



WORKERS COMPENSATION COMMISSION
ANNUAL REVIEW

—
2018/19

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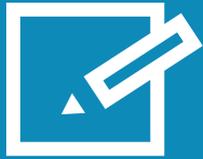
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OVERVIEW



PRESIDENT'S REPORT

I am pleased to present the 2018/19 Annual Review.

The year was one of change and renewal for the Commission. On 7 December 2018, long-time President his Honour Judge Greg Keating retired after 11 years as head of jurisdiction. His time as President saw the Commission go from strength to strength. In particular, it has a fine reputation for the timely and efficient resolution of disputes. Greg's legacy of hard work and achievement endures for the Commission's staff and users, as well as for the citizens of New South Wales who need the Commission's services. We wish Greg and his wife, Kerry, a long and happy retirement together.

Since I assumed this role on 23 January 2019, I have been greatly touched by the generous assistance I have been given by not only Commission staff but by other agencies within the Department.

The Commission now sits within the Department of Customer Service after the completion of the Machinery of Government changes. This new Department's mission is to better serve the citizens of New South Wales when they deal with government departments. Central to this aim is to deliver a consistent and efficient digital service experience. The aims of the Department, which was established on 1 July 2019, fit very well with the Commission's aims and objectives.

Still further change is on the horizon as a result of the Upper House Standing Committee on Law and Justice Report. In February 2019, this Committee issued a report on its 2018 review of the Workers Compensation Scheme. Two central recommendations fell from the report. They are:



As the only agency in New South Wales operating a dispute resolution service in the workers compensation area, the Commission can be well satisfied with the year's results. Our results are a measure of the drive and professionalism of an outstanding team, from our staff and members through to our service partners.

Recommendation 1

That the NSW Government consolidate the workers compensation scheme and CTP insurance scheme dispute resolution systems into a single personal injury tribunal by expanding the jurisdiction of the Workers Compensation Commission while retaining two streams of expertise.

Recommendation 2

That the NSW Government ensure that, if a single personal injury tribunal is established, as outlined in recommendation 1, it:

- be independent and judicial;
- have statutorily appointed presiding officers;
- provide a judicial appeal mechanism;
- publish its decisions; and
- allow claimants to have access to legal representation.

On 7 August 2019, the NSW Government responded to the Committee's report, supporting these recommendations in principle. We will now embark upon a process of consultation and discernment regarding the possible establishment of a consolidated personal injury tribunal. The idea of combining these jurisdictions has been around, to my knowledge, for at least the last 30 years, and it seems at last that its time has come. The Standing Committee was impressed with the timeliness and efficiency of the Commission's approach to dispute resolution, hence its recommendation that it be extended into the CTP insurance scheme. The prospect of a 'super tribunal' for the disposal of personal injury matters is an exciting development.

This is a long way from the Commission's first sittings, which took place in 1926, and is reflective of how every institution must change to continue to be relevant to those whom it serves.

April 2019 saw the completion of a significant digital project within the Commission. For years parties have filed their cases in either hard copy format or, more recently, by email. The opening of a new online lodgment portal ('digital service delivery platform'), for the first time in the Commission's history, has created an exceedingly time-efficient and user-friendly customer experience for the resolution of disputes, as described on page 5 of this report.

The digital service delivery platform is a significant advance on the traditional manner in which cases have been conducted in New South Wales. Given the Commission's commitment to swift and efficient access to justice, the online portal further enhances these aims.

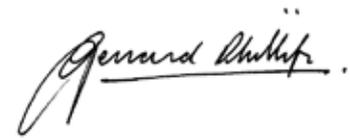
The Commission's operations and delivery of justice to the people of this State have continued apace in other areas as well. During the year, 6,778 dispute applications were registered with the Commission, with 6,803 disputes finalised. Ninety-two percent of workers compensation disputes were resolved without the need for a decision, and 69% of work injury damages disputes that proceeded to mediation settled. This is a significant achievement and speaks volumes for the quality of our dispute resolution model and the skills of those arbitrators and mediators working within the Commission.

Work injury damages disputes, if not

resolved, end in contested common law matters before the District Court, one of the busiest courts in the country. The efforts of our mediators in this regard not only assist injured workers and their employers to resolve their damages claims in a timely and cost-effective way but also help to alleviate the burden upon the District Court lists.

As the only agency in New South Wales operating a dispute resolution service in the workers compensation area, the Commission can be well satisfied with the year's results. Our results are a measure of the drive and professionalism of an outstanding team, from our staff and members through to our service partners.

I extend to them my thanks as we look forward to the year ahead.



Judge Gerard Phillips
President

ACHIEVEMENTS DURING THE YEAR



6,778

dispute applications
registered



6,803

dispute applications
finalised



3,557

telephone
conferences



1,820

conciliation/
arbitration hearings



2,284

medical
assessments



1,323

mediation
conferences



92%

resolution of Form 2
Applications without a
formal determination



69%

settlement of work injury
damages cases that
proceeded to mediation



Published Decisions

58 Presidential

352 Arbitral

135 Medical Appeal

LEVERAGING TECHNOLOGY TO IMPROVE CUSTOMER SERVICE

New Customer-facing Online Portal

On 1 May 2019, the Commission launched its new customer-facing online portal – referred to as the ‘digital service delivery (DSD) platform’. Now parties to a matter can upload documents directly to the portal, where they can be viewed 24/7 by all other parties. For our customers – workers, legal representatives, insurers and others – this means a smoother and more productive relationship with the Commission. But the new portal did not appear overnight – it is the result of the Commission’s commitment to improving customer service over many years.

From Hard Copy ...

From around 2002 to 2006, all documents had to be submitted to the Commission in hard copy, usually via mail or courier. Registered documents were sent back to parties, and decisions were issued, also in hard copy.

To Email ...

From 2006, customers could submit documents via email, saving them time and expense. However, this did not significantly reduce the time required to resolve a matter, as there was still considerable sending of hard copy documents between the Commission and its Arbitrators, Mediators and Approved Medical Specialists.

To an Internal Online Portal ...

In 2007, the Commission developed an online portal that was available to Commission staff, Arbitrators, Mediators and Approved Medical Specialists for uploading and accessing documents and invoices. Again, however, much reliance was placed on hard copy documents

for use during the daily course of hearing matters within the Commission. This situation continued for more than a decade.

To Paperless Documentation ...

In 2017, it was determined that a new approach was needed – paperless documentation in all matters for Arbitrators, Mediators and Approved Medical Specialists, provided via the internal online portal. This new system was piloted with a group of Arbitrators and Mediators from June 2017 and was adopted in full by all Arbitrators, Mediators and Approved Medical Specialists in January 2019. The results were beneficial to both customers and the Commission – a reduction in the average days to completion of the initial allocation in matters (teleconferences) from 35 days to 28 days. But customers still could not easily access documentation relating to their matter; they would typically need to contact Commission staff by phone and request information on the progress of their matter.

To a Customer-facing Online Portal

The logical next step was to expand portal access to customers. A pilot program began in November 2018 with a selection of law firms that represent parties before the Commission. Feedback was sought from the pilot group and enhancements were made in response to this feedback.

On 1 May 2019, the DSD platform went live, meaning that all parties can now submit and access documents via the portal. There is currently a settling-in period in which the old and new systems work side by side. From 1 January 2020, however, all workers who

have legal representation must submit documents electronically.

Benefits

The DSD platform provides significant benefits for both the Commission and its customers, including:

- 24/7 access to view applications from any device;
- Access to and exchange of information online;
- Real-time access to progress of matters (e.g. date and time of next teleconference);
- Opportunities for further reducing timeframes to resolve matters;
- Enhanced data collection and analytics;
- The ability for customers to ‘brief’ their counsel electronically;
- Significant reduction in costs for the Commission in terms of a paperless environment and reduced administrative burden.

Looking Ahead

The portal project is not yet complete. A second phase is now being piloted in which the Commission is looking to implement further improvements for customers. For example, the portal will soon send text message reminders to customers, triggered automatically by the DSD platform’s internal schedule. Over time, the Commission will continue to add functionality like this to enhance the effectiveness of the DSD platform.

Website Refresh

In mid-2018, the Commission refreshed its website to better support injured workers, employers and insurers who end up in dispute. Since then, the Commission has received excellent feedback on the look and functionality of the site. Stakeholders have been positive about the fresh, device-friendly design, with reports that the user-focused, intuitive layout makes it easier to locate forms, publications and legal resources.

The launch of the refreshed website coincided with the phasing in of the improved dispute resolution system. It is important for stakeholders to have instant access to news, information and forms via a modern digital platform with a clear and conversational narrative.

The website is now more user focused and intuitive, making it easier for customers to find what they need. The website is also now viewable on laptops, tablets, smartphones and other devices, with the interface adjusting to the size of the screen used.

Customer-focused Features

The website has a range of special features for customers (and other stakeholders), including:

- A dedicated decision search tool which searches only for data contained in decisions rather than the whole website;

- Information about dispute pathways that takes users on a step-by-step journey through what to expect when attending the Commission and throughout the process;
- Access to Google Translate, so that workers from non-English-speaking backgrounds can better understand the dispute resolution process;
- Simple layout which makes it easier for customers' legal representatives to find forms, publications and legal resources.

Improving the Commission's Efficiency

News and publications are posted regularly to keep the website relevant and up to date.

The website reflects recent legislative changes to the workers compensation dispute resolution system in New South Wales. Forms and other online documents have been updated to accommodate the Commission's ongoing workers compensation role and its new role of resolving work capacity disputes.

The website also allows access to the online portal (see page 5 of this report).

Corporate Videos to Help Customers

The Commission has produced a series of videos that describe the role of the Commission, illuminate the processes for resolving workers compensation disputes, and explain what workers can expect at each stage of their case.

The videos communicate that, although the processes of the Commission are legal in nature, they are not as intimidating or onerous as attending court. The videos also showcase the professional, customer-focused work of the Commission.

The videos cover Teleconferences, Conciliation/Arbitration Hearings, Approved Medical Specialist Assessments, Work Injury Management and Mediation Conferences. There is a sixth video that gives an overview of the role and work of the Commission.

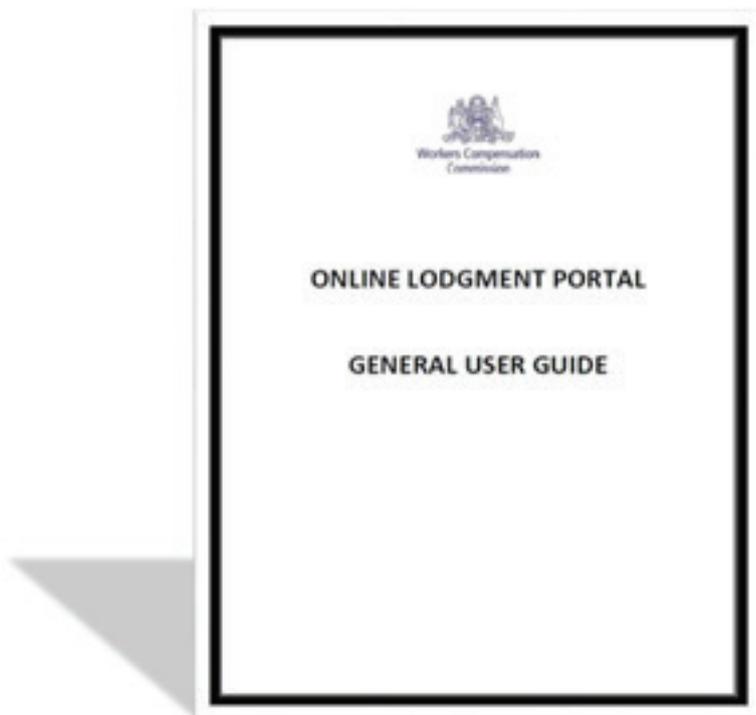
The videos have been produced in English and have also been translated into the following community languages:

- Arabic;
- Macedonian;
- Mandarin;
- Serbian;
- Spanish;
- Vietnamese.

The full suite of videos can be found in the publications section and under the relevant dispute pathways of the Commission's website.

Online Portal

www.wcc.nsw.gov.au/lodge-a-dispute/online-lodgment-portal



Website

www.wcc.nsw.gov.au/publications/videos/informational-videos-english



HONOURING THE PAST AND LOOKING TO THE FUTURE

The Commission is widely acknowledged for its progressive approach to dispute resolution. In 2001, a series of reforms was led by then Commission President Justice Terry Sheahan AO. His vision of early intervention, document exchange and informal conferencing marked a significant shift from longstanding practice and procedure. It challenged legal professionals practising in the jurisdiction at that time.

The foundations laid by Justice Sheahan were built on by Judge Greg Keating, who was President of the Commission from 2007 to 2018. By the conclusion of Judge Keating's appointment, the Commission had established a reputation for efficiency and durability in resolving disputes, with the majority of disputes resolved within three months of lodgment.

Under new President Judge Gerard Phillips, the Commission is embarking on the next stage of its service delivery program by incorporating greater use of digital technology.

The Commission honoured former Presidents Justice Sheahan and Judge Keating at a portrait unveiling on 23 May 2019, hosted by Judge Phillips. The portraits were unveiled by the Attorney General, the Hon Mark Speakman SC MP, before a well-attended gathering of family, friends and colleagues.

The portraits of the former Presidents continue the tradition of honouring past heads of the jurisdiction. Like those before them, the portraits join the historical record of judicial officers in New South Wales and are a fitting acknowledgement of their Honours' service to the State of New South Wales and their stewardship of a jurisdiction tasked with the important function of dispensing justice to injured workers, their families and employers.

The portraits are on public display at the Commission's premises at 1 Oxford Street, Darlinghurst.

The portraits were painted by Sydney artist Simon Fieldhouse. Simon is well known for his portraits of the legal profession and the judiciary.



Justice Terry Sheahan
President 2002 to 2007



Judge Greg Keating
President 2007 to 2018



Attorney General Mark Speakman SC MP, Judge Keating (second President), Judge Phillips (current President), Justice Sheahan (inaugural President)



Judge Phillips with artist Simon Fieldhouse



Kathryn Camp and Nyomi Gunasekera



Justice Sheahan addressing the gathering



Rod Parsons and Elizabeth Beilby



Judge Phillips and Justice Sheahan with Mark Speakman



FAREWELL GREG KEATING

ANNUAL REVIEW ACKNOWLEDGEMENT

Last year saw the retirement of the Hon Greg Keating from the role of President of the Commission. He was appointed a Judge of the District Court and President of the Commission in November 2007, and officially retired on 7 December 2018.

During his 11 years as President, his Honour led the Commission through significant legislative and structural change. Over this time, he delivered the Commission's vision of excellence and innovation in dispute resolution.

As Attorney General Mark Speakman said, "Judge Keating has undertaken both appointments with great dedication, intellect, gravitas and professionalism".

Early on, his Honour was instrumental in several reforms designed to improve workers compensation dispute resolution. These included the move in 2010 from a large pool of sessional members to a smaller group of highly skilled full-time members, and the strengthening of appeal provisions, resulting in a significant reduction in appeal rates.

The Commission improved its performance in dispute resolution and quickly adapted its practice and procedure to emerging trends. In particular, the timeframes for resolving disputes significantly improved.

He led the development of workers compensation jurisprudence during a period of significant legislative change. His fine legal knowledge and skill were confirmed when the High Court unanimously upheld his decision in *ADCO Constructions Pty Ltd v Goudappel & Anor* [2014] HCA 18.

In 2016, he also instigated a much-needed refurbishment of the Commission's facilities, to improve the functionality of dispute resolution. The refurbishment provided enhanced conference and hearing rooms, state-of-the-art sound recording equipment, and improved security for members.

His drive to utilise technological advances to improve dispute resolution and case management is what led to the launch of the Commission's online portal, a fully integrated digital lodgment and case management facility, and new website. His Honour's technological foresight and initiative have ensured that the Commission has the right tools to stay current in an electronic environment.

His Honour has left a very efficient and highly regarded organisation which is well placed to meet any challenges of the future. This has been recognised in recent legislative changes, providing the Commission with jurisdiction to hear and determine the gamut of workers compensation disputes under the statutory scheme.

The Commission's success is testament to the strength of his Honour's leadership over the years and the legacy of achievement he leaves behind.



Anne Keating, Kerry Keating, the Hon Greg Keating, the Hon Paul Keating, Sally McLean and baby Camilla



The Hon Greg Keating with the Hon Victor Dominello, Minister for Customer Service



STRATEGIC PLAN



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 Customer Service, is the Minister responsible for the administration of workers compensation legislation, except the appointment of members, which falls to the Attorney General.



Hon Victor Dominello MP

Our Objectives

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.

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

Our Functions

Workers compensation disputes are usually resolved by informal conciliation conferences conducted by telephone and/or 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 decisions in 2018/19 is set out in Appendix 4.

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

The Commission has proven to be effective in resolving disputes in a timely manner. The Commission's new digital service delivery platform will greatly assist in timely exchange of information.

The Commission 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 2019, the Commission was comprised of:

- Judge Gerard Phillips, President;
- Michael Snell and Elizabeth Wood, Deputy Presidents;
- Larry King SC and Geoffrey Parker SC, Acting Deputy Presidents;
- Rodney Parsons, Registrar;
- Glenn Capel and Josephine Bamber, Senior Arbitrators;
- 5 full-time and 18 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.

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

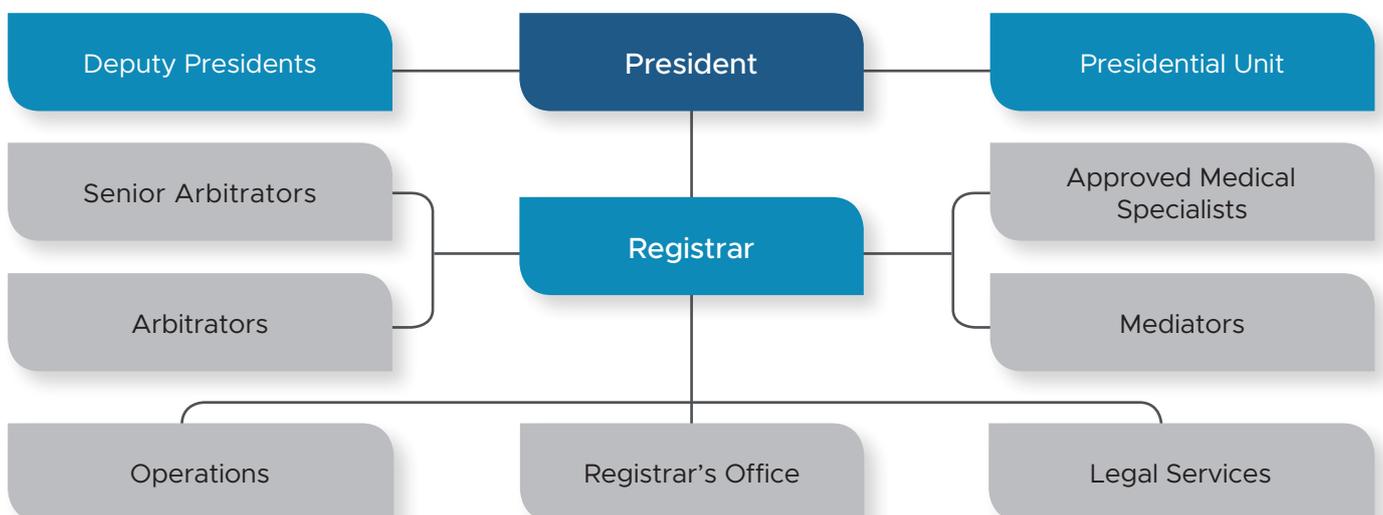
Senior Arbitrators and Arbitrators

Through conciliation, Senior Arbitrators and 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, made up of 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.

Organisation Structure



Our Staff

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

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

Operations Branch

The **Director Operations** leads staff in the provision of 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. The Director Operations is also part of the Commission’s executive committee and holds an Arbitrator appointment.

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, as well as concierge functions for the Commission’s hearing rooms in its Darlinghurst premises. The unit is also responsible for maintaining the Commission’s research library and managing file archives and sound recording processes.



Dispute Services staff are responsible for case management of workers compensation and work injury damages disputes, and make interim decisions to effectively progress matters through the Commission. The unit refers medical disputes to Approved Medical Specialists for assessment and manages medical appeals.

Operations Improvement staff are responsible for service improvement projects across Registry Services and Dispute Services, maintaining business processes and procedures, and managing audit and risk within the operational areas.

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



Legal Services Unit

The **Director Legal Services**

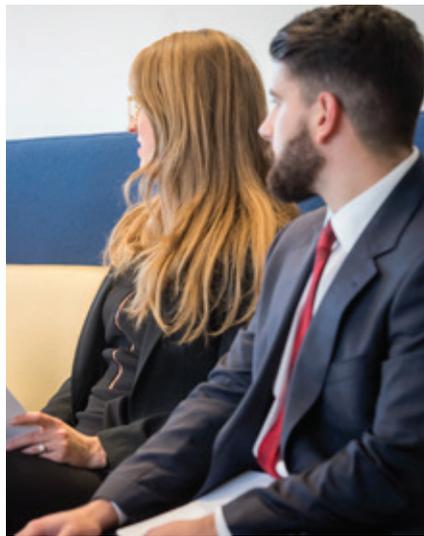
leads a team of legal staff who provide professional services to the Commission and stakeholders. The Director Legal Services is also part of the Commission's executive committee and holds an Arbitrator appointment.



Legal services include the statutory decision-making functions of the Registrar, providing legal advice to members and staff, responding to legal enquiries from the public and the legal profession, updating the Commission's **Arbitrator Practice Manual** and **Approved Medical Specialist Practice Manual**, publishing a weekly case summary and issuing the external publication entitled **On Review**. **On Review** is available on the Commission's website (www.wcc.nsw.gov.au).

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;
- Conduct money/production fees.



Registrar's Office

The Registrar's Office 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 and government agency and stakeholder enquiries, and coordinating presentations to internal and external stakeholders and other interested groups.

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

The **Business Support Unit** is within the Registrar's Office and its 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 provide administrative support, legal research, and case management of appeals and other matters.

Staff prepare a regular online publication entitled **On Appeal** which summarises 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 a range of medical specialties. They assess workers in relation to medical disputes, including assessing the degree of permanent impairment resulting from work-related injuries.

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

Approved Medical Specialists also sit on Medical Appeal Panels.

As at 30 June 2019, there were 112 Approved Medical Specialists who held appointments with the Commission (see Appendix 2).

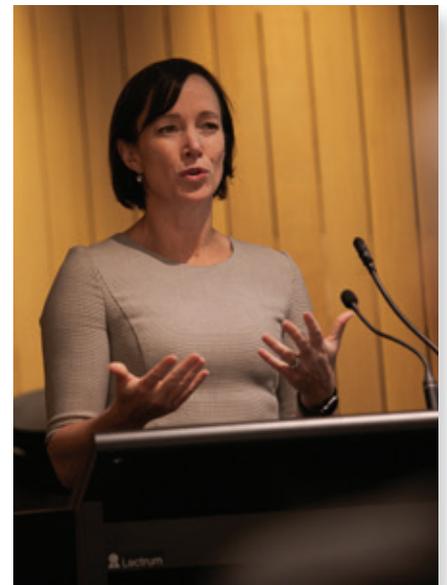
Mediators

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

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

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

As at 30 June 2019, there were 26 Mediators who held appointments with the Commission (see Appendix 3).



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 to and the amount of:
 - Weekly compensation payments;
 - Medical, hospital, rehabilitation and related expenses;
 - Lump sum compensation for permanent impairment;
 - Compensation for the death of a worker;
 - Domestic assistance;
 - Damage to artificial aids and clothing;
- Work capacity disputes;
- 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);
- Refunding of weekly compensation;
- Whether compensation is to be reimbursed to the Nominal Insurer;
- Disputes regarding return to work, including education and retraining;
- Applications to strike out pre-filing statements;
- Applications to cure defective pre-filing statements;
- Question of law applications;
- Applications for certificates to recover amounts ordered to be paid;
- Applications for access to information and premises;
- Applications for an order for costs (exempt workers only);
- Assessments of legal costs entitlements and apportionments (exempt workers only).

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

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



Expedited
Assessments



Legal
Disputes



Medical
Disputes



Work Injury
Damages Disputes

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 \$9,389 (as at 30 June 2019) are fast-tracked to a teleconference before a delegate of the Registrar. Disputes regarding work capacity and injury management are also expedited in this way. The teleconference is held 14 days from the date of lodgment 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. A delegate may refer a workplace injury management dispute to an injury management consultant for independent assessment.

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

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.



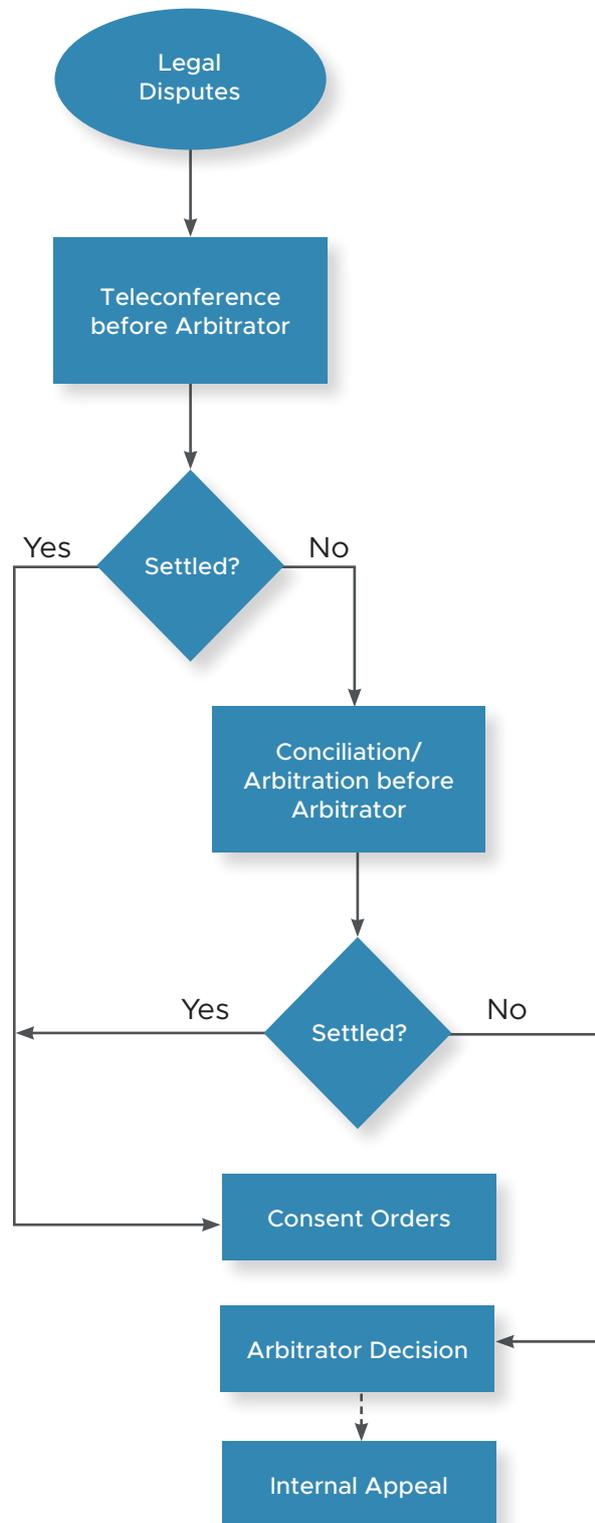
LEGAL DISPUTES

Disputes for weekly compensation exceeding 12 weeks, medical and related expenses compensation exceeding \$9,389 (as at 30 June 2019), and all other compensation types are listed for teleconference before an Arbitrator 28 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 (referred to as con/arb), within three weeks if the matter is ready to go ahead or up to eight weeks if third-party documents (e.g. medical records) are required to be produced before the Commission.

Arbitrators must use their 'best endeavours' (as stated in the 1998 Act) to bring the worker and employer to agreement. An Arbitrator will attempt to resolve the dispute during the teleconference and the in-person conciliation phase.

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

Either party may appeal to a Presidential member against an Arbitrator's decision for error of fact, law or discretion.

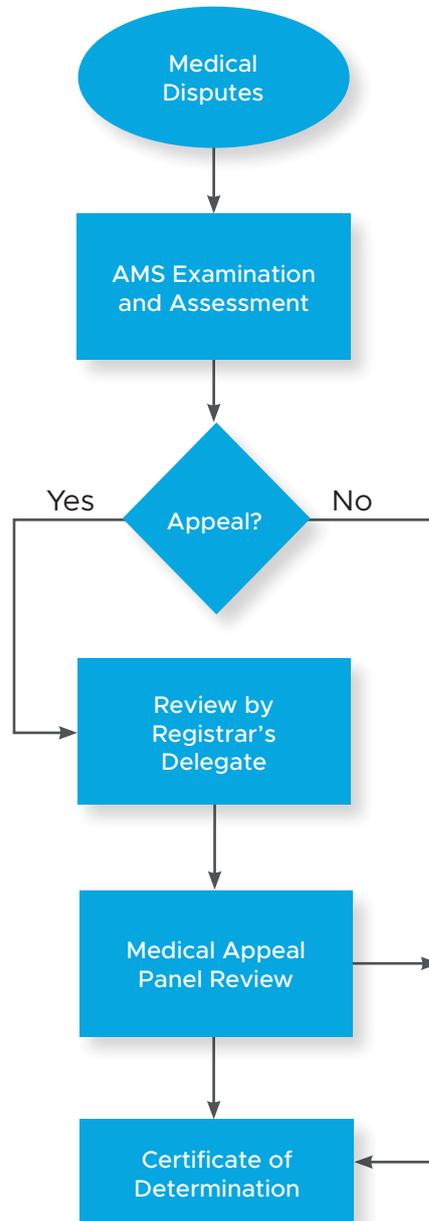


MEDICAL DISPUTES

Medical disputes, mostly concerning the degree of permanent impairment resulting from an injury, are generally referred to Approved Medical Specialists (AMSs) for assessment. In certain circumstances, disputes concerning an entitlement to compensation for permanent impairment will be referred to an Arbitrator for conciliation and possible determination.

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

A party may appeal against an assessment of permanent impairment through an internal appeal to a Medical Appeal Panel (comprised of an Arbitrator and two Approved Medical Specialists). An appeal may proceed 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.



WORK INJURY DAMAGES DISPUTES

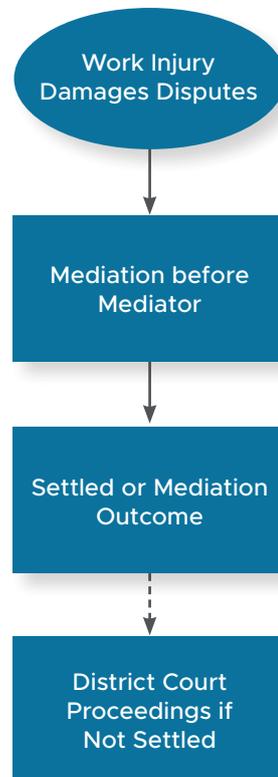
Workers must participate in mediation in the Commission before court proceedings can be started for work injury damages. Mediators must use their 'best endeavours' (as stated in the 1998 Act) to bring the worker and employer to agreement.

After the application by the worker and the response by the employer are received, the parties are requested to agree on a date for a Mediation Conference, to take place within 28 days. When a date is agreed, the matter is allocated to a Mediator.

Mediators attempt to bring the parties to a negotiated settlement. If, however, the parties fail to reach agreement at mediation, the Mediator will issue a Certificate of Final Offers, and the worker may then begin court proceedings.

The Commission is also responsible for resolving pre-trial disputes relating to:

- The threshold for entitlement to work injury damages;
- Defective pre-filing statements;
- Directions for access to information and premises;
- Pre-filing strike-out applications.



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 of the Commission 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 they are satisfied that sufficient written information has been supplied in connection with proceedings, 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 NSW Court of Appeal.

Medical Appeals

A party may appeal against a 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, as an alternative to an appeal, or reconsideration of the original assessment.

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' if the Panel is satisfied that sufficient written information has been supplied in connection with proceedings, without holding any conference or formal hearing.

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 NSW Supreme Court.



OUR PERFORMANCE

KEY PERFORMANCE INDICATORS

The Commission has two critical key performance indicators (KPIs): achieving timeliness in dispute finalisation and ensuring the durability of outcomes. Both these KPIs are closely monitored.

During the year, there has been improvement in the percentage of disputes resolved within three months for disputes resolved without an appeal.

The resolution rates for disputes resolved within six, nine and 12 months have been maintained.

There has also been improvement in the percentage of disputes resolved within three, six, nine and 12 months for disputes resolved where one of the parties has appealed against the decision of an Arbitrator.

Decisions made by Arbitrators and assessments made by Approved Medical Specialists continue to be durable, with low revocation rates. There has been a significant improvement in the durability of assessments by Approved Medical Specialists.

Timeliness	Target	2017/18 Average	2018/19 Average
% of Dispute Applications resolved (no appeal):			
• 3 months	45%	61%	65%
• 6 months	85%	94%	95%
• 9 months	95%	99%	99%
• 12 months	99%	100%	99%
Average days to resolution of Dispute Applications with no appeal	105	91	87
% of Dispute Applications resolved (with appeal):			
• 3 months	40%	55%	59%
• 6 months	80%	87%	88%
• 9 months	94%	95%	96%
• 12 months	98%	98%	98%
Average days to resolution for Dispute Applications with appeal		109	105
Average days to resolution of Arbitral Appeals	112	95	106
Average days to resolution of Medical Appeals	100	89	78
% of Expedited Assessments resolved within 28 days	90%	79%	80%
Durability	Target	% Revoked	% Revoked
% of determined Dispute Applications revoked on appeal ¹	<15%	5.5%	5.4%
% of Medical Assessment Certificates revoked on appeal ²	<15%	5.6%	6.6%

¹ This KPI represents the number of arbitral decisions revoked, expressed as a percentage of the total number of appellable arbitral decisions (i.e. 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, total registrations during 2018/19 remained approximately the same as for 2017/18.

Application type	2017/18	2018/19
Application to Resolve a Dispute (Form 2)	4,805	4,711
Application for Expedited Assessment (Form 1)	76	60
Workplace Injury Management Dispute (Form 6)	14	33
Application for Assessment of Costs (Form 15)	5	4
Registration of Commutation (Form 5A)	40	32
Application for Mediation (Form 11C)	1,345	1,472
Application to Cure a Defective Pre-filing Statement (Form 11B)	3	5
Application to Strike Out a Pre-Filing Statement (Form 11E)	3	3
Disputed Direction for Access to Information and Premises (Form 11)	2	3
Arbitral Appeal (Form 9)	61	89
Application for Leave to Refer a Question of Law (Form 13)	0	0
Medical Appeal (Form 10)	444	366
TOTAL	6,798	6,778

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).

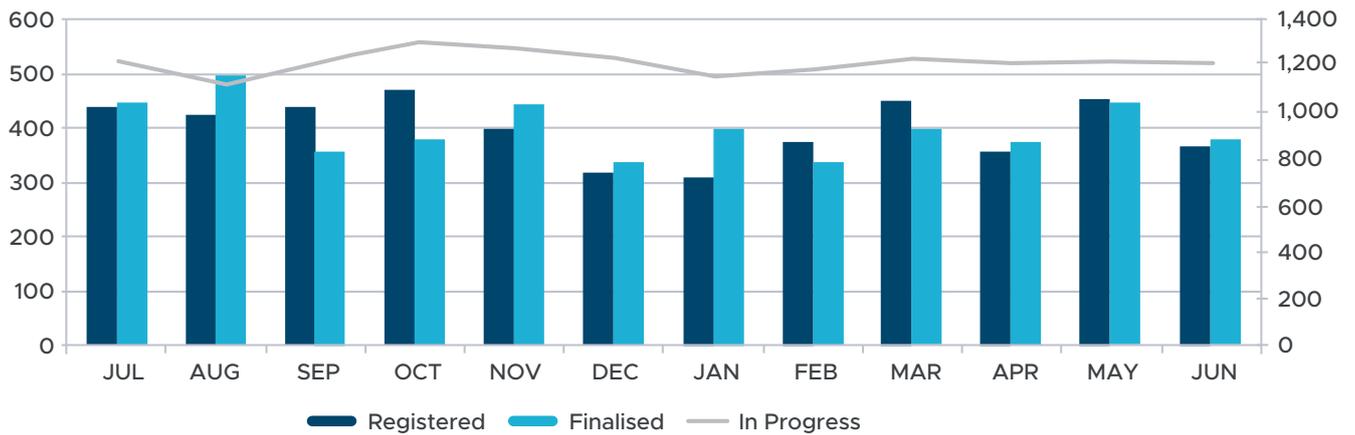
The graph below, which compares the number of Form 2 dispute registrations over the past two financial years, shows a very stable workload, with a decrease of only 2% in 2018/19. In 2018/19, on average, 393 Form 2 dispute applications were lodged per month, compared to 400 per month in the previous financial year.

FORM 2 - COMPARISON OF REGISTRATIONS



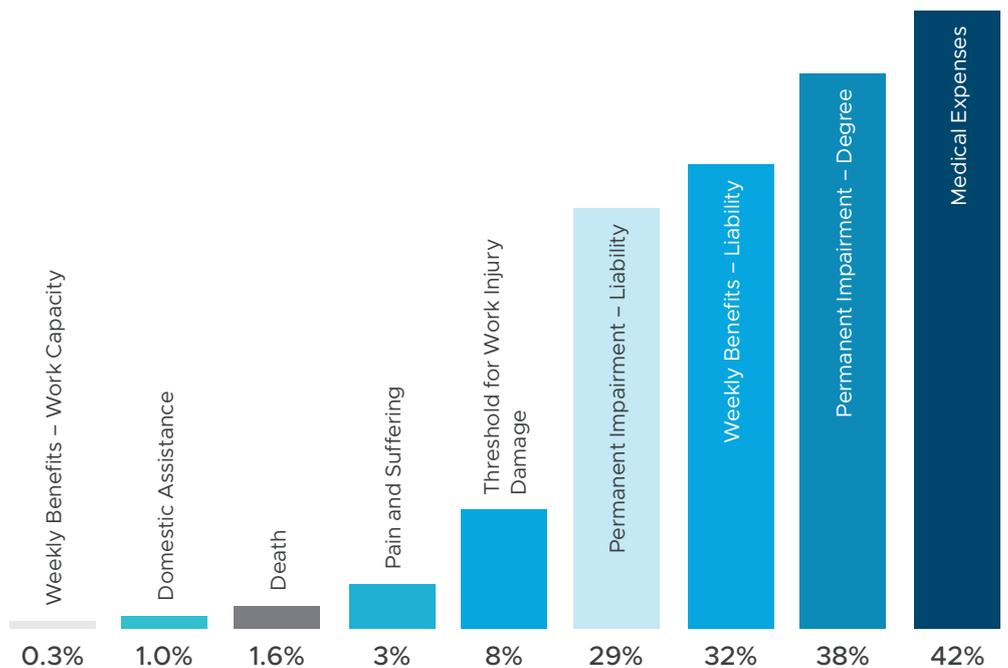
A monthly comparison of Form 2 disputes lodged and finalised in 2018/19 is shown in the graph below. The graph also indicates the number of active Form 2 dispute applications at any given time. The number of active disputes was maintained between a low of 1,130 matters and a high of 1,303 matters. As at 30 June 2019, there were 1,210 active Form 2 dispute applications on hand. The active case load has remained stable compared with the previous reporting period.

FORM 2 – REGISTERED, FINALISED AND IN PROGRESS

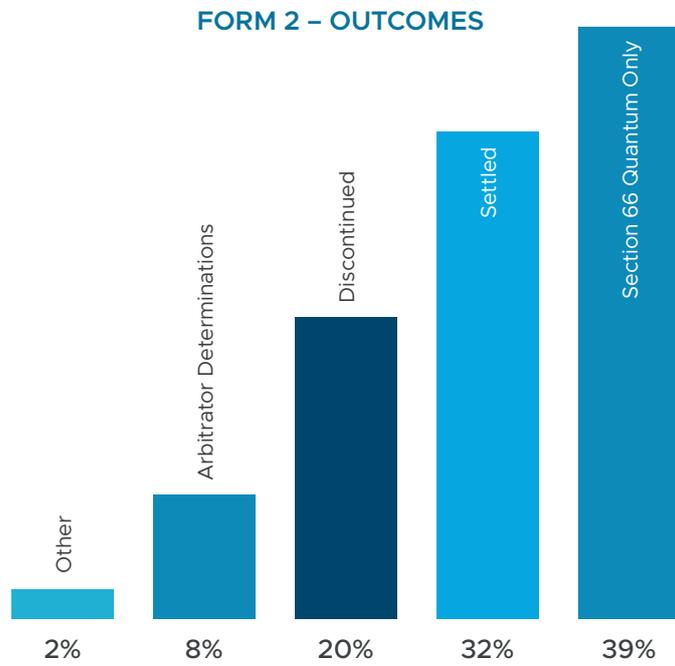


FORM 2 – COMPENSATION IN DISPUTE 2018/19

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 most of disputed compensation types. From 1 January 2019, the Commission also gained jurisdiction over weekly benefits disputes arising from work capacity decisions.



In 2018/19, disputes limited to the degree of permanent impairment (quantum only) made up 39% of all resolutions for Form 2 dispute applications. Settlements throughout the year remained strong, with Arbitrators required to determine only 8% of disputes in the reporting period. The profile of outcomes has remained essentially the same over the past two financial years.

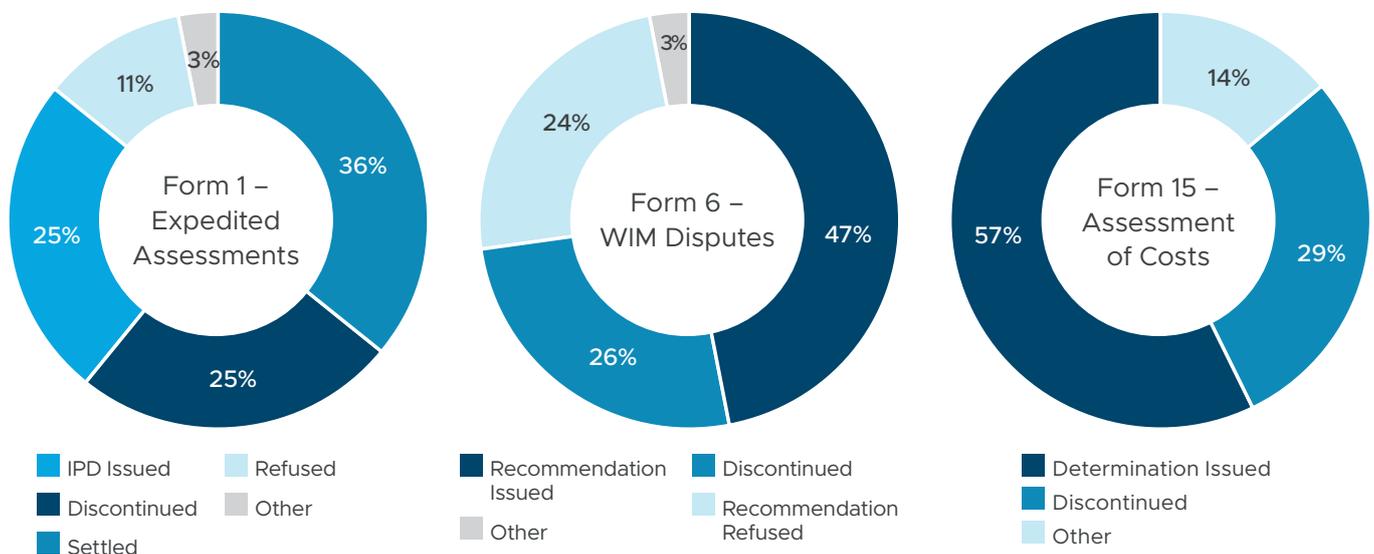


Other Compensation Dispute Applications

Other Compensation Dispute Applications (excluding appeals) included:

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

The figures below show outcomes for expedited assessments, WIM and assessment of costs.



Locations

During 2018/19, the Commission held 1,820 con/arbs at 19 locations:

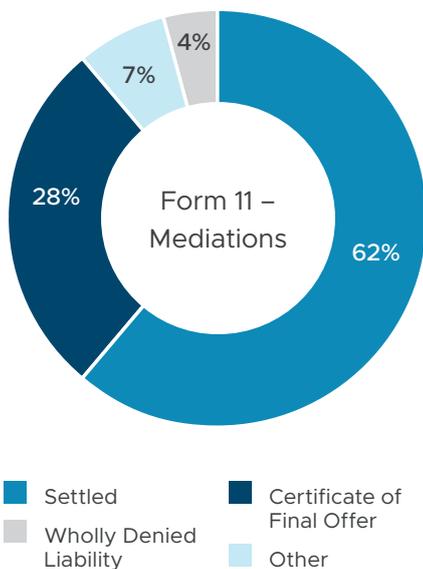
Albury	Ballina	Bathurst	Broken Hill
Coffs Harbour	Dubbo	Gosford	Griffith
Newcastle	Orange	Penrith	Port Macquarie
Queanbeyan	Sydney	Tamworth	Taree
Tweed Heads	Wagga Wagga	Wollongong	

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 2018/19, the Commission registered 1,472 Applications for Mediation to Resolve a Work Injury Damages Claim (Form 11C). This is an increase of 9% compared to the previous period.

The figure below shows the breakdown of outcomes for all work injury damages applications, including those that did not proceed to a mediation conference.



Mediation conferences were held in 1,323 matters during the period, of which 914 (69%) were settled.

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

Arbitral Appeals

In 2018/19, the Commission received 89 Applications to Appeal Against a Decision of an Arbitrator (Form 9), a 46% increase compared to the previous year. During the same period, Presidential members determined 58 appeals, and five applications were discontinued.

Overall, 5% of appellable decisions by Arbitrators were revoked on appeal.

Medical Appeals

There were 2,284 Medical Assessment Certificates issued in 2018/19, representing a 14% decrease compared with 2017/18.

The number of Application to Appeal Against Decision of Approved Medical Specialist (Form 10) lodgments decreased by 18%, from 444 appeals lodged in 2017/18 to 366 in 2018/19.

There were 404 medical appeals finalised in 2018/19. Approximately 7% of Medical Assessment Certificates issued were revoked on appeal.

Judicial Review of Registrar and Medical Appeal Panel Decisions

In 2018/19, 14 judicial review applications were lodged in the Supreme Court of NSW, and one application seeking leave to appeal was lodged in the Court of Appeal. Of those matters, 11 were against the decisions of Medical Appeal Panels and three were against decisions of delegates of the Registrar. Overall, the judicial review rate was approximately 3.5% of all decisions made by Medical Appeal Panels and Registrar's delegates.

In 2018/19, the Supreme Court determined 14 judicial review applications, dismissing six applications and quashing eight decisions. The Court of Appeal determined two matters, dismissing one appeal and allowing one appeal.

Appeals to the Court of Appeal from Presidential Decisions

In 2018/19, the Court of Appeal determined six appeals against Presidential decisions. Of those matters, three were dismissed and three was upheld, two of which were remitted to the Commission for re-determination.

As at 30 June 2019, three Presidential decisions were before the Court of Appeal.

EDUCATION AND COLLABORATION

User Group

The User Group, comprised of Commission representatives and representatives from the State Insurance Regulatory Authority, the 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 2019, the User Group membership was:

- Judge Gerard Phillips, President (Chair);
- Michael Snell, Deputy President;
- Elizabeth Wood, Deputy President;
- Rodney Parsons, Registrar;
- Annette Farrell, Director Operations;
- Michael Wright, Director Legal Services;
- Josephine Bamber, Senior Arbitrator;
- Glenn Capel, Senior Arbitrator;
- Nicholas Cobb, State Insurance Regulatory Authority;
- Ross Stanton, 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 induction training and support programs.

The Registrar is a committee member of the NSW Chapter of COAT and is also a member of the Australasian Tribunal Administrators' Group.

Workers Compensation Inter-Jurisdictional Meeting

The Commission's President convenes and chairs the annual Inter-Jurisdictional Workers Compensation Dispute Resolution Organisations Meeting. This annual meeting was initiated by the Commission to provide a forum for discussing current issues affecting workers compensation dispute resolution jurisdictions across Australia and New Zealand.

It is a useful networking tool which facilitates and promotes information-sharing and collaboration between workers compensation dispute resolution organisations facing similar types of issues.

It provides a valuable forum for discussing such things as legal and procedural issues, conciliation techniques, dispute resolution pathways, use of technology in dispute resolution, statistical data, reform, appointment of members, induction methods, and training materials.

The most recent meeting was held in June 2019 in conjunction with the COAT National Conference in Melbourne. This meeting was attended by representatives from dispute resolution organisations in the following jurisdictions: Commonwealth, New South Wales, South Australia, Tasmania, Victoria, and Western Australia. Each jurisdiction provided an update on developments in the law, practice and procedure. Valuable insights were gained from each jurisdiction, particularly in respect of dispute resolution practice and procedure and information technology system initiatives to improve customer experience.

CONFERENCES AND SEMINARS

In-house Conferences and Forums

The Commission holds annual professional development conferences for Approved Medical Specialists, Arbitrators, Mediators and staff. Conference sessions feature both internal and external speakers.



At the Approved Medical Specialist Conference, Louise Dubois, Director of Safety and Wellbeing for Ambulance NSW, conducted a workshop exploring how to better engage with workers to improve their experience during a consultation. Dr Glen Sheh, Senior Staff Specialist in Pain Medicine and Supervisor of Training at Concord General Repatriation Hospital, provided an update on the use of medicinal cannabis in the treatment of patients. Dr Leonard Bank,

Medical Director of Chatswood Diagnostic Centre, gave a fascinating presentation on artificial intelligence (AI) technology and its potential impact on the medical profession.

At the Mediator Conference, Sarah Edelman, clinical psychologist, author and trainer, provided insights on managing stress and the role of personality and style in building resilience. Judge Leonard Levy shared with the group insights from the District Court on Work Injury Damages. Francois Bogacz, CEO of Neuroawareness, joining the conference via video link from Kuala Lumpur, Malaysia, presented research findings on neuropsychology and what it is bringing to mediation.

At the Arbitrator Conference, Professor Nicholas Glozier, Professor of Psychological Medicine at the University of Sydney and a consultant psychiatrist specialising in epidemiology, clinical trials and health service research, gave a presentation on making a diagnosis in psychological injuries. He was joined by consultant psychiatrist and Senior Approved Medical Specialist Dr Julian Parmegiani, who presented on Psychiatric Impairment



Rating Scale (PIRS) assessment in psychological injuries. Geoffrey Watson SC gave an insightful and entertaining presentation on the challenges courts are facing regarding the admissibility, reasonableness and weight of social media as evidence.

At the inaugural Staff Conference, Marcus Crow, director and founding partner of consultancy 10,000 Hours, provided insights for Commission staff, through his 'Gunna and Duzz' presentation, on how to become more proactive by shifting your mindset.

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



Legal Seminars

The Commission held a series of legal seminars in October and November 2018. Of the 16 seminars held across the State, seven were held in Sydney, including (to launch the seminar series) an industry seminar that was attended by stakeholders from Government agencies that included SIRA (State Insurance Regulatory Authority), WIRO (Workers Compensation Independent Review Office) and icare (Insurance and Care NSW).

Seminars were also held in Penrith, Wollongong, Newcastle, Orange, Tamworth, Coffs Harbour, Tweed Heads, Port Macquarie and Wagga Wagga.

Overall there were almost 500 registrations for the seminars.

Each seminar was comprised of two sessions – covering legislative changes and online lodgment – and provided an opportunity for our stakeholders to ask questions about developments in these two areas.

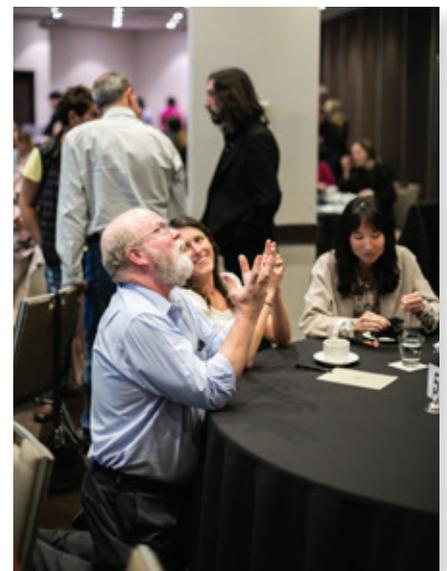
The legislative changes sessions focused on the Workers Compensation Legislation Amendment Bill 2018 and the proposed changes to dispute resolution to make the Commission a ‘one stop shop’ for resolving all disputes.

The online lodgment sessions focused on the significant service delivery changes at the Commission that will occur with the digital service delivery platform (online portal). Presenters outlined the changes to the way our clients will do business with us and how these changes deliver on the NSW Government’s priorities of providing better digital services and improving access to justice.

Feedback from the participants in the seminars was overwhelmingly positive.

External Presentations by Invitation

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





PUBLICATIONS

Bulletins

The Commission publishes 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 Presidential members' decisions and provides an overview of relevant High Court and Court of Appeal decisions.

The publication is issued periodically and is accessible via the Commission's website (www.wcc.nsw.gov.au).

On Review

On Review summarises 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 in 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 accessible via the Commission's website (www.wcc.nsw.gov.au).

Weekly Summaries

The Commission publishes 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 and contains extensive discussion on substantive and relevant legal issues. The manual enhances the consistency of the dispute resolution process and the durability of the Commission's determinations.

The manual, first published in 2009 and subsequently revised, continues to be regularly updated.

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, such as best practice for conducting examinations, and legislative issues, such as deductions for previous injuries or pre-existing conditions. The manual, first published in 2012, continues to be updated.





GOVERNANCE AND ACCOUNTABILITY

OVERVIEW

The Commission maintains a robust corporate governance framework that covers:

- 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

Various committees and forums, comprising a mixture of staff, service partners and external stakeholders, help 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, which meets weekly, is the Commission's strategic and management decision-making forum. The Committee, chaired by the President, comprises the Registrar, Director Operations and Director Legal Services.

Senior Leaders Group

The Registrar meets monthly with the Director Operations, Director Legal Services and other senior leaders. The meetings are an interactive information and communication channel involving discussion of key events, issues and emerging trends in the Commission and within each business unit.

Operational Leaders Group

The operational leaders in the Commission meet monthly with members of the Executive and Senior Leadership teams. These meetings are an opportunity to share information across units, raise issues, and make recommendations relating to people, process and performance.

Practice and Procedure Committee

The Practice and Procedure Committee is primarily responsible for reviewing the Commission's rules. It also operates as a deliberative and decision-making forum for a range of issues affecting practice and procedure in the Commission.

Service Provider Consultation

Reference groups and practice meetings for Arbitrators, Approved Medical Specialists and Mediators, provide forums for information-sharing and input to practice and procedure.

Access and Equity

The Commission's Access and Equity Service Charter sets out standards for accessible and equitable services. In this regard, 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;
- Free interpreter services;
- Hearings in regional and rural locations.

Codes of Conduct

The Commission has developed codes of conduct for Arbitrators and Approved Medical Specialists.

These codes seek to guide Arbitrators and Approved Medical Specialists in carrying out their duties in a manner that is consistent with the objectives of the Commission and to assist them to:

- Identify and resolve ethical disputes;
- Ensure the highest standards of conduct in their relationship with the parties;
- Maintain appropriate standards of professional performance.

Complaint Handling

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

During the year, the Commission received a total of eight complaints. Five concerned medical assessments conducted by Approved Medical Specialists, two concerned proceedings held by Arbitrators, and one related to the conduct of a mediation conference.

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 that is compliant with ISO 31000:2018 Risk Management – Guidelines.

The framework helps the Commission identify, assess and treat 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.

PEOPLE AND CULTURE

Employment Provisions

The Attorney General appoints members of the Commission, while the President, in accordance with criteria developed by the Minister for Customer Service, appoints Approved Medical Specialists and Mediators. Staff are employed under the *Government Sector Employment Act 2013*, supported by its regulation and rules.

Member and Service Partner Retention and Appointments

The Commission's Approved Medical Specialists are appointed for periods of up to three years. At the end of the appointment period, the Commission undertakes a recruitment process to ensure that the needs of the Commission will be met for the next three-year period. In October 2018, 112 doctors were appointed by the President as Approved Medical Specialists (105 reappointments and 7 new appointments). The complete list of Approved Medical Specialists can be found in Appendix 2.

Learning and Development

In addition to the conferences and seminars set out on pages 32–33, Commission staff and members completed a range of internal and external learning and development activities during the year, including:

- COAT (Council of Australasian Tribunals) National and NSW Chapter Annual Conferences;
- Resolution Institute accredited mediator course.

Work Health and Safety and Wellbeing

The Commission supports wellness initiatives, such as flu vaccinations and fitness passports.

Staff can access a range of work/life balance initiatives, including 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.

The Social Committee hosted a variety of social events during the year, including a Melbourne Cup function, Christmas party, Easter egg hunt, hot cross bun morning tea and Australia's Biggest Morning Tea. All social events included fundraising for various charities. Various business units also organised informal morning teas and lunches.

Graduate Program

The Commission, in conjunction with the Department of Customer Service and the Public Service Commission (PSC), is participating in an 18-month graduate rotation program. The structured program involves three six-month placements across government agencies and offers a diverse experience that allows graduates to build their career in the public service.

The graduate rotation program also provides an opportunity for Commission staff to participate as mentors to graduates, providing advice and guidance to help them navigate the start of their careers. Mentors also participate in workshops with their mentees to build strong relationships.



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 employees on matters that affect the workplace. There are formal and informal opportunities for employee consultation, including:

- Quarterly staff meetings, involving formal, structured information-sharing followed by an opportunity for informal networking;

- Reference group and practice meetings for Arbitrators, Approved Medical Specialists and Mediators, providing a forum for information-sharing and input to practice and procedure;
- Staff surveys, including online surveys in which staff can provide feedback on workplace issues such as work health and safety.





APPENDICES

Appendix 1 – Arbitrators

(As at 30 June 2019)

Senior Arbitrators

Josephine Bamber

Glenn Capel

Arbitrators

Full Time

Elizabeth Beilby

Cameron Burge

Rachel Homan

John Isaksen

Paul Sweeney

Sessional

Brett Batchelor

Ross Bell

William Dalley

Marshal Douglas

Grahame Edwards

Gerard Egan

John Harris

Catherine McDonald

Deborah Moore

Jane Peacock

Richard Perrignon

Michael Perry

Nicholas Read

Carolyn Rimmer

Anthony Scarcella

Jill Toohey

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, Annette Farrell, and Director Legal Services, Michael Wright, are also appointed as Arbitrators.

Appendix 2 – Approved Medical Specialists

(As at 30 June 2019)

Dr Nigel Ackroyd

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 Roy Beran

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 Beatrice Byok

Prof John Carter

Dr Lionel Chang

Dr Christopher W Clarke

Dr Richard Crane

Dr David Crocker

Dr Paul Curtin

Dr Michael Davies

Dr Michael Delaney

Dr Paramatma Dhasmana

Dr Drew Dixon

Dr John Dixon-Hughes

Dr Hugh English

Prof Paul Fagan

Dr Donald Kingsley Faithfull

Assoc Prof Michael Fearnside

Dr Sylvester Fernandes

Dr Robin B Fitzsimons

Dr John F W Garvey

Dr Peter Giblin

Dr Margaret Gibson

Dr John Giles

Dr Michael Gliksman

Prof Nicholas Glozier

Dr David Gorman

Dr Richard Haber

Dr Ian Hamann

Dr Henley Harrison

Dr John Harrison

Dr Philippa Harvey-Sutton

Dr Mark Herman

Dr Roland Hicks

Dr Yiu-Key Ho

Dr Alan Home

Dr Michael Hong

Assoc Prof Nigel Hope

Dr Kenneth Howison

Dr Murray Hyde-Page

Dr Robert Ivers
Dr Mark Jones
Dr Gregory Kaufman
Dr Edward Korbel
Dr Lana Kossoff
Dr Damodaran Prem Kumar
Dr Robert Kuru
Dr Sophia Lahz
Dr David Lewington
Dr Michael Long
Dr Frank Machart
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
Dr Patrick John Morris
Dr Jonathan Negus
Dr Bradley Ng
Dr Paul Niall
Dr Brian Noll
Dr Chris Oates
Dr John O'Neill
Dr Robin O'Toole
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 Tom Rosenthal
Dr Joseph Scoppa
Dr Farhan Shahzad
Dr Wasim Shaikh
Dr Michael Steiner
Dr John P H Stephen
Dr J Brian Stephenson
Dr Harry Stern
Dr Ash Takyar
Dr Philip Truskett
Dr Ian Wechsler
Dr George Weisz
Dr Gregory White
Dr Brian Williams
Assoc Prof Siu Wong

Appendix 3 – Mediators

(As at 30 June 2019)

Ross Bell
Laurence Boule
Jak Callaway
Philip Carr
Janice Connelly
Gerard Egan
Geri Ettinger
David Flynn
Robert Foggo
Nina Harding
John Ireland
Katherine Johnson
John Keogh
Bianca Keys
Stephen Lancken
Margaret McCue
John McGruther
Garry McIlwaine
Chris Messenger
Dennis Nolan
Philippa O'Dea
Anthony Scarcella
Jennifer Scott
John Tancred
John Weingarth
John Whelan

Appendix 4 – Developments in the Law

RSM Building Services Pty Ltd v Hochbaum [2019] NSWCCPD 15 (18 April 2019)
Phillips P

This appeal concerned the application and interpretation of s 39 of the 1987 Act. Section 39 provides that a worker's entitlement to payments of weekly compensation is only available for an aggregate period of 260 weeks, unless the worker's degree of permanent impairment resulting from injury is more than 20%.

In September 2000, the worker sustained an injury to his right leg when he fell while pushing a wheelbarrow during the course of his employment. The insurer voluntarily paid weekly payments of compensation.

On 26 December 2017, the insurer ceased the worker's weekly payments of compensation following the aggregate period of 260 weeks pursuant to s 39 of the 1987 Act.

On 16 July 2018, the worker was assessed by an Approved Medical Specialist to have a whole person impairment of 21% in respect of the 2000 injury. The insurer recommenced weekly payments of compensation from 16 July 2018.

The insurer denied the worker's claim for weekly payments for the period between 26 December 2017 and 15 July 2018 (the disputed period).

The matter came before a Commission Senior Arbitrator. The Senior Arbitrator found that, once a worker receives an assessment of permanent impairment of more than 20%, meeting the requirements of s 39(2), s 39(1) has no application as if it never existed. As the worker was assessed to have 21% whole person impairment as a result of injury, the Senior Arbitrator awarded the worker weekly payments of compensation for the disputed period. The employer appealed the Arbitrator's decision.

The issue on appeal concerned whether the Senior Arbitrator erred in her interpretation of s 39 of the 1987 Act. The appellant submitted that the Senior Arbitrator should have found that, where a worker has been assessed to have a degree of permanent impairment of greater than 20%, s 39 applies to permit weekly compensation payments after the end of the aggregate 260-week period only on and from the date of such assessment, and not in the period before such an assessment.

Given the nature of the issues in dispute, the State Insurance Regulatory Authority intervened in the appeal proceedings before the President, pursuant to s 106 of the 1998 Act.

The President revoked the Senior Arbitrator's determination.

The President held that the Senior Arbitrator's construction of s 39(2) focused almost exclusively on the words in s 39(2) "[t]his section does not apply ...", and by doing so failed to strive to give meaning to all the words in s 39. In particular, the Senior Arbitrator failed to give close consideration to the effect of s 39(3) and its reference to the particular assessment which can only take

place as provided by s 65 of the 1987 Act.

The President held application of s 39(2) is contingent on the worker satisfying the requisite degree of "permanent impairment resulting from the injury". The words "permanent impairment" are given meaning, for the purpose of s 39, by s 39(3). Section 39(3) provides a detailed definition which sets out how the operative provision in s 39(2) is to operate. The function of s 39(3) is to supply the statutory definition for the operation of s 39(2). Section 39(3) must be given some work to do and that is achieved by reading s 39(3) into s 39(2), to give meaning to the phrase "permanent impairment".

The President held that, where a worker ceases to be paid weekly payments of compensation due to s 39(1), it is only if a worker has been assessed, for the purpose of s 65, to have a degree of permanent impairment of greater than 20% that s 39(2) is engaged to determine whether the worker's entitlement to weekly payments of compensation may be restored. The worker, having undertaken the process of an assessment of permanent impairment as defined in s 39(3) and having achieved the criterion set out in s 39(2), is then relieved of the bar provided for in s 39(1). The bar is lifted at the point in time of the assessment of permanent impairment of greater than 20%. The phrase "[t]his section does not apply" set out in s 39(2) is dependent upon the completion of this process and the achievement of the criterion. The operation of s 39(2) is subject to the existence of an assessment of the degree of permanent impairment, as set out in s 39(2) when read with s 39(3).

The President observed that a worker's entitlement to weekly compensation beyond the aggregate period of 260 weeks remains dependent on satisfying the preconditions for payment of weekly compensation pursuant to s 38 of the 1987 Act.

The President also observed that s 39(2) is an excepting provision and therefore did not warrant a beneficial interpretation as suggested by the worker. In any event, the President said that if the beneficial interpretation urged by the worker were adopted this would produce a result which was contrary to the textual construction, and was therefore not permitted.

It followed that the Senior Arbitrator's determination was revoked and an award entered for the respondent.

An application to appeal the decision has been filed in the Court of Appeal.

The question of the construction of s 39 was also raised in almost identical terms in *Technical and Further Education Commission t/as TAFE NSW v Whitton* [2019] NSWCCPD 27. The President determined that matter consistently with *Hochbaum*. A Notice of Intention to Appeal this decision has been filed in the Court of Appeal.

***Vannini v Worldwide Demolitions Pty Ltd* [2018] NSWCA 324 (17 December 2018)**

Gleeson JA, Macfarlan JA and Barrett AJA

This appeal concerned the powers of a Medical Appeal Panel on review of a Medical Assessment Certificate (MAC) by an Approved Medical Specialist (AMS). It also concerned the meaning of demonstrable error pursuant to s 327(3)(d) of the 1998 Act.

From the time of his late teens, the worker had been employed as a demolitions labourer in heavy manual work. In 2008, at the age of 23, he developed gradual onset back pain. This resulted in L5/S1 surgery, and after a period of around six months off work the worker returned to work. His original employer was unable to accommodate him, and he retained employment of the same nature with Worldwide Demolitions Pty Ltd.

On 6 March 2009, the worker was lifting a sheet of roofing iron when he felt sudden severe pain in his lower back. He brought a claim for lump sum compensation to the Commission, based on an independent medical expert's opinion that initially assessed 15% whole person impairment (WPI), apportioning two-thirds to the 2008 condition and one third to the 2009 injury. This assessment was then revised to 22% WPI with no deduction for the pre-existing condition under s 323 of the 1998 Act. Worldwide Demolitions disputed the degree of permanent impairment resulting from the injury, and proceedings were referred to an AMS, who assessed 22% WPI, with no deduction.

Worldwide Demolitions lodged a Medical Appeal, and the Medical Appeal Panel revoked the MAC, making a deduction of one-half. Justice Fagan dismissed judicial review proceedings brought by the worker in the Supreme Court, and the worker brought proceedings in the Court of Appeal seeking leave to appeal the decision of Fagan J.

The appellant argued that the Fagan J had erred in holding that the Panel was permitted to review a MAC on the merits without identifying error and that the Panel had performed its task of identifying error before revoking the MAC. The appellant also submitted that a demonstrable error was one clear on the face of the MAC, and not something that requires forensic evaluation.

Gleeson JA (Macfarlan JA and Barrett AJA agreeing) dismissed the appeal.

The Court discussed at length the concept of demonstrable error as an undefined and somewhat nebulous term. It held that there is no express limitation on the material to which the Panel may have regard when assessing whether a MAC contains a demonstrable error. The error must be contained in the MAC, but may be established by reference to material that was before the AMS.

The Court noted that the reasons of the Panel must be read as a whole and considered fairly without combing through words to identify a verbal slip. On a fair reading of the Panel's reasons, the Panel did not simply express a different opinion to the AMS. Rather, the Panel had implicitly found error on the part of the AMS in concluding that a deduction under s 323 should be made.

The Court held that there is no fixed or formulaic way in which a finding of error must be expressed. The error identified by the Panel was apparent on the face of the MAC. The error found by the Panel was held to answer the description of a demonstrable error. The Panel's reasons were adequate.

Pacific National Pty Ltd v Baldacchino [2018] NSWCA 281 (31 October 2018)
Macfarlan JA, Payne JA and Simpson AJA agreeing

This appeal concerned the application and interpretation of s 59A of the 1987 Act. Section 59A provides a limit on the payment of compensation to an injured worker in respect of any treatment, service or assistance given or provided after the expiry of the relevant compensation period. Section s 59A(6) exempts certain treatments from the operation of s 59A, including “artificial aids, members, eyes or teeth and other artificial aids or spectacles (including hearing aids and hearing aid batteries)”.

In October 1999, the worker sustained an accepted injury to his left knee in the course of his employment. The worker had reached retiring age and had ceased receiving weekly payments of compensation in respect of the accepted injury. The worker was later diagnosed with post traumatic arthritis which was said to result from the accepted work injury. It was proposed that the worker undergo total knee replacement surgery. The worker claimed the costs of that surgery pursuant to s 60(5) of the 1987 Act. The employer disputed liability on the basis that the worker was precluded from obtaining medical expenses pursuant to s 59A(1) and (2).

The matter came before a Commission Arbitrator. The Arbitrator found that the proposed total knee replacement fell within the meaning of “artificial aids” within s 59A(6). The Arbitrator applied the decision in *Thomas v Ferguson Transformers Pty Ltd* [1979] 1 NSWLR 216 (*Thomas*), where Hutley JA held the meaning of “artificial aids” under former s 10 of the Workers’ Compensation Act 1926 meant “anything that was specifically constructed to enable the effects of the disability to be overcome” and that the “essential quality of an artificial aid is an aid specially tailored to the needs of a person, which flowed from the injury. The artificial aid is specific to an injured person.”

The employer appealed the decision. On appeal, Deputy President Snell confirmed the Arbitrator’s decision, finding that the worker was not subject to the restrictions in s 59A(1) and (2) because the surgery involved the provision of an “artificial aid” within the meaning of s 59A(6)(a). The employer appealed that decision to the Court of Appeal.

The employer argued that, on a proper construction of s 59A(6)(a), the expression “artificial aid” could not include “two or three pieces of plastic surgically inserted in a knee to replace lengths of human bone that were excised” for the purposes of a total knee replacement.

The employer also argued that an “artificial aid” was “an article or object, complete in itself, which serves a purpose”, whereas a total knee replacement involves “interference with part of a human body and the insertion of objects which come together as part of an overall [or unified] operation”.

The employer further argued that the Commission’s application of the decision in *Thomas* was wrong, because that decision had been rendered of no assistance by subsequent changes in the relevant statute law.

In the alternative, the appellant argued that, if compensation was payable in respect of the cost of the materials to be used in the knee replacement operation, the cost of the surgery was nevertheless not covered.

The Court of appeal upheld the Presidential decision. It held that Deputy President Snell did not err in finding that the respondent’s total knee replacement was an “artificial aid” within the meaning of s 59A(6)(a).

The Court held that the expression “artificial aid” must work to ameliorate the effect of the person’s disability and may comprise a single object or a composite of objects operating together. A knee replacement was found to have these characteristics. The Court held that the material inserted between the bones was plainly designed to facilitate the movement and use of the knee after the operation, therefore easing the patient’s disability. The provision of these materials (the “artificial aid”) in the form of a total knee replacement requires surgical operation. It followed that the cost of the surgery fell within s 59A(6)(a).

The Court also held that the Deputy President did not err in having regard to the decision in *Thomas*. That decision remains relevant authority as to what constitutes an “artificial aid”, even though the present legislation is, to some extent, in a different form to that considered in that case.

Legislative Changes

The *Workers Compensation Legislation Amendment Act 2018* (the 2018 amending Act) received assent on 26 October 2018.

The 2018 amending Act introduced changes expanding the jurisdiction of the Commission to determine disputes. It provides for the Commission to determine disputes about work capacity decisions of insurers in respect of work capacity decisions made on or after 1 January 2019. It also provides for the Commission to award lump sum compensation without the requirement to refer disputes concerning the degree of permanent impairment for assessment by an Approved Medical Specialist. Among other things, it also simplifies the pre-injury average weekly earnings methodology in the assessment of a worker's entitlement to weekly payments of compensation.

The *Workers Compensation Commission Rules 2011* were amended to improve procedures to be followed in proceedings before the Commission and to reflect the expanded jurisdiction of the Commission brought about by the changes introduced by the 2018 amending Act. In particular, the rule amendments incorporate the Commission's power to deal with work capacity disputes by way of expedited assessment and interim payment direction.

The Commission's practice directions, forms and guides to completing forms were also updated to reflect the legislative changes introduced by the 2018 amending Act.

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