's home; he was rushing because he was late; it was raining and the road gutter contained a substantial quantity of water; he lunged over the gutter to keep his shoes dry as he had been instructed not to remove his shoes before entering the customer's home; and the congenital knee condition had not prevented him from engaging in regular sporting activities and full-time employment.

Manildra Flour Mills Pty Ltd v Almer [2017] NSWWCCPD 21

The claimant, a truck driver, was injured in incidents in October 2014 and February 2015. He had previously run a business in Queensland and contracted with the appellant, Manildra. On moving to NSW, the claimant sold his trucks and would hire a truck to complete his work with Manildra in NSW.

The issue before the Arbitrator was whether Manildra contracted with the claimant personally, or with a company of which the claimant was the sole director and shareholder. The Arbitrator held that Manildra contracted with the claimant personally, and that the claimant was a deemed worker pursuant to Sch 1, cl 2 of the 1998 Act.

Deputy President Snell held that the Arbitrator's determination was in error as it described the contract as one 'for services' and the claimant did not argue that he was a 'worker' within the meaning of s 4 of the 1998 Act. The Deputy President also held that the fact that Manildra always dealt with the claimant was not more supportive of one possibility than the other, regarding whether Manildra contracted with the claimant personally or the company. The Deputy President held that the Arbitrator's reliance on the evidence in this regard affected the result and was an error.

Deputy President Snell held that a contract would be construed by reference to the objective intention of the contracting parties. He observed that neither party had sought to put on evidence dealing with what was done or said leading to the formation of the oral contract. The Deputy President held that determining the identity of the parties involved consideration of the words and conduct used, and what they were reasonably understood to convey, rather than the actual beliefs and intentions of those involved.

Deputy President Snell revoked the Arbitrator's determination and remitted the matter for re-determination by another Arbitrator.

XCI Pty Ltd (in liq) v Thompson [2016] NSWWCCPD 58

The issue in this appeal concerned a challenge to the worker's credit.

The worker claimed lump sum compensation for a primary psychological injury, arising from an accepted injury when he was crushed between two pipes he was laying. Apart from some minor complaints at the time, a substantial period had elapsed before the worker reported symptoms and was diagnosed with post-traumatic stress disorder.

Before the Arbitrator, the counsel for the employer did not raise a credit issue in relation to the delayed reporting of symptoms. The Arbitrator held that it was inappropriate to determine the matter against the worker on the basis of reliability or credibility if the employer did not raise it in submissions, giving the worker an opportunity to respond.

On appeal, the employer sought to challenge the worker's reliability and credibility. The President held that the parties were bound by the conduct of their counsel and the forensic decisions made during the conduct of a hearing. The President confirmed the Arbitrator's determination, holding that the Arbitrator was bound to accept the worker's evidence, as the worker's credit had not been challenged.

Hamad v Q Catering Limited [2017] NSWWCCPD 6

The worker suffered from a conceded psychological injury. The employer asserted that it had a defence pursuant to s 11A(1) of the 1987 Act as the injury was caused by reasonable disciplinary action.

As part of an industrial dispute, the worker refused to complete certain tasks, despite being directed in writing. The employer assigned him other tasks at a lower grade.

The worker was called into a disciplinary meeting and was issued a warning letter. He completed his shift and then ceased work, claiming weekly compensation and medical expenses.

The Arbitrator held that the employer had made out a defence pursuant to s 11A of the 1987 Act on the basis of discipline. The worker appealed.

Deputy President Snell held that the employer carried the onus of establishing the elements of s 11A(1), including the causation issue, whether the injury "wholly or predominantly caused" by the relevant "action taken or proposed to be taken". The Deputy President observed that the available medical evidence suggested there were various potential causal factors, beyond those characterised as "discipline". It was not a matter where the cause of the psychological injury could be proven on the basis of common knowledge and experiences of ordinary life. The causation issue was not self-evident.

As the employer had not presented relevant medical evidence, Deputy President Snell held that the employer had not succeeded in proving the causation issue. He revoked the Arbitrator's finding that the employer had made out a defence under s 11A(1) and remitted the matter back to the Arbitrator to determine the remaining issues in the matter.



Workers
Compensation
Commission