

## WORKERS COMPENSATION COMMISSION

### Annual Review

# 2012



#### 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 1995, 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 rapid 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 consultation and arbitration, work with the parties to reach agreement where possible through a series of confidential zone investigations 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 and suffering, medical and related expenses, weekly benefits paid as compensation for loss of earnings, as well as registration of origin agreements.

##### PUBLICATION OF ANNUAL REVIEW

Each year the Commission publishes an online summary of its operations during the preceding calendar year. This is the 10th annual review published by the Commission and covers the 10th period from January to December 2006.

WORKERS COMPENSATION COMMISSION ANNUAL REVIEW 2006

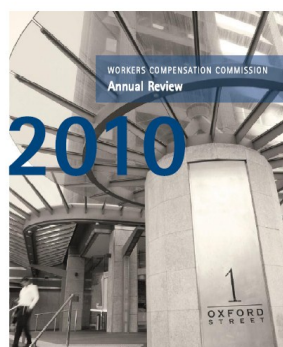
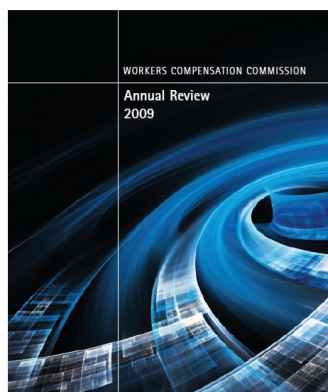


#### 2007 ANNUAL REVIEW



Workers  
Compensation  
Commission

ANNUAL REVIEW  
2008



April 2011



April 2012





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# PRESIDENT'S FOREWORD



In April 2012, the Minister for Finance and Services, the Hon Greg Pearce MLC, released an issues paper describing the need for urgent reform of the workers compensation scheme in NSW. The paper was issued in response to a burgeoning deficit in the WorkCover NSW actuarial valuation of its outstanding claims liability.

In May 2012, the NSW Parliament established a Joint Select Committee to inquire into and report on, the NSW workers compensation scheme. Submissions were invited and hearings were held in May 2012. The Committee reported in June 2012 and recommended wide-ranging changes to the benefits payable to injured workers and the dispute resolution process.

The vast majority of the Committee's recommendations were accepted by the Government. Ultimately, this resulted in the enactment of the *Workers Compensation Legislation Amendment Act 2012*.

One of the features of the recent amendments prohibits the Commission from making any costs order in Commission

proceedings. In lieu of such orders, the Government has established the Independent Legal Assistance and Review Service. This service will deal with applications for funding for injured workers to seek resolution of disputed claims in the Commission. The transitional arrangements allowed for matters registered in the Commission prior to 31 December 2012 (which has since been extended to 31 March 2013) to proceed in accordance with the existing costs provisions.

This led to a proliferation of applications being registered in the Commission between June and December 2012. By the end of the year, the Commission had around 8,000 outstanding applications on hand, as compared to about 3,500 cases prior to the amendments being passed. Managing the large number of applications awaiting disposal will certainly be one of the more significant challenges the Commission's members and staff will face in 2013.

In last year's foreword I commented on the NSW Parliamentary Standing Committee on Law and Justice's inquiry into opportunities to consolidate tribunals in NSW. In October the Attorney General, the Hon Greg Smith SC MP, announced that the Government would proceed to consolidate 23 of the State's tribunals. The Commission has not been included in the consolidation.

Following the recruitment activity in the latter part of the year, the Commission re-appointed 131 of its existing Approved Medical Specialists. An additional 15 medical specialists were also recruited to meet the Commission's requirements over a range of specialties and regions.

At the Approved Medical Specialist conference in August, I had the privilege to launch the inaugural Approved Medical Specialist Practice Manual, delivering on a commitment to publish a practice manual for use by the Commission's Approved Medical Specialists, following on from the successful launch of the Arbitrator Practice Manual several years ago.



# PRESIDENT'S FOREWORD

The manual addresses many of the day-to-day issues faced by Approved Medical Specialists and gives guidance on a range of practical and technical issues. Some of the more challenging areas, such as the treatment of deductions for previous injury, pre-existing conditions or abnormalities on permanent impairment claims, have been given special attention and a readable summary of a number of leading judicial decisions dealing with these issues has also been included.

I would like to acknowledge the contribution made by the Senior Approved Medical Specialists, Dr Roger Pillemer, Associate Professor Michael Fearnside, Dr Henley Harrison and Dr Julian Parmegiani, to the publication of the manual. However, I particularly thank Deputy Registrar Rod Parsons for his stewardship of the project.

In April 2012, the Commission launched its new look website. The site is considerably easier to navigate, particularly for Commission users seeking information on the dispute resolution process. The search capacity has also been improved, making it easier and quicker to access decisions, and a new feature has been added making the Approved Medical Specialist database more accessible. I acknowledge, in particular, the contribution made by Deputy Registrar Annette Farrell to the website redevelopment project.

One of the highlights of the year was the keynote address at the Arbitrators' Annual Conference in November by the Hon Michael Kirby AC CMG. Mr Kirby's insightful observations of the importance of the role of Arbitrators in the judicial system were matched only by his amusing anecdotes of his own days as a solicitor and barrister in the antecedent Workers Compensation Commission.

I take this opportunity to express my sincere thanks to the members and staff of the Commission for their contributions throughout the year. The surge in applications during the latter part of the year added considerably to an already demanding workload. I particularly express my thanks to those who worked so tirelessly to absorb the extra work.

Finally, I express my appreciation to the Registrar, Sian Leatham, for her continued support. I should also add that Sian has been seconded from early 2013 for six months to the Department of Attorney General and Justice to project manage the establishment of the NSW Civil and Administrative Tribunal. I wish her well in that role.

**Judge Greg Keating**  
**President**

# REGISTRAR'S REPORT



2012 was an extremely challenging year for the Commission. The swiftness and scale of the legislative changes passed in late June 2012 meant that there was little opportunity for the Commission to prepare for the large influx of applications that were received between July and December 2012. Readers of our previous Annual Reviews will note that the Commission has previously enjoyed a remarkably stable workload, with around 12,000 applications being lodged in each of the calendar years from 2008 to 2011. That situation altered dramatically in the second half of 2012, with an increase of around 75 per cent on usual lodgements over the same period.

I am pleased to say that, despite the inevitable pressures and difficulties that accompany such a sudden surge in workload, the Commission's members and staff applied themselves diligently and professionally to the task at hand. That work will continue well into 2013 as efforts are directed to addressing the large volume of matters on hand. There will also be a period of evaluation, during which the Commission will need to assess the longer term impact on lodgements

and any necessary changes to our structure and dispute resolution processes.

Regrettably, the sudden increase in volume has negatively affected the timeliness of resolution, an area that the Commission has prided itself on in the past. However, it is anticipated that there will be a sharp drop in lodgements from 31 March 2013, which will relieve the current pressure on resources and allow for a return to more regular listing timeframes by the end of 2013.

In addition to receiving more than 17,000 applications, our members and staff were involved in a range of significant projects and activities during the reporting year, including: the design and implementation of a new website and intranet; reviewing the organisation's governance and consultative framework; implementing a new Risk and Audit Committee and coordinating and publishing a comprehensive Practice Manual for Approved Medical Specialists.

During the reporting year, the former Compensation Authorities Staffing Division (CASD) was replaced by the new Safety, Return to Work and Safety Division (SRWSD). SRWSD is now the agency responsible for employing all of the Commission's staff and for providing most of the Commission's corporate services. These arrangements have been reflected in a revised Shared Services Agreement and are monitored by a joint management group. Through these arrangements, the Commission will continue to receive a suite of corporate services, including: information technology, finance, payroll, site services and human resource support.

I would like to take the opportunity to acknowledge the dedication and commitment shown by the Commission's members and staff, particularly during a time of change and uncertainty.

**Sian Leathem**  
**Registrar**

# WHAT WE DO

## Our Role

The Workers Compensation Commission (the Commission) is an independent statutory tribunal within the justice system of New South Wales. Our role, as part of a broader statutory scheme, is to resolve disputes about workers compensation claims between injured workers and employers.

The Commission was established under the *Workplace Injury Management and Workers Compensation Act 1998* and commenced operations on 1 January 2002. Legislation relevant to the Commission's jurisdiction includes the:

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

The Hon Greg Pearce MLC, Minister for Finance and Services, Minister for the Illawarra, is the Minister responsible for the administration of workers compensation legislation, except for those parts concerned with the appointment and remuneration of members.

## Our Objectives

The objectives of the Commission, set out in s367 of the *Workplace Injury Management and Workers Compensation Act 1998* are to:

- provide a fair and cost-effective system for the resolution of disputes;
- reduce administrative costs;
- provide a timely service;
- create a registry and dispute resolution service that meets expectations in relation to accessibility, approachability and professionalism;
- provide an independent dispute resolution service that is effective in settling disputes and leads to durable agreements, and
- establish effective communication and liaison with interested parties.

## Our Functions

The Commission's non-adversarial process ensures that parties are directly involved in resolving disputes about workers compensation claims.

The main types of dispute include:

- General Disputes:
  - weekly compensation payments;
  - past medical and related treatment expenses;
  - compensation to dependants of deceased workers;
  - lump sum compensation for permanent impairment where liability is in dispute;
  - lump sum compensation for pain and suffering;
- Medical Disputes:
  - lump sum compensation for permanent impairment where degree of permanent impairment is in dispute;
  - future medical and related treatment expenses;
- Expedited Assessments;
- Common Law Mediations;
- Legal Costs Assessments.

The Commission has an internal appellate jurisdiction that is a distinguishing feature of its operations. The Presidential Members of the Commission hear appeals against the decisions of the Arbitrators.

Similarly, Medical Appeal Panels determine appeals against assessments by Approved Medical Specialists.

# WHO WE ARE

## Members

The Commission currently consists of the following members:

- President – Judge Greg Keating;
- two Deputy Presidents – Bill Roche and Kevin O'Grady;
- one Acting Deputy President – Lorna McFee;
- Registrar – Sian Leathem;
- two full-time Senior Arbitrators – Deborah Moore and Michael Snell;
- 11 full-time and four part-time Arbitrators (see Appendix 1), and
- 19 sessional Arbitrators (see Appendix 1).

The Attorney General appoints the members of the Commission.

## PRESIDENT AND DEPUTY PRESIDENTS

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

The Presidential members hear and determine appeals from decisions of Arbitrators. The decisions of Presidential members may be appealed to the NSW Court of Appeal on questions of law only.

The President also has the responsibility of determining 'novel or complex' questions of law referred by Arbitrators or parties. In relation to work injury damages matters, the President has exclusive jurisdiction to determine applications by defendants to strike out pre-filing statements.

## REGISTRAR

The Registrar is responsible for the administrative management of the Commission and is the functional head of the Commission's services.

The Registrar is directly responsible for providing high-level executive leadership and strategic advice to the President on the resources of the Commission, including human resources, finance, asset management, facilities and case management strategies.

Deputy Registrars, Ms Annette Farrell and Mr Rod Parsons and Manager of Executive Services, Mr Geoff Cramp, assist the Registrar.

In addition to the administrative responsibilities, the Registrar may exercise all of the functions of an Arbitrator. Further, the Registrar is responsible for the general control and direction of Arbitrators in the exercise of their functions.

## SENIOR ARBITRATORS

Senior Arbitrators are responsible for the resolution and determination of disputes about workers compensation claims. They also assist the Commission in professional development, peer review, mentoring and appraisal of Arbitrators, case management and the development of practice and procedure.

## ARBITRATORS

Arbitrators work with the parties to explore settlement options and where possible, reach an agreed resolution of the dispute. Arbitrators manage disputes through to finalisation, utilising a series of conferences, including either teleconferences and/or conciliation conferences. Unresolved disputes proceed to a formal arbitration hearing.

# WHO WE ARE

## Service Partners

### APPROVED MEDICAL SPECIALISTS

There are approximately 140 Approved Medical Specialists located throughout New South Wales holding appointments with the Commission. Approved Medical Specialists are appointed by the President.

Approved Medical Specialists are highly-experienced medical practitioners from a variety of specialities. To be appointed, they must have completed the necessary training in the WorkCover NSW guidelines to assess whole person impairment and their application must have undergone a rigorous assessment for impartiality. Approved Medical Specialists appointed for the assessment of general medical disputes must also be in clinical practice or teaching.

The Commission refers medical disputes, such as the degree of permanent impairment of the worker as a result of an injury, to an Approved Medical Specialist for assessment.

A schedule of Approved Medical Specialists appears in Appendix 2.

### MEDIATORS

The Commission is supported by 27 contracted Mediators. All Mediators have extensive experience in alternative dispute resolution, as well as knowledge of the workers compensation jurisdiction.

Mediators are required to use their best endeavours to bring the parties to a negotiated settlement. They conduct mediation conferences in the Commission's Oxford Street premises and in other regional locations when required.

A schedule of Mediators appears in Appendix 3.

## Staff

The Commission's staff establishment is 103 full-time equivalent positions, in a number of business units in the Commission, who are employed to carry out its functions.

### PRESIDENTIAL UNIT

Presidential Unit staff work closely with the Presidential members, providing high level administrative support, research assistance and case management of arbitral appeals. Legal staff also assist in the conduct of Presidential hearings as required.

The Presidential Unit prepares and publishes 'On Appeal', an electronic publication of headnote summaries of Presidential and Court of Appeal decisions.

The unit also coordinates and provides secretariat support for the Commission's User Group and organises the Annual Inter-Jurisdictional Personal Injury Dispute Resolution Tribunal meeting.

### ORGANISATIONAL STRATEGY BRANCH

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

### Registrar's Office

The Registrar's Office is responsible for a range of functions, including the coordination of responses to Ministerial, WorkCover NSW and stakeholder inquiries, the management of complaints against Arbitrators, Mediators, Approved Medical Specialists and staff and the coordination of presentations to internal and external audiences, including visiting delegations.

# WHO WE ARE

## Executive Unit

The Executive Unit is responsible for the coordination of strategic and corporate planning processes, the preparation and monitoring of the Commission's budget, the provision of timely and accurate organisational data, risk management and audit functions and the management of requests under the GIPA Act.

## Organisational Performance Unit

Tasks undertaken in the Organisational Performance Unit include the coordination of training and development for staff, the management of appraisal processes for Arbitrators, Mediators and Approved Medical Specialists, the management of appointments of service providers, the coordination of reference group meetings and the publishing of internal and external communication materials.

## OPERATIONS AND BUSINESS SUPPORT BRANCH

The Operations and Business Support Branch manages the client services and business support functions within the Commission. The Branch has five units, including Registry Services, Dispute Services, Operations Support, Business Services and Information Systems.

### Registry Services Unit

The Registry is the first point of contact with the Commission for workers, insurers, legal representatives and the general public.

Registry Services manage the call centre, mailroom, registration of dispute applications and information exchange processes and concierge functions for the Commission's hearing rooms in its Oxford Street, Darlinghurst premises.

### Dispute Services Unit

Dispute Services staff are responsible for the administrative case management of applications for dispute resolution and

applications for mediation, from the end of the information exchange period to closure of the matter, excluding appeals.

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

### Operations Support Unit

The Operations Support Unit initiates and undertakes service improvement projects across the Registry Services and Dispute Services units.

The unit's staff develop and maintain business processes and procedures and undertake audit and risk management functions within the operational areas.

### Business Services Unit

The Business Services Unit manages a number of business support functions including in the finance area, purchasing and invoice processing. In the area of records management, the unit oversees the archive and audio processes for the Commission.

The Unit is also responsible for the management of facilities, including the Commission's premises in Sydney and the sourcing of venues in regional and rural NSW for hearings.

### Information Systems

The Information Systems Unit provides support for the Commission's case management system and other IT applications and equipment.

The unit operates a help-desk facility for staff, members and service providers in relation to the case management system and to the general public for the Commission's online lodgement facility, e-Screens.



# WHO WE ARE

## LEGAL AND MEDICAL SERVICES BRANCH

The Legal and Medical Services Branch comprises five units: a Legal Unit, Legal and Medical Support Unit, Expedited Assessments Unit, Arbitrator Support Unit and Research and Information Unit.

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

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

### Legal Unit

The Legal Unit is mainly responsible for managing and determining applications for:

- medical appeals;
- costs orders and assessments;
- defective pre-filing statements;
- disputes regarding access to information and premises, and
- determination of conduct money/production fees.

Administrative support staff are responsible for the case management and administration of various applications and provide support to projects managed within the Legal and Medical Services Branch.

### Legal and Medical Support Unit

The Legal and Medical Support Unit is responsible for developing ongoing education programs for Arbitrators and Approved Medical Specialists, including annual conferences and periodic forums.

This work involves membership of the relevant reference groups, provision of professional development opportunities to Arbitrators, Approved Medical Specialists and Mediators and coordination of activities such as induction, mentoring and peer review.

### Expedited Assessments Unit

This unit is responsible for resolving applications under the expedited assessment provisions including workplace injury management disputes, interim payment directions and small claims.

In addition, the unit deals with applications for certification of amounts to be paid for the purpose of debt recovery in a court of proper jurisdiction.

### Arbitrator Support Unit

The Arbitrator Support Unit provides legal and administrative support to full-time, part-time and sessional Arbitrators, including the proofreading of decisions and legal research. Staff may also assist in the conduct of hearings, as required.

### Research and Information Unit

The Research and Information Unit is responsible for maintaining the Commission's research library.

The unit works with members and staff to ensure access to significant sources of legal information. The unit is also responsible for the publication of Commission decisions on AustLII and the Commission's website.

# HOW WE DO IT

## Dispute Resolution Processes

The process for resolving a dispute depends on the type of claim that is in dispute (see Appendix 5) . Parties are encouraged to settle their dispute at any time during the process.

The Registrar will refer general disputes to an Arbitrator for determination. Medical disputes are referred directly to an Approved Medical Specialist for assessment of permanent impairment or opinion on the need for medical and related treatment.

### TELECONFERENCE

When an Application to Resolve a Dispute involves a general dispute, a proceedings timetable is issued to the parties advising of the date and time for teleconference. Teleconferences are scheduled for one and a half hours.

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

During the teleconference, the Arbitrator will ensure all parties understand the process, identify the relevant issues and encourage the parties to reach an agreement. If the parties reach an agreement, the Arbitrator will record the agreement in consent orders to be issued to the parties by the Commission's registry.

Where the parties are unable to reach an agreement, the Arbitrator may determine the dispute on the basis of documents and information already provided, known as a 'determination on the papers'. A written decision will be issued to the parties at a later date.

Alternatively, the matter may be scheduled for a conciliation conference/arbitration hearing. The Arbitrator will also consider applications to issue directions for the production of documents.

## CONCILIATION CONFERENCE

The conciliation conference is the first part of a two-stage process where the parties (and their legal representatives) meet face to face. If the worker lives in Sydney, the meeting will be held in the Sydney CBD. If the worker and/or his or her legal representative live in regional New South Wales, the Commission will arrange the conciliation conference according to its venue policy.

At the conciliation conference, the Arbitrator will explore the possibility of reaching an agreement on the issues in dispute. If the parties reach an agreement, the Arbitrator will record the agreement in consent orders to be issued to the parties by the Commission's registry.

If the parties are unable to reach an agreement about the dispute, the Arbitrator will terminate the conciliation conference. After a short break, the arbitration hearing will usually commence on the same day.

## ARBITRATION HEARING

The arbitration hearing, open to the public, is the more formal phase of proceedings leading to a legally binding decision issued by the Arbitrator. Proceedings are sound-recorded and evidence may be taken under oath or affirmation.

The conciliation conference and arbitration hearing is generally scheduled for three hours, but may exceed that period depending on the complexity of the issues and the progress of settlement discussions.

At any time before the Arbitrator makes a decision, the parties may settle the dispute. The Arbitrator may inform the parties of the decision at the end of the hearing. More commonly, however, the Arbitrator will reserve his or her decision and issue a Certificate of Determination and Statement of Reasons, usually within 21 days of the hearing.

# HOW WE DO IT

## MEDICAL ASSESSMENTS

Where liability is not in issue, medical disputes are referred by the Registrar, or delegate, to an Approved Medical Specialist. Approved Medical Specialists are appointed by the President of the Commission to provide an independent medical assessment for a work-related injury.

Medical disputes may be about the degree of permanent impairment or whether medical and related treatment is reasonably necessary.

The Approved Medical Specialist will usually examine the worker before issuing a Medical Assessment Certificate.

Where the dispute concerns a claim for permanent impairment, the following matters are certified by the Approved Medical Specialist and are conclusively presumed to be correct in proceedings before the Commission:

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

If the dispute concerns whether medical and related treatment is reasonably necessary as a result of an injury, the dispute must be referred for the opinion of an Approved Medical Specialist. The resulting opinion of the Approved Medical Specialist is evidence, but not conclusive evidence, in proceedings.

## COMMON LAW – MEDIATION

The Commission's role in work injury damages claims is limited to providing an administrative and mediation framework, together with a process for determining if the degree of whole person impairment is sufficient to meet the threshold for the recovery of damages. The Commission is also responsible for resolving disputes relating to defective pre-filing statements, directions for access to information and premises and pre-filing strike out applications.

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

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

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

## COSTS ASSESSMENTS

Costs in workers compensation and common law claims are regulated. Parties may make application to the Registrar to assess costs where an agreement or order for costs has been made and the quantum of those costs cannot be resolved. Applications may be made for party/party costs, solicitor/client costs or agent/client costs and disputes as to apportionment between former and current legal representatives. Assessments are undertaken by delegates of the Registrar.

# HOW WE DO IT

## Appeals

### ARBITRAL APPEALS

Decisions made by Arbitrators may be appealed to Presidential members. The President, or a Deputy President, sitting alone, hear and determine appeals from arbitral decisions.

An appeal against an Arbitrator's decision is limited to whether the decision was or was not affected by an error of fact, law or discretion, and the correction of any such error.

If the Presidential member is satisfied that he or she has been provided with sufficient information, the appeal can be determined on the documentary material without holding a conference or formal hearing. While the majority of arbitral appeals are determined 'on the papers', a number of appeals require a full hearing.

Determinations by Presidential members are final, subject only to appeal on a point of law to the Court of Appeal. Decisions of the Court of Appeal are binding on the Commission and all parties to the proceedings.

### MEDICAL APPEALS

A party may appeal against those parts of a Medical Assessment Certificate that are conclusively presumed to be correct.

A party who appeals may rely on any of four grounds of appeal:

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

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

Medical Appeal Panel. The delegate may refer the matter to an Approved Medical Specialist for further assessment or reconsideration as an alternative to an appeal.

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

In conducting the appeal, the Medical Appeal Panel reviews material available to the Approved Medical Specialist and documents filed in the medical appeal proceedings. Appeals may be dealt with 'on the papers' without further submissions from the parties. In some cases, the worker may be re-examined by an Approved Medical Specialist on the Medical Appeal Panel and/or an assessment hearing may be held where the parties may make oral submissions to the Medical Appeal Panel.

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

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

### QUESTIONS OF LAW

The President hears and determines questions of law. The President may grant leave for a question of law to be referred for his opinion, either by the Arbitrator's own motion or after an application by a party to the Arbitrator. The President is not to grant leave for the referral of a question of law unless he or she is satisfied that the question is novel or complex.

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

# HOW WE DO IT

## Expedited Assessments

Expedited assessments are divided into three categories:

- Interim Payment Directions;
- Small Claims, and
- Workplace Injury Management Disputes.

The expedited assessment process provides for faster resolution of disputes than the general dispute resolution process.

Teleconferences, convened by the Registrar, or delegate, are usually conducted approximately two weeks after registration of the application. Face-to-face conciliation conferences and arbitration hearings are not scheduled. Where the dispute does not settle at the teleconference, a decision will usually be issued to the parties following a determination by reference to documents lodged and submissions made at the teleconference.

### Interim Payment Directions

Disputes concerning weekly compensation payments up to 12 weeks and/or medical expenses compensation up to \$8,057.10 (as at 1 October 2012) are generally dealt with under the Interim Payment Direction provisions.

These provisions ensure early intervention where an insurer fails to commence payment of compensation or fails to determine a claim within the required time. The provisions may, however, also be utilised when an insurer disputes liability and a dispute notice has been issued.

The payment of compensation in accordance with an Interim Payment Direction is not an admission of liability by the insurer or employer.

## Small Claims

In some cases, the Registrar, or delegate, may determine past weekly compensation benefits claims for a closed period of up to 12 weeks under the 'small claims' provisions. When doing so, the Registrar, or delegate, exercises arbitral functions and a dispute is determined by the issuing of a Certificate of Determination. The determination may be appealed to a Presidential Member.

## Workplace Injury Management Disputes

Disputes regarding workplace injury management may be lodged in the Commission where:

- there is no injury management plan or the plan has not been followed;
- there is no return-to-work plan or the plan has not been followed;
- suitable duties have not been provided to the injured worker, and/or
- the worker's capacity to perform duties is in dispute.

A teleconference will usually be held by the Registrar, or delegate, in the first instance. The matter may be referred to an Injury Management Consultant or other suitably qualified person to conduct a workplace assessment. An Injury Management Consultant is a registered medical practitioner appointed by WorkCover NSW, who assists the worker, the worker's nominated treating doctor and the employer, in relation to the worker's return to work and/or injury management plan.

Where the matter is not resolved, the Registrar, or delegate, makes a recommendation to the parties for a certain course of action to be adopted. Whilst this usually concludes the dispute, a party may seek referral of the matter to an Arbitrator for determination.

# GOVERNANCE

## COMMITTEES AND FORUMS

The Commission utilises a variety of committees and forums to assist with decision-making and governance arrangements. The various committees and forums comprise a mixture of Commission members, staff, service partners and external users. They provide opportunities for information-sharing, consultation and the development of options in relation to the operations of the Commission. A brief summary of several of the forums is outlined below.

### Approved Medical Specialist Reference Group

This reference group meets quarterly, with membership revamped bi-annually.

During 2012, the Reference Groups comprised:

Chair: Registrar Sian Leathem  
Secretariat: Legal and Medical Services  
Dr Neil Berry  
Dr Mark Burns  
Dr Bruce Conolly  
Dr Michael Fearnside  
Dr Henley Harrison  
Dr Frank Machart  
Dr Tom Mastroianni  
Dr Julian Parmegiani  
Dr Roger Pillemer  
Dr Greg Steele  
Dr George Weisz  
Ms Lyn Martin, Manager Legal and Medical Support

Matters dealt with by the Approved Medical Specialist Reference Group in 2012 included:

- content of the Approved Medical Specialist conference program;
- Approved Medical Specialist re-appointment, and
- development and review of Approved Medical Specialist Performance Development Framework.

## User Group

The User Group, chaired by the President, meets three times per year. The Group includes representatives from the NSW Bar Association, the Law Society of NSW and WorkCover NSW. During 2012, the membership was as follows:

Chair: President Judge Greg Keating  
Secretariat: Presidential Unit  
Deputy President Bill Roche  
Deputy President Kevin O'Grady  
Registrar Sian Leathem  
Senior Arbitrator Deborah Moore/Senior Arbitrator Michael Snell  
Deputy Registrar Annette Farrell  
Deputy Registrar Rod Parsons  
Mr Cameron Player/Mr Gary Jeffrey, WorkCover NSW  
Mr Greg Beauchamp, barrister  
Mr Steve Harris, solicitor  
Ms Roshana May, solicitor  
Mr Brian Moroney, solicitor  
Ms Penny Waters, solicitor

Issues discussed during the 2012 meetings included:

- 2012 legislative amendments, and
- NSW Government inquiry on tribunals consolidations.

## Arbitrator Practice Meetings

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

The practice meetings provide regular information to Arbitrators and to seek their input on operational matters in the Commission.



# GOVERNANCE

## ACCESS AND EQUITY SERVICE CHARTER

The Charter sets out standards to ensure the provision of accessible and equitable services to all members of the community. To achieve these standards, the Commission has developed a range of practices, policies and procedures including:

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

## COMPLAINTS HANDLING

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

Complaints can be made about the actions of Commission members, staff, Approved Medical Specialist or Mediators. Dissatisfaction with the outcome of a dispute is not a matter that is dealt with through the complaint handling process. There are statutory rights of appeal and reconsideration for parties who are not satisfied with a decision of a Commission member or Approved Medical Specialist.

During the reporting year, the Commission received a total of 14 complaints, a decrease of six complaints from 2011. This represents a complaint lodged in less than 0.1 per cent of all applications registered in the Commission during 2012. Of these complaints, 11 concerned medical assessments conducted by Approved Medical Specialists, two complaints concerned an Arbitrator and the remaining complaint concerned a Mediator.

All of the complaints were acknowledged in writing within seven days of receipt, with 11 receiving a full written response within 28 days. The remaining three matters were delayed either at the request of the complainant or due to the detailed nature of the complaint.

## RISK MANAGEMENT

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

The risk management framework incorporates:

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

The aim is to ensure that the Commission has in place an appropriate framework to identify, assess and mitigate risks in line with its risk tolerance. Risk tolerance is determined through the development of a matrix that incorporates operational risks, financial risks, reputation, fraud, legal and people impact criteria.

Risk management activities undertaken in 2012 included updating the framework, policy and risk tolerance matrix. The inaugural meeting of the Risk Management Committee, reporting through the Registrar to the President, was held in November 2012 to review the key strategic risks.

## GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

The *Government Information (Public Access) Act 2009* (GIPA Act) requires agencies to report on their obligations under the GIPA Act. In compliance with s7(3) of the GIPA Act, the Commission reviewed the information released to the public through the design and implementation of a new website.

During 2012, the Commission received no valid applications to release information under the GIPA Act.

# THE STRATEGIC PLAN

## The Planning Process

The three-year Strategic Plan, released in 2011, informs the development of our annual Corporate Plan, Business Unit Plans and individual development plans.

The three focus areas in the 2011–2014 Plan are: excellence in client service, skilled and committed people and effective business systems.

## Achievements under the Corporate Plan

### APPROVED MEDICAL SPECIALIST PRACTICE MANUAL

Following the success of the Arbitrator Practice Manual, the Commission designed, developed and published a manual for Approved Medical Specialists. The manual is a comprehensive resource for Approved Medical Specialists to assist with all elements of the medical assessment process.

Material included deals with the roles and functions of Approved Medical Specialists and the processes and procedures in relation to medical assessments and medical appeals and significant developments in the law as they relate to medical assessments.

The Approved Medical Specialist Practice Manual was launched at the Approved Medical Specialist Conference in August 2012 and will be regularly updated as relevant changes in the law or practice and procedure occur.

### INFORMATION RESOURCES ON 2012 LEGISLATIVE AMENDMENTS

To assist members and staff in the implementation of the 2012 legislative amendments, various information resources were developed during the year including:

- a summary report of the provisions in the amendment Act, including transitional arrangements;
- forum topics at annual conferences, and
- weekly updates in the staff newsletter.

### ANNUAL CONFERENCES

#### Arbitrator Annual Conference

The 2012 Arbitrator Annual Conference provided an opportunity for discussion on various topics including issues arising from legislative changes and an update from the WorkCover Independent Review Officer.

The keynote speaker, the Hon Michael Kirby AC CMG, gave a history of workers compensation as experienced throughout his career and some insightful observations of the importance of the work of the Commission in the judicial system of NSW.

Other conference topics included dealing with unrepresented applicants and social media in tribunal proceedings.

# THE STRATEGIC PLAN

## Approved Medical Specialist Annual Conference

The Approved Medical Specialist Annual Conference was held in August 2012. The focus of the conference, with a keynote address by Ms Joanna Kalowski, was dealing with workers during the examination. There were also short presentations by Approved Medical Specialists on topics including bias, managing the presence of a support person, dealing with pain behavior and abnormal illness behaviour.

Topics of a medical nature were discussed in relevant specialty groups in the afternoon program.

The conference also marked the release of the Approved Medical Specialist Practice Manual.

## LAUNCH OF NEW WEBSITE AND INTRANET

In late 2011, the Commission engaged the services of a website development company to design and implement a new internet (public access) and intranet site (internal access), utilising SharePoint 2010 technology.

The new internet site, with the same URL, [www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au), went live on 30 April 2012. The site has a new look and feel, with an improved search engine to enable easier identification of published decisions by subject matter, keywords and decision maker.

The intranet site, with secure access for staff, members and service partners, was launched in stages, with access for staff and in-house Arbitrators available from early July 2012. This site also provides for secure remote access by sessional Arbitrators, Approved Medical Specialists and Mediators to custom designed pages within the intranet. The remote access solution was released in late August.

## GOVERNANCE REVIEW

In order to ensure robust and effective organisational decision making, the Commission reviewed its existing committees and forums and developed a new Governance and Consultative Framework. The framework includes terms of reference and standard agendas to assist in the effective and efficient running of each committee/forum.

## PROJECT MANAGEMENT METHODOLOGY

The Commission finalised and released a Project Methodology Framework in 2012 to achieve consistent application of project management principles across projects. The benefits of the framework include clarification of scope and proposed outcomes, structured planning, improved reporting and accountability and better project outcomes.

# THE STRATEGIC PLAN

## Strategic Plan 2011-14



**WORKERS  
COMPENSATION  
COMMISSION**

### OUR VISION

To be recognised  
for excellence in  
dispute resolution

### OUR MISSION

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



### OUR VALUES

Fairness | Independence | Accessibility | Respect | Professionalism | Teamwork

# 2012 WORKLOAD DISCUSSION

## Total Registrations

In 2012, the Commission registered over 17,000 applications as detailed below. This represents a 44 per cent increase in registrations over the 2011 year, resulting primarily from significant increases in Applications to Resolve a Dispute (Form 2).

Application Type	2010	2011	2012
Application to Resolve a Dispute (Form 2)	8,921	9,225	14,164
Expedited Assessments (Form 1)	516	505	700
Workplace Injury Management Dispute (Form 6)	139	112	142
Registration for Assessment of Costs (Form 15)	240	171	173
Commutations (Form 5A) and Redemptions (Form 5B)	227	220	252
Mediations (Form 11)	848	1,207	1,266
Arbitral Appeals (Form 9)	135	69	80
Medical Appeals (Form 10)	566	567	599
<b>TOTAL</b>	<b>11,592</b>	<b>12,076</b>	<b>17,376</b>

## Applications to Resolve a Dispute (Form 2)

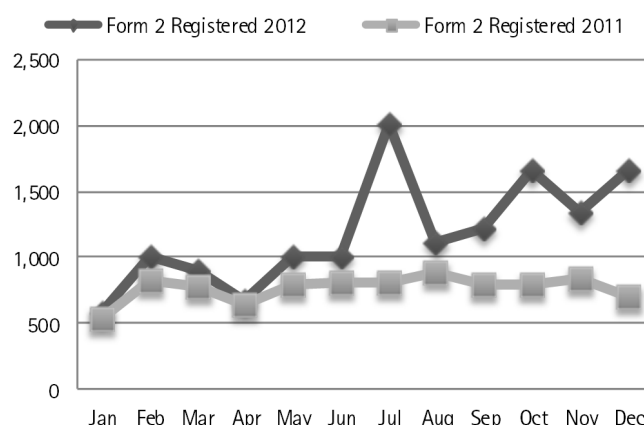
### REGISTRATIONS

For the three years prior to 2012, Form 2 registrations remained relatively stable. With the announcement in early 2012 of a parliamentary inquiry into workers compensation in NSW, the Commission experienced a steady increase in lodgements, with an 18 per cent increase in the first six months of 2012 compared to the same period in 2011.

On 22 June 2012, the *Workers Compensation Legislation Amendment Act 2012* passed the NSW Parliament, introducing sweeping reforms to injured workers benefit entitlements, dispute resolution processes and legal costs in disputed claims.

From July to December 2012, Form 2 registrations increased by 86 per cent compared to the same period in 2011. As at 31 December 2012, the Commission had on hand a further 2000 plus applications yet to be registered.

### Form 2s Registered by Month



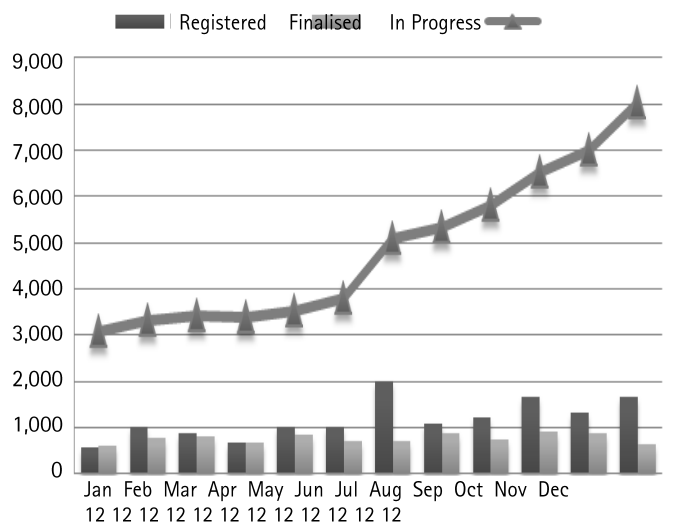
### WORK IN PROGRESS

The Commission's capacity to resolve disputes where a matter is referred to an Arbitrator is relatively fixed due to the dispute resolution model and the mix of in-house and sessional Arbitrators.

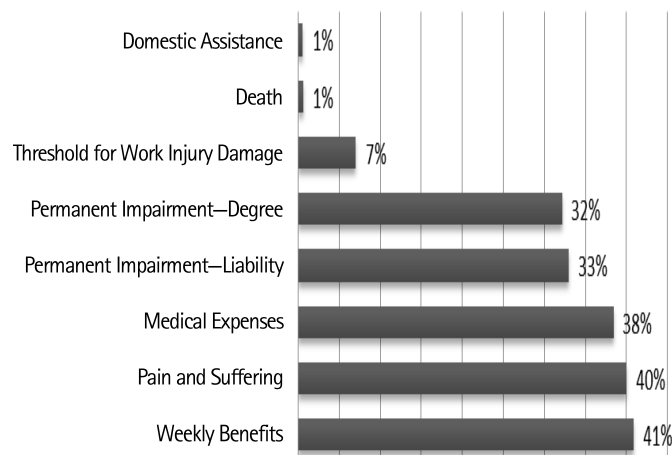
Consequently, registered matters on hand have increased more than twofold over matters on hand prior to the legislative amendments.

# 2012 WORKLOAD DISCUSSION

## Applications to Resolve a Dispute



## Issues in Dispute 2012



## ISSUES IN DISPUTE

Form 2s usually involve a dispute over more than one claim. For example, the dispute may involve a claim for weekly benefits, a claim for medical expenses and a claim for lump sum compensation for permanent impairment. During the reporting year, the proportion of disputes involving a claim for weekly benefits increased from 36 per cent of Form 2s to 41 per cent of Form 2s.

Form 2s that included a claim for permanent impairment compensation reduced from 73 per cent to 65 per cent, whilst those including a claim for pain and suffering compensation reduced from 47 per cent to 40 per cent.

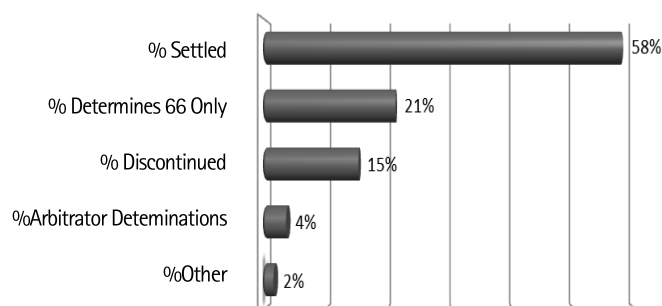
These changes demonstrate the initial impacts of the introduction of a threshold for entitlement to permanent impairment compensation and the abolition of pain and suffering compensation for claims made on or after 19 June 2012.

## OUTCOMES

Seventy-five per cent of Form 2s in 2012 (74 per cent in 2011) were finalised without the need for a determination – that is, they were resolved by agreement between the parties or by some other means of finalisation.

The settlement rate for Form 2s increased from 55 per cent in 2011 to 58 per cent in 2012. More than 84 per cent of the determined matters involved the issuing of a Certificate of Determination by the Registrar, finalising a worker's entitlement to permanent impairment compensation following a medical assessment by an Approved Medical Specialist.

## ARD Outcomes 2012





# 2012 WORKLOAD DISCUSSION

## Other Applications (excluding appeals)

As a further consequence of the legislative amendments, Applications for Expedited Assessment (Form 1) increased by 39 per cent. This is a reversal of the trend experienced over the previous two years, where applications had shown a steady decline.

The increase in lodgements for Form 1 applications resulted in an increase in matters on hand as at 31 December 2012, largely due to the 110 matters lodged in December.

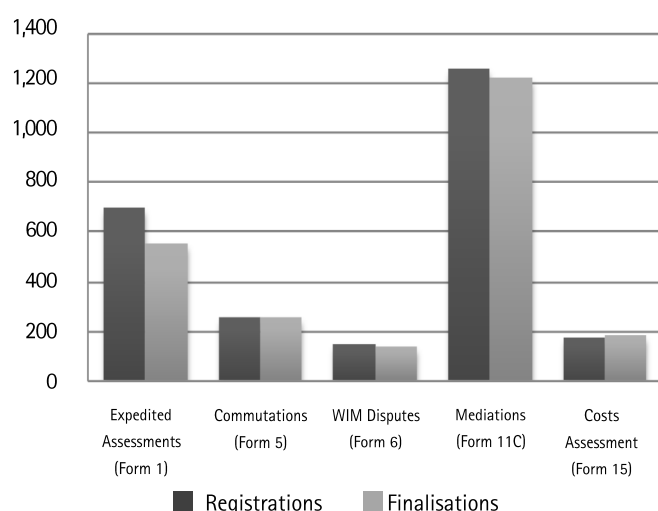
Applications for Mediation (Form 11C) were comparable to 2011, ending an extended trend of increasing lodgements each year since 2007.

Applications for Workplace Injury Management Disputes (Form 6) increased to 2010 levels, with relatively stable lodgements in other application types.

During 2012, the Commission finalised more of the following types of applications than it registered during the year:

- Commutations (Form 5), and
- Costs Assessments (Form 15).

## Registrations vs Finalisations 2012 (excluding ARDs and Appeals)



Outcomes for the various applications are shown in the tables below:

Form 6 – WIM Disputes	
% Recommendation Issued	71%
% Discontinued	13%
% Other	10%
% Recommendation Refused	7%

Form 11C—Mediations	
% Settled	53%
% Certificate of Final Offer	30%
% Wholly Denied Liability	12%
% Other	5%

Form 1—Expedited Assessments	
% IPD Issued	49%
% Discontinued	26%
% Refused	11%
% Settled	11%
% Other	4%

Form 15—Costs Assessments	
% Determination Issued	55%
% Discontinued	43%
% Other	2%

# 2012 WORKLOAD DISCUSSION

## Medical Appeals

There were 599 Applications to Appeal Against a Decision of an Approved Medical Specialist (Form 10) registered in 2012, an increase of six per cent from the 567 registered in 2011. The increase in appeals registered is directly proportionate to the increase in Medical Assessment Certificates issued (up from 4748 to 5054), resulting in a stable medical appeal rate of 12 per cent over the past two years.

Of the 526 medical appeals finalised, 393 were finalised by Medical Appeal Panels. Fifty-three per cent of those matters determined by a Medical Appeal Panel resulted in revocation of the Medical Assessment Certificate, an increase from 49 per cent in 2011. However, overall revocation rates, measured as the proportion of revoked certificates over the total Medical Assessment Certificates issued remain stable at an average of four per cent for the 2012 year.

## Arbitral Appeals

In 2012, the Commission registered 80 Appeals Against the Decision of an Arbitrator (Form 9), with 77 applications finalised by Presidential members. There were 21 appeals in progress at the end of the year. This represents a 16 per cent increase in the number of appeals and a five per cent increase in the clearance ratio over 2011 applications. However, with the increase in the number of determinations issued, the overall revocation rate, expressed as the proportion of revoked decisions over the total appealable decisions, remains constant at six per cent.

Of the 77 appeals finalised, the Arbitrator's decision was confirmed in 51 per cent of matters, with 28 per cent revoking the Arbitrator's decision. The remaining 11 per cent were discontinued or rejected for procedural non-compliance.

## Key Performance Indicators

The Commission continues to monitor its performance against a series of key performance indicators (KPIs). The KPIs are intended to track the Commission's progress in the delivery of a number of its statutory objectives including timeliness.

Timeliness	Target	Actual
% of Dispute Applications resolved (no appeal):		
3 months	45%	31%
6 months	85%	87%
9 months	95%	98%
12 months	99%	99%
% of Dispute Applications resolved (with appeal):		
3 months	40%	28%
6 months	80%	82%
9 months	94%	95%
12 months	98%	98%
Average days to resolution for Dispute Applications with no appeal	105	122
Average days to resolution of Arbitral Appeals	112	86
Average days to resolution of Medical Appeals	100	95
% of Expedited Assessments resolved with 28 days	90%	74%
Durability	Target	Actual
% of determined Dispute Applications revoked on appeal <sup>[1]</sup>	< 15%	6%
% of Medical Assessment Certificates revoked on appeal <sup>[2]</sup>	< 15%	4%

<sup>1</sup> This KPI represents the number of arbitral decisions revoked, expressed as a per centage of the total number of appealable arbitral decisions (ie: excluding s66 determinations).

<sup>2</sup> This KPI represents the number of Medical Assessment Certificates revoked by a Medical Appeal Panel, expressed as a per centage of the total number of Medical Assessment Certificates issued.

# 2012 WORKLOAD DISCUSSION

## Judicial Review of Registrar and Medical Appeal Panel Decisions

Parties who are aggrieved by decisions of the Registrar or Medical Appeal Panels may seek review of these decisions in the Supreme Court, pursuant to the *Supreme Court Act 1970*.

In 2012, the Supreme Court registered five new judicial review applications against decisions of the Registrar and/or Medical Appeal Panels, equal to the number of lodgements in 2011. This represents a judicial review rate of less than one per cent of all decisions made.

There was one appeal lodged in the Court of Appeal against the decision of a single judge of the Supreme Court, relating to a judicial review decision made in respect of a medical assessment.

In 2012, the Supreme Court handed down a total of three decisions in matters relating to decisions made by Medical Appeal Panels. One matter was settled, one dismissed, and one decision quashed.

## Appeals to the Court of Appeal from Presidential Decisions

Appeals from Presidential decisions on points of law are made to the Court of Appeal.

In 2012, the Court of Appeal determined four appeals and two applications for leave to appeal from Presidential decisions. Three further appeals were discontinued.

The two applications for leave to appeal were dismissed. Of the appeals that proceeded to determination, three were dismissed and one was upheld and remitted to the Commission for re-hearing. An application to seek leave to appeal to the High Court of Australia has been filed in the remitted matter.

# EDUCATION AND COLLABORATION

## Inter-Jurisdictional Meeting

Each year in June, the Australasian Institute of Judicial Administration (AIJA) holds an annual tribunals conference that is well-attended by a range of decision-makers and staff from State, Territory, Commonwealth and New Zealand tribunals. Prior to commencement of the conference, an inter-jurisdictional meeting is convened to promote information-sharing and collaboration across the various tribunals in Australia and New Zealand managing workers compensation disputes.

In 2012, the meeting was held in Sydney, chaired by the President Judge Keating. The meeting agenda included:

- NSW scheme review;
- technology in tribunals;
- peer review;
- professional development, and
- orders for production.

## Council of Australasian Tribunals

The Council of Australasian Tribunals (COAT) is a peak body that facilitates liaison and discussion between tribunals throughout Australia and New Zealand. It supports the development of best practice models and model procedural rules, standards of behaviour and conduct for members and increased capacity for training and support for members.

During 2012, members and staff of the Commission participated in various activities organised by COAT, including its annual conference, the national annual general meeting and the Whitmore Lecture. The President and the Registrar are members of the Executive Committee of the NSW Chapter of COAT.

## Stakeholder Presentations

Over the course of the reporting year, members and staff delivered a number of presentations to stakeholders including:

### Bill Roche – Deputy President

21 March 2012 – UNSW Faculty of Law Centre for Continuing Legal Education

### Sian Leathem – Registrar

21 March 2012 – UNSW Workers Compensation Seminar

29 May 2012 – Specialist Accreditation Conference in Personal Injury

1 June 2012 – College of Law Personal Injury Law Specialist Accreditation Conference

13 September 2012 – National Mediation Conference

2 November 2012 – Sydney University

21 November 2012 – College of Law

27 November 2012 – Office of the Legal Services Commissioner

### Annette Farrell – Deputy Registrar

30 August 2012 – State Legal Conference

13 September 2012 – National Mediation Conference

### Ramon Loyola – Senior Solicitor

29 February 2012 – College of Law

4 May 2012 – College of Law

# EDUCATION AND COLLABORATION

## Stakeholder and Client Publications

### Bulletins

The Commission publishes a number of bulletins to disseminate information periodically to various stakeholders including:

- e-Bulletin – for the legal profession;
- Arbitrator Bulletin – for full-time, part-time and sessional Arbitrators;
- AMS Bulletin – for Approved Medical Specialists, and
- Medical Appeal Panel Bulletin – for Arbitrators and Approved Medical Specialists who sit on Medical Appeal Panels.

### On Appeal

Issued monthly to Arbitrators and published on the website, 'On Appeal' summarises the decisions of Presidential members in the preceding month and provides a brief overview of relevant Court of Appeal decisions.

### On Review

'On Review', available on the Commission's website, lists relevant and significant judicial review and appeal decisions of the Supreme Court and the Court of Appeal in relation to medical assessments, medical appeals and administrative decision-making functions of the Registrar.

### Arbitrator Practice Manual

The Arbitrator Practice Manual provides guidance to members on a range of procedural and ethical issues. The manual also contains a number of chapters on substantive legal issues relevant to the Commission's work.

## Approved Medical Specialist Practice Manual

The Approved Medical Specialist Practice Manual (released in August 2012), assists Approved Medical Specialists to understand the dispute resolution model and the relationship between their functions and those of Arbitrators. The manual includes chapters on practical issues such as conducting examinations and legislative issues such as the deduction for previous injuries or pre-existing conditions.

### Decisions of Medical Appeal Panels

This new summary publication was first issued in August 2012. 'Decisions of Medical Appeal Panels' contains summaries of Medical Appeal Panel decisions on specific areas of the medical assessment process including adequacy of reasons, assessment methodologies and fresh evidence.

# DEVELOPMENTS IN THE LAW

## Legislative Amendments

The *Workers Compensation Legislation Amendment Act 2012*, enacted in June 2012, introduced significant reforms to the New South Wales workers compensation scheme.

The amendments apply to all workers in NSW, with the exception of police officers, paramedics, firefighters, coal miners, emergency and rescue services volunteers and persons with a dust disease.

The amending legislation, as it relates to disputes heard in the Commission, is summarised below.

### WEEKLY PAYMENTS OF COMPENSATION

The new provisions create separate entitlement periods for weekly payments of compensation:

- the first entitlement period (first 13 weeks) – applies to all workers having some or no capacity for work;
- the second entitlement period (weeks 14–130) – applies to all workers having some or no capacity for work. For those workers who have some capacity to work, a higher rate of compensation is payable to those who have returned to work for greater than 15 hours per week;
- weekly payments after second entitlement period (after week 130) – applies to a worker who has no work capacity or a worker who has at least 15 hours per week work capacity and is earning at least \$155 per week, and
- weekly payments after week 260 – applies to workers whose injury results in greater than 20 per cent permanent impairment, subject also to the same requirements as the third entitlement period.

An injured worker's work capacity is to be assessed by the insurer, except where the worker is a 'seriously injured worker', defined as a worker whose injury results in greater than 30 per cent permanent impairment.

A worker may seek review of a work capacity decision by internal review by the insurer, merit review by WorkCover NSW, or procedural review by the WorkCover Independent Review Officer. The Commission is excluded from reviewing work capacity decisions and may not make a decision in respect of a dispute that is inconsistent with a work capacity decision.

The amendments apply to claims made on or after 1 October 2012. Transitional arrangements apply to existing recipients of weekly payments of compensation, with a staged introduction from 1 January 2013.

### LUMP SUM COMPENSATION

Amendments to lump sum compensation entitlements include:

- introduction of a threshold of greater than 10 per cent permanent impairment for lump sum compensation;
- abolition of lump sum compensation for pain and suffering;
- a limit of one claim for permanent impairment lump sum compensation for an injury, and
- enabling a worker to enter into a lump sum compensation agreement without first obtaining independent legal advice.

Changes apply to claims for lump sum compensation made on or after 19 June 2012.



# DEVELOPMENTS IN THE LAW

## MEDICAL AND RELATED EXPENSES

Medical and related expenses compensation will only be payable for 12 months after a claim is first made, unless weekly payments of compensation are or have been paid or are payable to a worker. Entitlement to medical and related expenses after weekly payments cease is limited to 12 months thereafter. Should weekly payments recommence, medical expenses can be claimed, but only for the period that weekly compensation payments are paid.

However, where a worker is a 'seriously injured worker', there remains an ongoing entitlement to medical and related expenses, irrespective of whether weekly compensation is paid or the period of time since a claim is first made.

Claims first made on or after 1 October 2012 are subject to the amendments. Medical expenses incurred prior to that date are not subject to the amendments. Where a claim is first made before 1 October 2012, the 12 month period will commence no earlier than 1 January 2013.

## JOURNEY CLAIMS

For injuries received on or after 19 June 2012, journey claims are now restricted to those injuries occurring on a journey to or from the worker's place of abode and where there is a real and substantial connection between the employment and the accident or incident.

## HEART ATTACK AND STROKE CLAIMS

Heart attack and stroke injuries are no longer compensable unless the nature of employment gave rise to a significantly greater risk of injury than had the worker not been so employed. The amendments apply to injuries received on or after 19 June 2012.

## DISEASE INJURIES

Claims for disease injuries received on or after 19 June 2012 are payable only if the employment was the main contributing factor to contracting the disease or to the aggravation, acceleration, exacerbation or deterioration of the disease.

## LEGAL COSTS

The amendments provide that each party will bear its own costs in relation to a claim for compensation. The Commission will no longer have jurisdiction to order the payment of costs. The amendments do not apply to claims made before 1 October 2012 where proceedings for the claim are commenced in the Commission prior to 31 March 2013.

To assist workers in funding a challenge to an insurer's decision, the government has established a legal aid system, the Independent Legal Assistance and Review Service, managed by the WorkCover Independent Review Officer.

# DEVELOPMENTS IN THE LAW

## Significant Presidential Member Appeal Decisions

### *Goudappel v ADCO Constructions Pty Limited & anor* [2012] NSWCCPD 60

*Novel or complex question of law; s351 of the 1998 Act; application of savings and transitional provisions of the Workers Compensation Legislation Amendment Act 2012 with respect to claims for lump sum compensation*

Keating P  
22 October 2012

#### Facts:

Mr Goudappel was employed by ADCO Constructions Pty Limited. He was injured on a building site on 17 April 2010. It was agreed that he made an initial claim for compensation on 19 April 2010.

On 20 June 2012, his solicitors made a claim for compensation pursuant to s66 of the 1987 Act for \$8,250 representing six per cent whole person impairment.

Section 66(1) of the 1987 Act was amended by Sch 2 cl 2.1[5] of the *Workers Compensation Legislation Amendment Act 2012* (the Amending Act). The amendment provided that a worker who receives an injury which results in permanent impairment greater than 10 per cent is entitled to receive compensation from the worker's employer. Prior to the amendment there was no impairment threshold limiting the entitlement to lump sum compensation under s66.

Clause 15 of Sch 12 of the Amending Act, (amendments relating to savings and transitional provisions) provides that the Sch 2 amendment 'extends to a claim for compensation made on or after 19 June 2012 but not to such a claim made before that date'.

The issue in dispute before the Commission was whether the applicant was precluded from claiming lump sum

compensation which had been assessed to be less than 11 per cent whole person impairment because his claim for compensation was made on or after 19 June 2012, even though he had previously made a claim for weekly compensation in respect of the same injury.

The Arbitrator considered that the issue involved a novel and complex question of law concerning the statutory construction of the amendments made by the amending Act. The parties agreed that the question of law should be referred for determination by the President, pursuant to s351 of the 1998 Act.

#### The question of law referred:

'Do the amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* apply to claims for compensation pursuant to s66 made on or after 19 June 2012 where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012?'

#### The answer to the question of law referred for determination:

The amendments to Div 4 of Pt 3 of the 1987 Act introduced by Sch 2 of the *Workers Compensation Legislation Amendment Act 2012*, apply to claims for compensation pursuant to s66 made on and after 19 June 2012, where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012.

An application for leave to appeal the President's decision has been filed in the Court of Appeal.

A full summary of the decision in *Goudappel* can be accessed in 'On Appeal', available on the Commission's website.

# APPENDIX 1

## Arbitrators

### SENIOR ARBITRATORS

Deborah Moore  
Michael Snell

### ARBITRATORS

#### Full-time

Brett Batchelor  
Elizabeth Beilby  
Garth Brown  
Glenn Capel  
Christine D'Souza  
Grahame Edwards  
Kerry Haddock  
Michael McGrowdie  
Annemarie Nicholl  
Jane Peacock  
Paul Sweeney

#### Part-time

Ross Bell  
Marshal Douglas  
Richard Perrignon  
Josephine Snell

#### Sessional

Robert Caddies  
Janice Connelly  
Margaret Dalley  
William Dalley  
Eraine Grotte  
John Hertzberg  
Carol McCaskie (MAP)  
Bruce McManamey (MAP)  
Peter Molony (MAP)  
Dennis Nolan

Jeffrey Phillips SC  
Faye Robinson  
Carolyn Rimmer  
Jennifer Scott  
Natasha Serventy  
Craig Tanner  
John Wright  
John Wynyard  
Leigh Virtue

The Registrar may exercise all the functions of an Arbitrator by operation of s 371(1) of the *Workplace Injury Management and Workers Compensation Act 1998*. The Deputy Registrars also hold Arbitrator appointments.

# APPENDIX 2

## Approved Medical Specialists

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

# APPENDIX 3

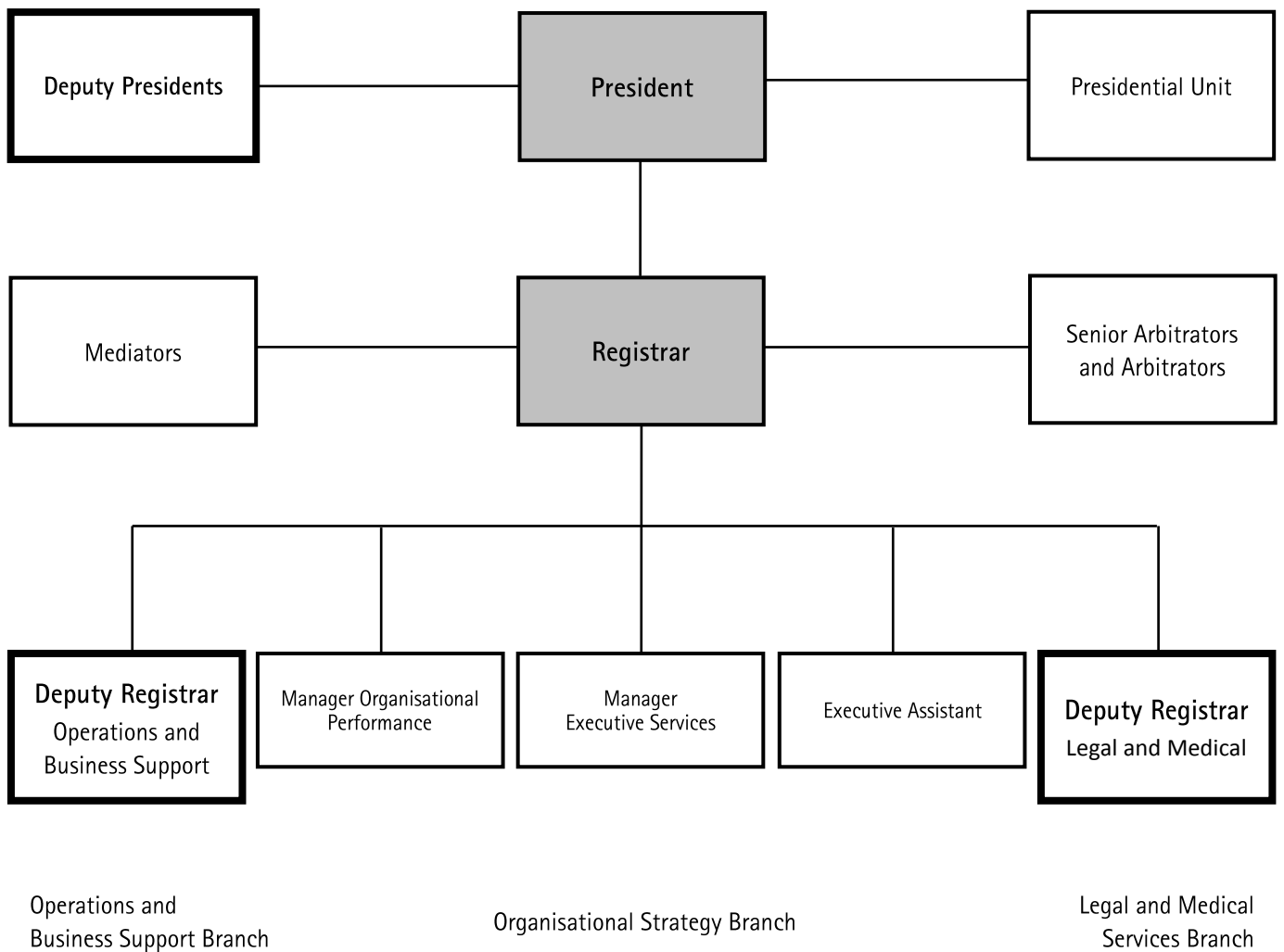
## Mediators

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

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

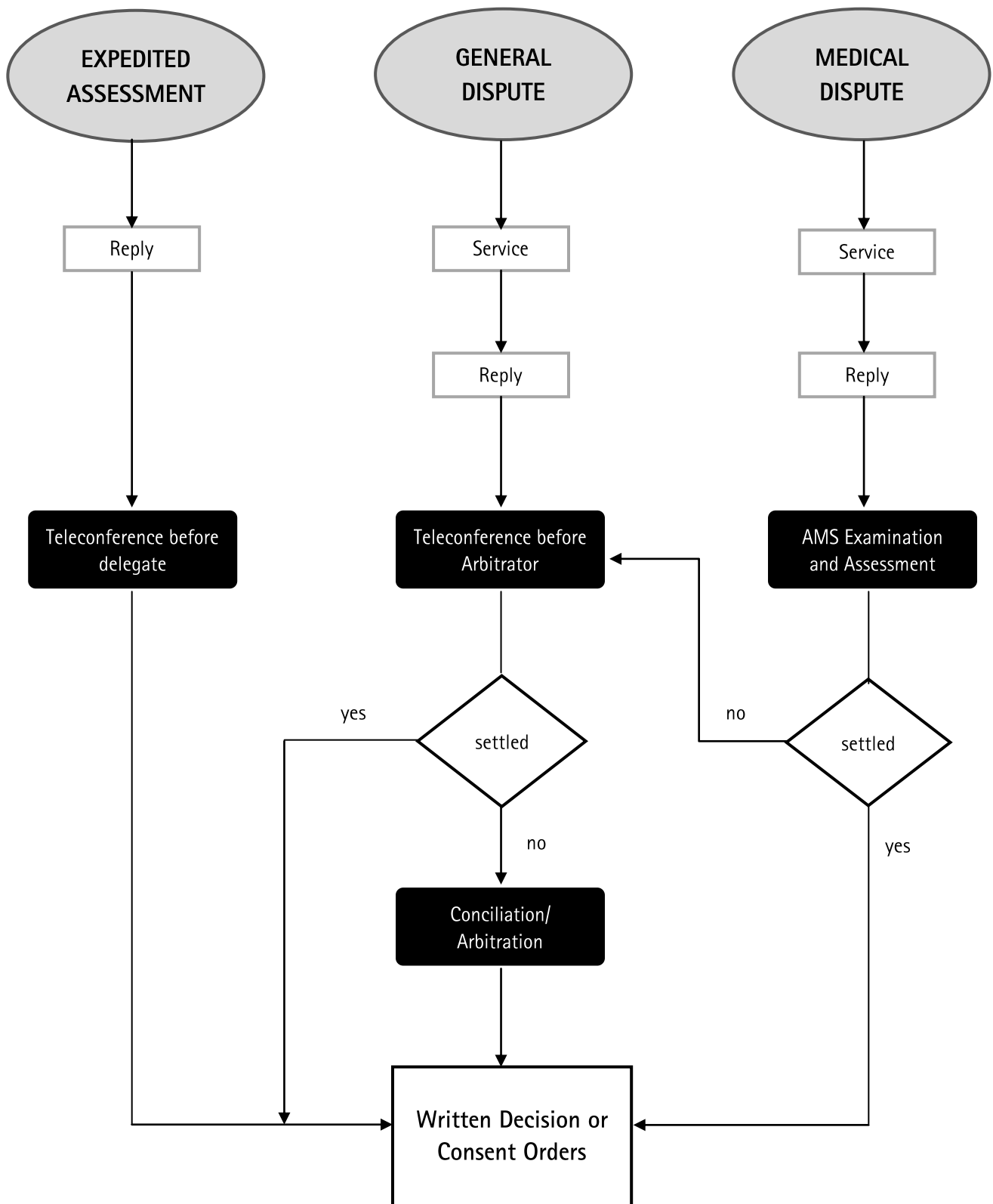
# APPENDIX 4

## WCC Organisational Chart



# APPENDIX 5

## Process Flowchart





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