

ANNUAL REVIEW 2006

ABOUT THE COMMISSION

The Workers Compensation Commission is an independent statutory tribunal within the justice system of New South Wales, which began operating on 1 January 2002.

Established under the *Workplace Injury Management and Workers Compensation Act 1998*, the Commission aims to provide a just, timely and cost effective forum for the resolution of workers compensation disputes. The Commission's non-adversarial dispute resolution process directly involves the parties in an accessible and accountable process that ensures injured workers obtain a fair and quick resolution to disputes about their workers compensation entitlements.

Under the legislation, the Commission is required to try to bring the parties in a workers compensation dispute to an agreed resolution, where possible.

The Commission's independent Arbitrators, who have expertise in conciliation and arbitration, work with the parties to reach agreement where possible through a series of conference style meetings (by telephone and in person). Where parties are unable to reach agreement about their workers compensation dispute, the Arbitrator makes a determination.

The Commission makes decisions on a wide range of workers compensation disputes, including permanent impairment/pain and suffering, medical and related expenses, weekly benefits paid as compensation for loss of earnings; as well as registration of certain agreements.

PUBLICATION OF ANNUAL REVIEW

Each year the Commission publishes an online summary of its operations during the preceding calendar year. This is the fifth annual review published by the Commission and covers the 12-month period from January to December 2006.

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2006 AT A GLANCE

- 10,435 applications to resolve disputes were registered
- Most applications have more than one issue in dispute (10,435 applications is equal to 17,460 issues in dispute)
- 12,594 applications to resolve a dispute were finalised. Of those:
 - * 41% of applications were settled (an agreement between the parties)
 - * 28% of applications were discontinued by the parties
 - * 4% applications were struck out
 - * 2% of those finalised applications had other miscellaneous outcomes
 - * 10% of applications were decided by an arbitrator
 - * 15% of applications had more than one type of outcome (these applications all had more than one issue in dispute)
(NB results are rounded to the nearest whole number)
- Of the total number of applications finalised, 1,282 applications had at least one issue that was decided by an arbitrator
- The total number of issues decided by an arbitrator was 2323. This number includes the 10% of applications that were decided by an arbitrator (as above), plus those applications in which some issues were decided by an arbitrator from the 15% of applications (above) that had more than one type of outcome
- 284 appeals against a decision of an arbitrator were registered
- 418 appeals against a decision of an arbitrator were finalised
- 8% of Arbitrator determinations were overturned on appeal
- 3,420 Medical Assessment Certificates were issued by independent Approved Medical Specialists
- 716 appeals against Medical Assessment Certificates were registered
- 990 appeals against Medical Assessment Certificates were finalised
- 14% of Medical Assessment Certificates were revised on appeal

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- 748 applications for Interim Payment Directions were registered
- 827 applications for Interim Payment Directions were finalised. Directions for payment were issued in about 63% of finalised applications
- 95 applications for expedited assessment of Workplace Injury Management disputes were registered
- 108 applications for expedited assessment of Workplace Injury Management disputes were finalised
- 415 applications for mediation for work injury damages were registered
- 404 applications for mediation for work injury damages were finalised
- 519 applications for assessment of costs were registered
- 404 applications for assessment of costs were finalised
- The Workers Compensation Commission registered:
 - * 74 redemption agreements
 - * 35 commutation agreements
 - * 6,010 section 66A agreements
- 11 appeals against presidential decisions were lodged in the Court of Appeal
- 11 appeals against presidential decisions were finalised by the Court of Appeal. Of those:
 - * 5 appeals were dismissed
 - * 3 appeals were discontinued
 - * 3 appeals resulted in a decision to remit the matter back to the President
- 29 applications for judicial review were lodged in the Supreme Court
- 19 applications for judicial review were finalised by the Supreme Court. Of those:
 - * 8 applications for judicial review were dismissed



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- * 3 applications for judicial review were discontinued
- * 2 applications for judicial review were struck out
- * 6 applications for judicial review resulted in the decision of the Registrar and/or Appeal Panel being set aside

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- KEY INITIATIVES IN 2006 -

MAJOR TENDERS AND CONTRACTS

The Workers Compensation Commission is committed to supplying the best possible service and value for money to the public of NSW, its stakeholders and staff. As part of this process the Commission constantly reviews the services provided by its external service providers.

In June 2006 the Commission commenced a Request for Quotation (RFQ) process for the supply of Security/Concierge Services under the State Contracts Control Board (SCCB). Five submissions were received and after a comprehensive evaluation of the submissions the contract was awarded to Fogl Knight. The contract is for a two-year period and commenced in October 2006. The average value of the contract is approximately \$120,000 p.a.

The Commission uses interpreters to provide assistance for parties to proceedings whose first language is other than English – consistent with Access and Equity Service Charter. Interpreters are booked to be in the same location as the injured worker during proceedings to help the injured worker understand and participate in the dispute resolution process.

In October 2005 the Commission tendered for the supply of interpreter services. Three respondents met all the selection criteria and were evaluated accordingly. The contract was awarded to On-Call Interpreters and Translators Agency Pty Ltd and commenced January 2006. On-Call Interpreters and Translators use only NAATI accredited interpreters for languages where NAATI accreditation or recognition is available. The Commission spends up to \$500,000 a year on interpreters.

LEGISLATIVE CHANGES

On 1 November 2006 amendments to the *Workers Compensation Act 1987* No 70 and *Workplace Injury Management and Workers Compensation Act 1998* No 86 (made under the *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005* No 113), *Workers Compensation Regulation 2003* and *Workers Compensation Commission Rules 2006* commenced.

All Practice Directions, Forms, and Guidelines issued by the Workers Compensation Commission were reviewed and updated to give effect to the amendments.

Key changes to the Commission's procedures arising from these amendments include:

- Parties are restricted to lodging disputes with the Commission in relation to matters previously notified, and documents exchanged prior to lodgement of the application with the Commission
- Disputes in relation to the degree of permanent impairment are referred directly to an Approved Medical Specialist for medical assessment by the Registrar

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- Only disputes in relation to other claims for compensation, such as weekly benefits, medical expenses, or liability for permanent impairment, are referred to an Arbitrator to resolve or determine
- If a dispute is referred to an Arbitrator, the teleconference is scheduled approximately 35 days after registration of the application
- Directions for Production are issued only with leave of an Arbitrator
- If a conciliation/arbitration hearing is required, it will be held:
 - § within 21 days of the date of the teleconference if no directions for production are issued
 - § within 8 weeks of the date of the teleconference if directions for production are issued
- Provisional liability for medical expenses increased to \$7,500
- The provisions for expedited assessment were amended to include determination in relation to weekly payments for closed periods up to 12 weeks
- The provisions enabling agreements under s66A of the *Workers Compensation Act 1987* to be registered by the Commission were repealed

The Commission is monitoring the impact of these amendments and participating in the evaluation strategy of WorkCover NSW in relation to the effectiveness of the legislative amendments.

PRESENTATIONS

During 2006, the Commission conducted seminars throughout NSW to provide practical information for the legal profession. The seminars focused on the legislative amendments and resulting changes to the Commission's rules, practices and procedures. The seminars were divided into Basic and Intermediate sessions to cater to the varying workers compensation levels of knowledge.

Eighteen seminars were held in six locations across NSW including Ballina, Newcastle, Orange, Port Macquarie, Sydney, Wagga. A total of 320 practitioners attended these seminars.

The majority of practitioners who attended the seminars confirmed that the seminars had met their objectives. The most beneficial aspects of the seminars were the sessions on costs, new legislation, rules and procedures.

The Commission, in conjunction with WorkCover NSW, gave presentations to the legal profession through the College of Law, and to Unions NSW focusing on the legislative changes.

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During 2006, the President and Deputy Presidents of the Commission gave fourteen presentations to a wide range of groups and conferences including NSW Young Lawyers, International Tribunal Workshop, State Legal Conference, Australian Self Insurance Summit, and Sydney University Law School.

ARBITRATORS

The Workers Compensation Commission meets the professional development needs of Arbitrators through a variety of communication and training activities. The Arbitrators Reference Group, which includes Arbitrators, the Registrar and other Commission staff, met five times in 2006 to consider the professional development needs of Arbitrators and related issues.

Three mandatory conferences for Arbitrators were held in 2006, as well as two half-day Appeal Panel conferences. Arbitrators were also involved in a variety of other activities aimed at identifying and meeting their professional development including two performance appraisals, and completion of a professional development questionnaire to identify individual and group needs.

APPROVED MEDICAL SPECIALISTS

The Approved Medical Specialist Reference Group, which includes Approved Medical Specialists, the Registrar and other Commission staff, met three times in 2006 and provided input into the Professional Development calendar and further insight into the needs of Approved Medical Specialists.

The Workers Compensation Commission meets the professional development needs of Approved Medical Specialists through a variety of communication and training activities, in conjunction with WorkCover NSW.

The Commission held one mandatory conference for Approved Medical Specialists in 2006 focussing largely on the impact of legislative changes and role of an Approved Medical Specialist, in addition to two half-day Appeal Panel conferences for those Approved medical Specialists appointed to Appeal Panels. Approved Medical Specialists attended a number of voluntary sessions, aimed at problem-solving common issues experienced by Approved Medical Specialists in Workers Compensation matters. The Commission also held two training sessions for Practice Managers, with attendance of approximately 50 Practice Managers from throughout New South Wales.

A performance management system for Approved Medical Specialists was developed and piloted in 2006, for implementation in mid 2007.

Based on a review of requirements in light of the impending legislative changes, the President appointed 10 new Approved Medical Specialists in 2006, and reappointed over 120 existing Approved Medical Specialists.

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An induction session was held for new Approved Medical Specialists, as well as the introduction of an AMS “buddy” system, where experienced AMS were provided as a point of reference and “mentor” to newly appointed Approved Medical Specialists.

APPOINTMENTS

On 9th March 2006 the Minister for Commerce, John Della Bosca reappointed Mr Robin Handley, Mr Michael McGrowdie, Ms Deborah Moore and Ms Robyn Lansdowne as Acting Deputy Presidents for a further twelve months. An additional seven Acting Deputy Presidents were also appointed in March 2006. They are as follows:

Mr Anthony Candy
Mr Robert Harrington
Mr Julian Martin
Mr Kevin J O’Grady
Mr Bill Roche
Mr Michael Snell
Ms Elizabeth Tydd

Dr Gabriel Fleming resigned from her position as Deputy President of the Commission on October 2006 after accepting an appointment as a Magistrate of the Local Court of NSW. On 18th December 2006, former Acting Deputy President Mr Bill Roche was appointed by the Minister as Deputy President of the Workers Compensation Commission, filling the position vacated by Dr Gabriel Fleming.

In July 2006 Ms Robyn Lansdowne resigned as an Acting Deputy President to take up a position as Master of the Supreme Court of Victoria.

Two additional Acting Deputy Presidents, Mr Rod Weaver and Ms Joanne Muller were appointed on 5th December 2006 for a period of twelve months.

USER GROUP

The Commission’s User Group, established in 2005, continued to meet on a quarterly basis in 2006. The meetings are a forum for dialogue between the group members and the President and Registrar of the Commission to discuss and address operational issues as identified by the members of the group.

Membership of the Commission’s User Group includes:
Brian Moroney
Bob Whyburn
Steve Harris



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Howard Harrison
Michael Jenkins

These are the original and continuing members of the Group and are all very experienced practitioners in the jurisdiction.

An initiative arising from the meetings has been the inclusion of representatives from legal firms in the testing of electronic filing via the Commission's new IT system in 2007.

It is anticipated the User Group will continue to meet on a quarterly basis throughout 2007. There are a number of items currently on the agenda that the group is working to resolve over the next year.

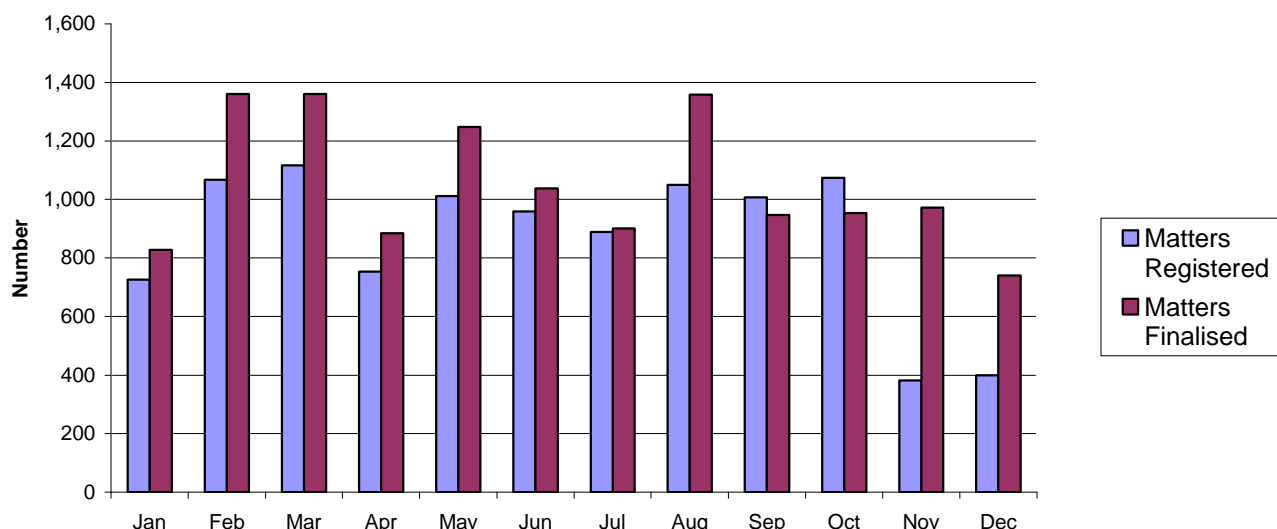
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DISPUTE RESOLUTION

A total of 10,435 Applications to Resolve a Dispute were registered with the Commission during 2006. This is a reduction of 18% over the 12,761 disputes lodged with the Commission in 2005.

The number of new disputes in 2006 averaged about 870 per month.

New and Finalised Disputes, 2006 by month



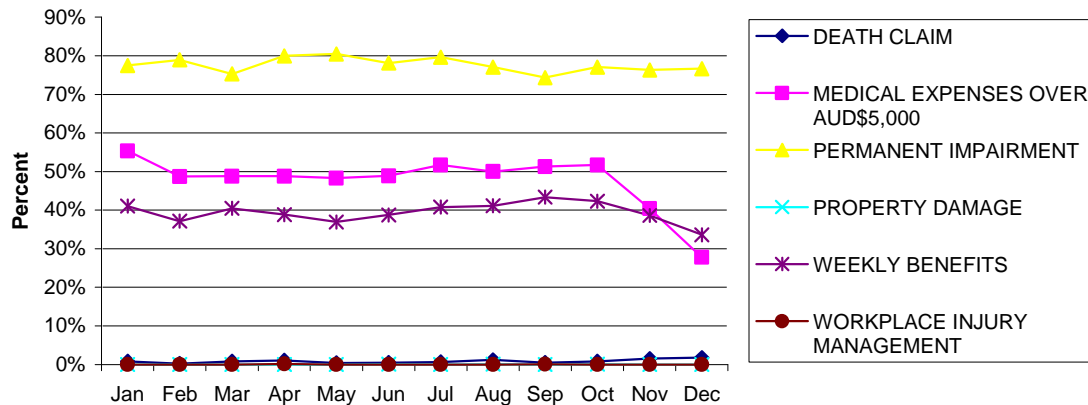
ISSUES IN DISPUTE

An Application to Resolve a Dispute may identify one or more disputed issues about an injured worker's claim for compensation. On average, there were approximately 1.67 disputes per application during 2006.

Around 78% of new disputes concerned statutory compensation for permanent impairment (section 66 claims), a slight increase from 73% in 2005. Other common disputed issues included medical expenses (49% of all disputes) and weekly benefits (40% of all disputes).

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Issues in Dispute, 2006

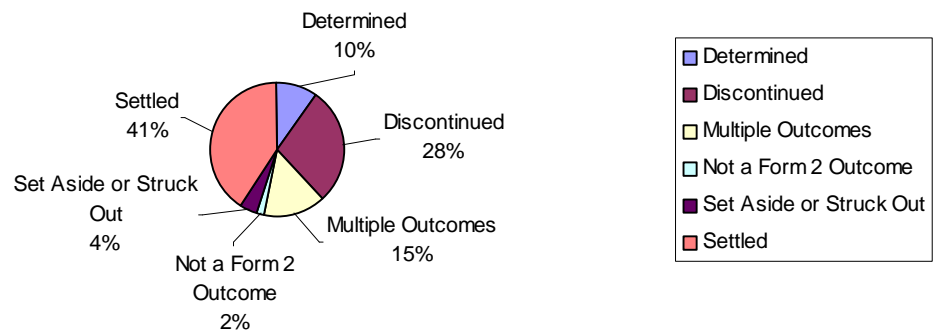


Note: The total percentages of issues in dispute is greater than 100% as one application can have more than one issue and there are therefore more issues than applications – the bases for the percentage calculations

DISPUTE OUTCOMES

12,594 applications to resolve a dispute were finalised during 2006. A significant proportion of disputes were discontinued or withdrawn by the parties (28%). About 19% of those applications were discontinued before the teleconference, and 81% after the teleconference. Discontinuance includes settlement. Approximately 10% were determined by an Arbitrator. In 15% of matters finalised there are different outcomes recorded for different issues in dispute. These are reported as 'multiple outcomes'. A further 4% of applications were struck out by the Registrar for failure to comply with procedural requirements.

Outcomes of Applications, 2006



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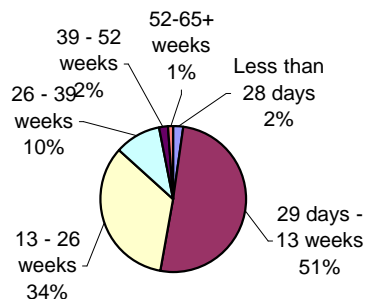
TIME TAKEN

The time taken to resolve disputes may vary considerably due to a number of factors. These include:

- whether an assessment by an Approved Medical Specialist is required
- whether an appeal is lodged in relation to a medical assessment
- whether the application is resolved during or after the teleconference or requires a hearing before an Arbitrator
- delays in the information exchange process – during 2006, 51% of disputes involved at least one application to seek access to documents under Direction. This is down from 58% of disputes in 2005.

Of the disputes resolved in 2006 that did not have a medical or arbitral appeal, 86% were resolved within 26 weeks and 97% were resolved within 39 weeks.

Time Taken to Finalise Disputes, 2006 No medical or arbitral appeal



APPEALS

Appeals Against Medical Assessments

During 2006, 3,420 Medical Assessment Certificates were issued and 716 appeals against Medical Assessment Certificates were registered, an appeal rate of 21%.

990 medical appeals were finalised during 2006. Of these, 463 (or 14% of all Medical Assessment Certificates issued) resulted in the original Medical Assessment Certificate being revoked and replaced.

Appeal Against Decisions of Arbitrators

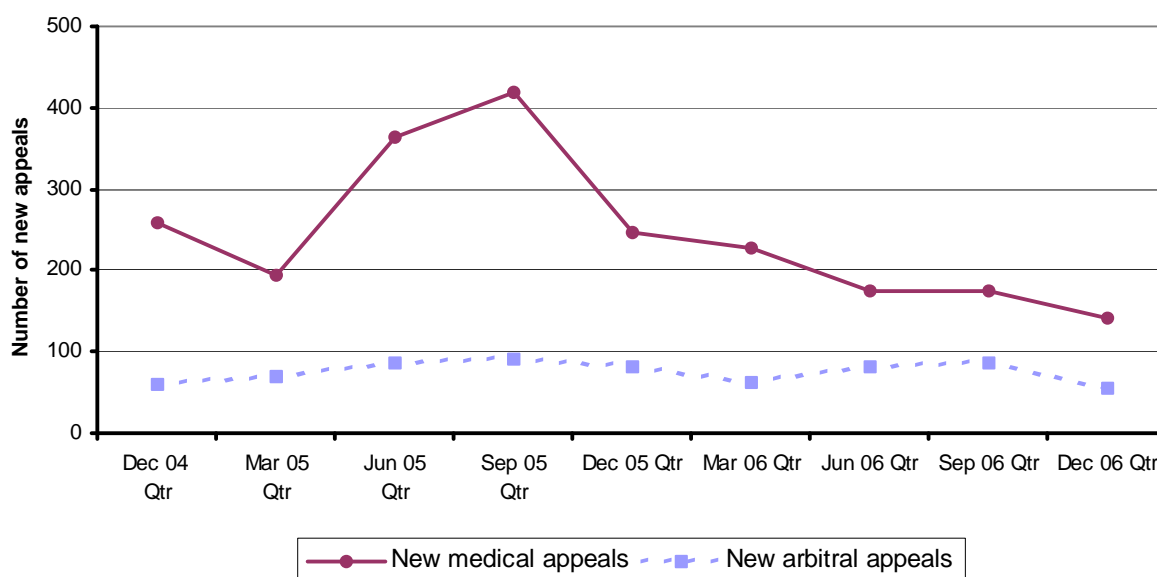
During 2006, Arbitrators made 2323 decisions.

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284 appeals against decisions of Arbitrators were registered during 2006, an appeal rate of approximately 12%.

418 arbitral appeals were finalised during 2006 of which 194 (or approximately 8% of all Arbitrator decisions) resulted in the Arbitrator's decision being overturned.

**Appeals against decisions of arbitrators and AMS
by quarter**

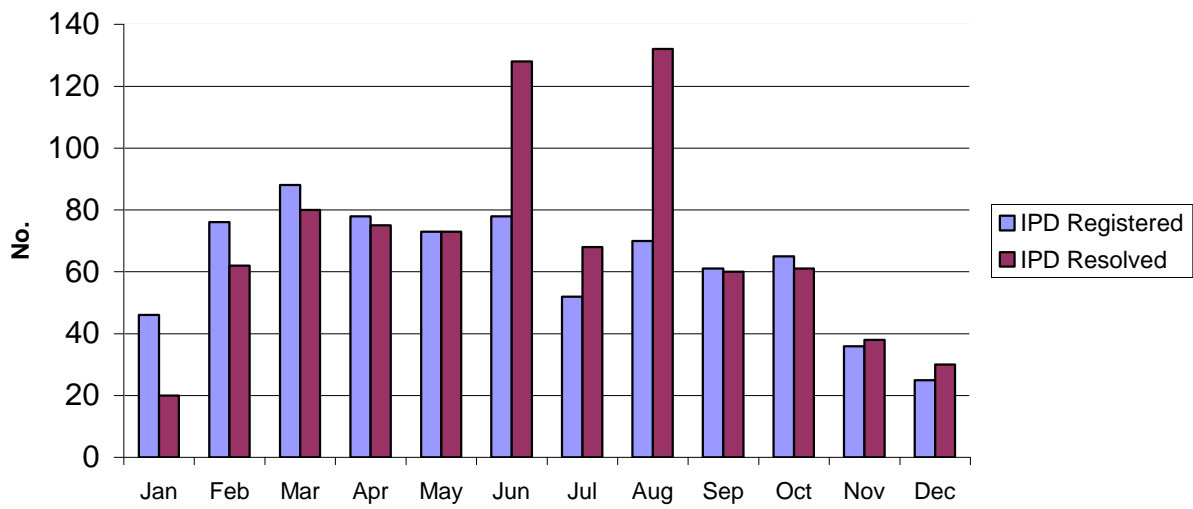


INTERIM PAYMENT DIRECTIONS

A total of 748 applications for an Interim Payment Direction were registered in 2006, an increase of 31% over the 570 received in 2005.

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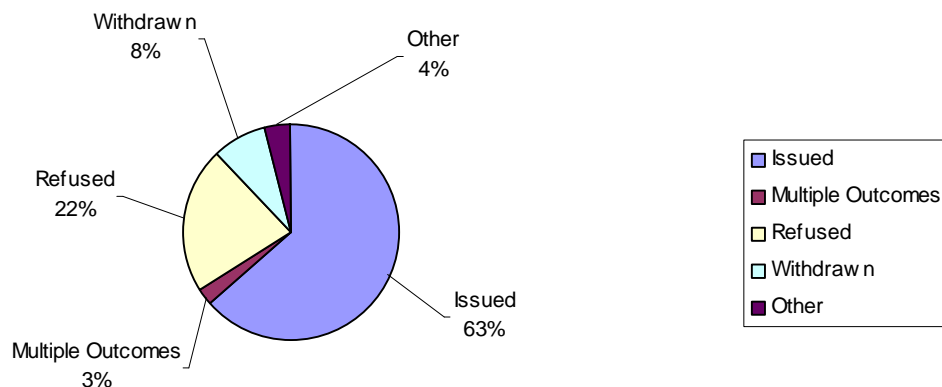
New and Finalised Applications for Interim Payment Directions 2006, by Month



827 applications for Interim Payment Directions were finalised during 2006, with Interim Payment Directions being issued in about 63% of cases.

19 applications to Revoke an Interim Payment Direction were registered during 2006 and 13 were subsequently revoked.

Outcomes of Applications for Interim Payment Directions, 2006

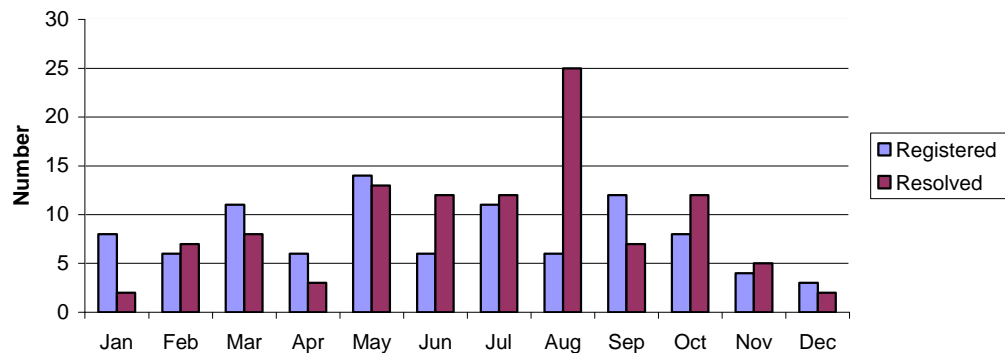


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WORKPLACE INJURY MANAGEMENT DISPUTES

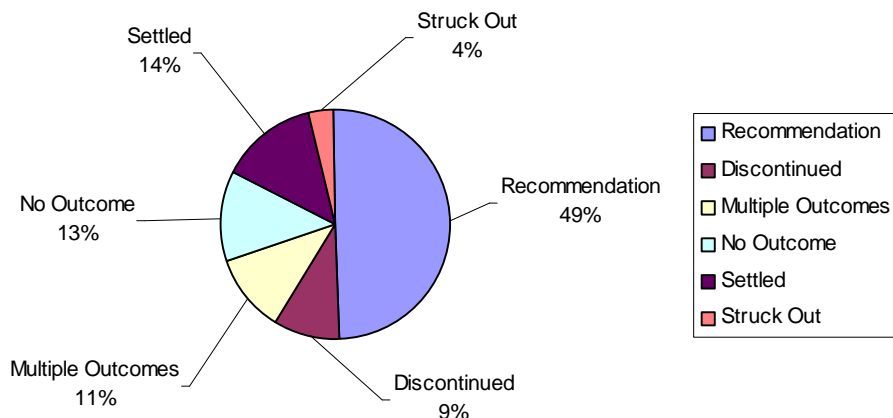
95 applications to resolve Workplace Injury Management disputes were subject to expedited assessment during 2006. This compares to 83 applications received during 2005, an increase of 14%.

New and Finalised Workplace Injury Management Dispute, 2006



108 expedited assessments of Workplace Injury Management disputes were finalised during 2006. 49% resulted in a recommended course of action and 14% were settled by agreement.

Outcomes of Workplace Injury Management Disputes, 2006



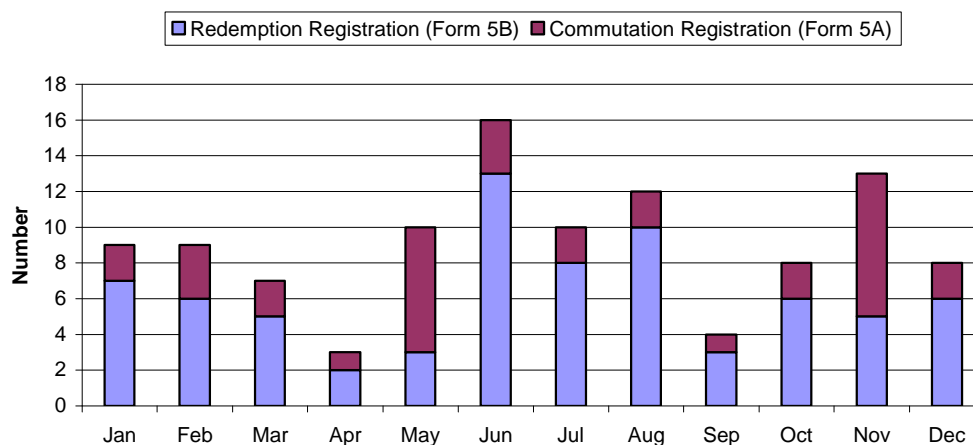
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COMMUTATION AND REDEMPTION AGREEMENTS

In accordance with the legislation, agreements between insurers and injured workers for lump sum payments of future weekly benefit entitlements must be registered with the Commission. These agreements are referred to as redemptions for workers injured prior to 1 July 1987 and commutations for workers injured on or after 1 July 1987.

During 2006, the Commission received 74 applications to register a redemption agreement and 35 applications to register a commutation agreement.

Applications to register Commutations and Redemption Agreements, 2006

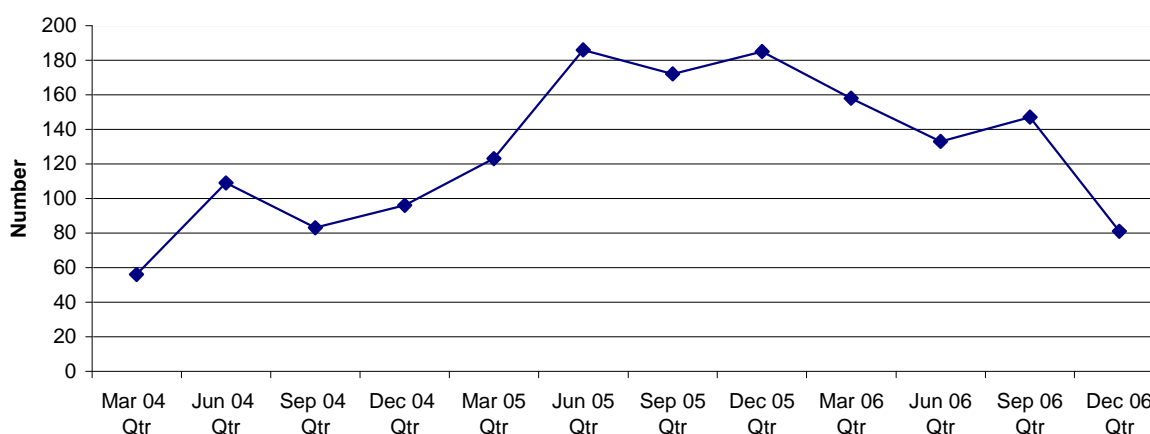


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ASSESSMENT OF COSTS

519 applications for assessment of costs were registered in 2006 and 404 applications for assessment of costs were finalised

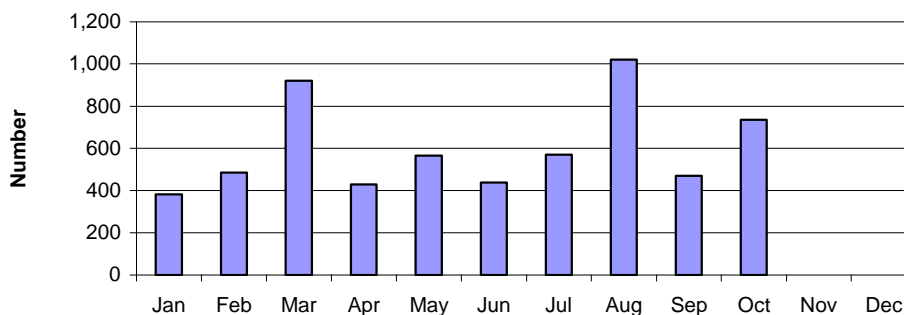
Application for Assessment of Costs, 2006



AGREEMENTS ON PERMANENT IMPAIRMENT COMPENSATION

Until 31 October 2006, the Commission registered agreements between injured workers and insurers regarding lump sum payments for permanent impairment and pain and suffering under section 66A of the Workers Compensation Act 1987. The Commission registered 6,010 agreements under section 66A of the Workers Compensation Act 1987.

Number of New Applications to Register a Section 66A Agreement, 2006

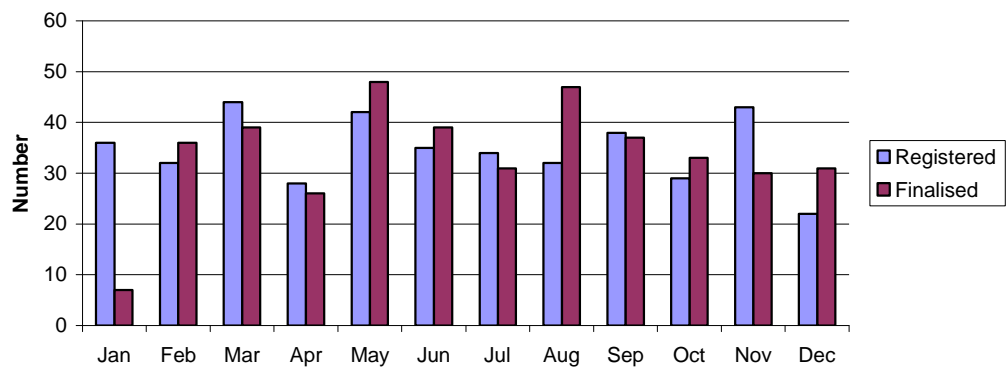


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MEDIATION - WORK INJURY DAMAGES

415 applications for mediation in relation to Work Injury Damages claims were registered in 2006, up from 244 in 2005. 404 applications for mediation were finalised in 2006.

Applications for Mediation Work Injury Damages, 2006

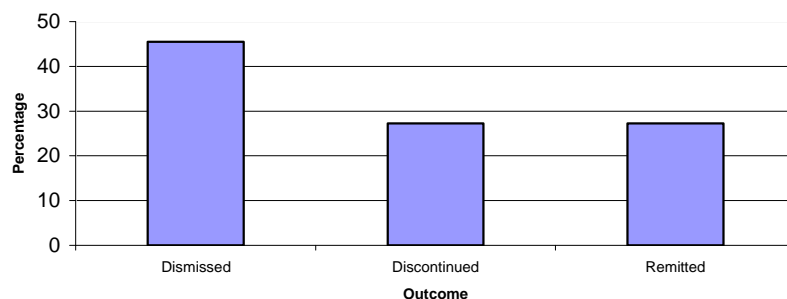


APPEALS – COURT OF APPEAL

11 notices of appeal against presidential decisions were lodged with the Court of Appeal during 2006.

11 notices of appeal against presidential decisions were finalised by the Court of Appeal during 2006. 46% of appeals were dismissed, 27% of appeals were discontinued and 27% of appeals resulted in a decision to remit the matter back to the President.

Notices of Appeal Finalised in 2006



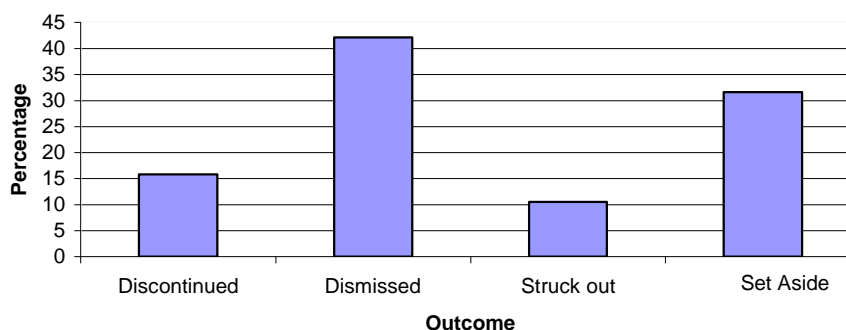
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JUDICIAL REVIEW – SUPREME COURT

29 applications for judicial review against decisions of the Registrar and/or Appeal Panel were lodged with the Supreme Court during 2006.

19 applications for judicial review were finalised by the Supreme Court during 2006. 42% of applications were dismissed, 11% of applications were struck out, 16% of applications were discontinued, and 31% of applications resulted in the decision of the Registrar and/or Appeal Panel being set aside.

Outcomes of Judicial Review, 2006



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