



**Personal Injury  
Commission**



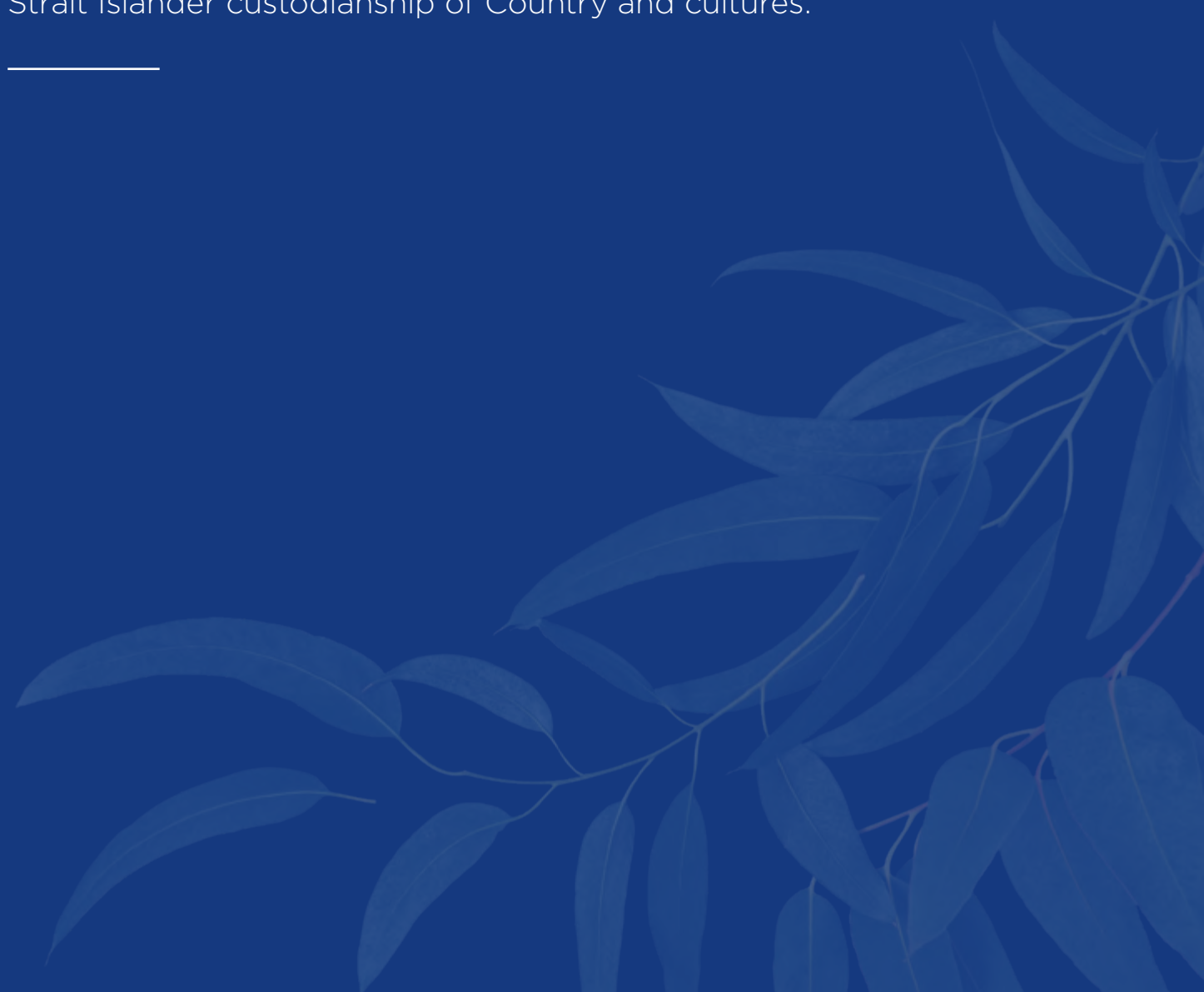
**Annual Review  
2021-2022**

# Acknowledgement of Country

The Personal Injury Commission acknowledges, respects and values Aboriginal peoples as the Traditional Custodians of the lands on which we live, walk and work. We pay our respects to Elders past, present and future. We recognise and remain committed to honouring Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships, and continuing connection to their lands, waters and seas. We acknowledge their history here on these lands and their rich contribution to our society.

We also acknowledge our Aboriginal employees who are an integral part of our diverse workforce, and recognise the knowledge embedded forever in Aboriginal and Torres Strait Islander custodianship of Country and cultures.

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## Personal Injury Commission

Office of the President

The Hon. Victor Dominello, MP  
Minister for Customer Service and Digital Government  
GPO Box 5341  
SYDNEY NSW 2001

Dear Minister

I am pleased to submit the 2022 Annual Review for the Personal Injury Commission of New South Wales.

This review covers the reporting period from 1 July 2021 through to 30 June 2022.

The review has been prepared in accordance with s 66 of the *Personal Injury Commission Act 2020* (NSW).

Following the tabling of the review in the Parliament, it will be made available for public access on the Commission's website at [www.pi.nsw.gov.au](http://www.pi.nsw.gov.au).

Yours sincerely

A handwritten signature in black ink, reading 'Gerrard Phillips', written over a horizontal line.

**His Hon Judge G Phillips**  
President

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# 1. The Reporting Year in Review

## President's Report



Judge Gerard Phillips, President

It is with great pleasure that I present the Annual Review for the Personal Injury Commission of New South Wales (the Commission) as required by s 66 of the *Personal Injury Commission Act 2020* (the Act). This review covers the reporting period required under the Act, being the 12 months of the Commission's operations from 1 July 2021 to 30 June 2022. This is the first Annual Review which covers the entirety of the Commission's operations for a 12-month period.

The past two years have been a significant challenge. Not only did we open the new tribunal on 1 March 2021, and undertake all of the development work associated with that, we have continued to service injured workers, road users and their insurers. We have continued to recruit new staff and Members and have contended with the worst that the pandemic could throw at us. Whilst some cases have necessarily been delayed, many were not and were able to be completed notwithstanding the challenges presented by the pandemic circumstance.

As at the date of this report, the pandemic is still current. Most of the community has been vaccinated and we are in the process of returning to a semblance of normal operations. However, our operations will not go back to what they were pre-pandemic. Significant strides in terms of how we use IT, particularly our Microsoft Teams platform to conduct hearings, will remain a permanent part of our operations. Cases which must be heard in person will continue to be dealt with in that manner, but cases which can be sensibly and fairly conducted online will be dealt with online. All of the Members' chambers in 1 Oxford Street double as virtual hearing rooms. In this way we can continue to strive to meet the objects of the Act which require the justice the Commission delivers to be quick, just and efficient. No longer will we be limited in the listing of our hearings by virtue of the number of hearing rooms we have. In the future, on any given day of the Commission's operations we will be conducting hearings in person, virtually, or a hybrid mix of both.

Later in this report is a detailed description of pandemic operations during the 2021/22 year. Given the great vicissitudes occasioned to the Commission's practice by the ongoing effects of the pandemic and consequent Public Health Orders, the fact that in this year we disposed of over 13,600 disputes stands to the great credit of Commission staff, Members, Medical Assessors, Merit Reviewers and Mediators. Whilst it is true that delays were suffered, and continue to be suffered, by claimants, this is an unavoidable by-product of this very difficult ongoing situation.

Indeed, due to the pandemic, during the first six months of the reporting period, a large number of booked medical assessments could not take place for various reasons. These circumstances continue to inhibit our capacity to clear the backlog of in-person medical assessments.

Added to this during the year have been the ongoing effects upon Commission staff and Members of a series of rolling train strikes, floods, and the fact that many are still having to isolate for seven days after having tested positive to COVID-19. Our capacity to contend with these issues by remote working is one bright light arising from the response to pandemic conditions.

## Renovation of 1 Oxford Street

October 2021 saw the commencement of the long-awaited renovation of our 1 Oxford Street premises. The premises of the Commission's legacy organisations, the Workers Compensation Commission and the Dispute Resolution Service, were no longer fit for purpose for the new Commission. After an extensive period of planning, work commenced in October 2021 with small groups of staff being able to return to the office from March 2022 onwards. Later in this report is more detailed information regarding the renovation and some photographs of the finished premises. The result has been truly amazing, the Commission has a state-of-the-art, fully digital set of premises which befits this State's newest tribunal. By mid-April we had commenced in-person hearings in the new hearing rooms, including in the new large President's Court, with 70-80% of staff and Members now returning to in-person work.

## Single Digital Platform

At the commencement of the new Commission, we acquired the existing digital platforms of the two legacy organisations. The motor accidents platform has had and continues to experience operational difficulties; the workers compensation platform is at the end of its working life. During 2021 we undertook a process of discernment to identify the IT needs of the new Commission. The Commission's Executive Leadership Team was committed to creating a fully digital tribunal, namely one where filings are by way of the Commission's online portal, meaning that Members, Medical Assessors and other decision-makers are all provided with digital briefs of the claims they are allocated. Parties are also able to access their opponents' filings through the online portal. These operations also must be compatible with the capacity to undertake online hearings or hybrid hearings, depending upon the circumstance.

As a result of this process, I was delighted to announce SBC IT as the preferred tenderer for the Commission's new single digital platform. Development work is under way and all going well, we expect the divisions to begin transferring from their existing platforms onto the new SBC IT system from April 2023. A comprehensive plan for consultation and training of all Commission decision-makers, staff and users will be undertaken in late 2022/early 2023.

The conclusion of the 1 Oxford Street renovation and the development of the new single digital platform represent two significant foundational steps which will shortly be completed and which will set the Commission up for its future operations. The completion of both of these projects will produce significant flexibility in the Commission's operations which will enable us to better serve the citizens of this State.

## 1. The Reporting Year in Review (continued)

### The Commission's Rules

The Commission's Rule Committee undertook a review of the inaugural Personal Injury Commission Rules late last year, to identify any Rules that had not been operating well in practice since our commencement on 1 March 2021. Consultation was undertaken with our key stakeholders and ultimately, it was established that the Rules, whilst operating well in practice, required several amendments. In addition, amendments were required as a result of changes to the Commission's enabling legislation introduced by the *Customer Service Legislation Amendment Act 2021*.

On 29 April 2022 the rule amendments were published on the NSW Legislation website and commenced operation and, as we detail later in this review, the amendments have worked to enhance the Commission's operations, to better harmonise procedures between our two divisions.

### Federal Diversity Jurisdiction

Under the Commonwealth Constitution, disputes between residents of different States or between the resident of a State and another State can only be dealt with by a court of the State. Clearly, the Commission was not established as a court of record. The Act in Div 3.2 specifies how claims potentially affected by the federal diversity jurisdiction are to be dealt with. This division requires such matters to be decided by the District Court, a State court with the relevant constitutional power to decide such matters. During this reporting year it became clear that a significant number of matters, particularly in the Motor Accidents Division, were potentially affected by this jurisdictional issue. There have been a number of matters determined by the District Court, with more in train, which will bring clarity to practitioners with respect to this issue.

### Retirement of Rod Parsons

During this year, our Workers Compensation Division Head and former Registrar of the Workers Compensation Commission, Rod Parsons, retired after 42 years' public service. In many respects Rod's history as a public servant is a part of the history of the New South Wales public service. When he finished school, like many others at that time, he sat the public service exam. At the end of this process, a senior public servant directed those who passed their exam into the requisite department, Rod went to the then Workers Compensation Commission and of course the rest is history. He started as a counter clerk and as a result has first-hand knowledge of many of the legal giants of that area of the law. Within this review is a delightful tribute to Rod and the enormous role he has played in the workers compensation system. He was a great source of support and advice to me as President of the former Workers Compensation Commission and he had a significant role in the development of this Commission and in particular its Rules, practice and procedure.

On behalf of the Commission, we thank Rod for his years of sterling service and wish Rod and his wife Janene a long and happy retirement. Rod's replacement, Glenn Capel, is a long-time Member and vastly experienced practitioner in workers compensation matters.

### Obituaries

This year has seen the passing of four giants of compensation law in this State. They are former Chief Judge of the Compensation Court, the Hon Frank McGrath AM, OBE, former Compensation Court Judge, the Hon Ramon Burke, former Deputy President Bill Roche and long-time Dispute Resolution Service Assessor and Law Society committee member, Geraldine Daley AM. Later in this review are a series of fitting tributes to these four people who have made great contributions to the law of compensation in this State.



## Conclusion

Last year's Annual Review was of course all about the establishment of the new Commission. This year has been very much dedicated to bedding down our operations and undertaking significant foundational activities regarding the premises and the development of the new IT platform. As these projects are completed, and hopefully the pandemic conditions become more manageable, the Commission will be able to move into a more normal operating environment. We continue to look for ways to enhance the manner in which we serve the citizens of New South Wales and to make that experience as painless and efficient as we can.

I am most indebted to the members of the Commission's Executive Leadership Team, Principal Registrar Marianne Christmann and the two Division Heads Marie Johns and Glenn Capel, for their wise counsel and commitment to the new Commission. I am also very appreciative of the very collegiate relationship that exists between the Commission and SIRA, and in particular their CEO Adam Dent, and Simon Cohen the Independent Review Officer.

Additionally, much of what we have been able to achieve has been with the active collaboration of the Law Society and Bar Association and their respective Presidents.

Finally, I do pay my thanks to the Commission's decision-makers and staff. They have continued to perform their important work of public service under continued trying conditions.

I commend a close reading of this Annual Review to all with an interest in motor accidents and workers compensation law.

**Judge Gerard Phillips**  
President

## Principal Registrar's Report



Marianne Christmann,  
Principal Registrar

I am delighted with the Personal Injury Commission's progress and achievements in its first full year of operations since we opened on 1 March 2021 and began offering dispute resolution services to the injured people of NSW.

My focus in this first year has been on continuing to build a vibrant, modern tribunal where all our people contribute to the just, timely and cost-effective resolution of personal injury disputes. We continued to support our leadership teams and people through the 'forming' phase of the Commission's early life and growing the culture and social fabric of the organisation. We bedded down the new organisational structure, aligned and finetuned our operations and business processes, harmonised technology platforms, completely refurbished the Commission's premises, launched many projects and service offerings and launched the Commission's inaugural Strategic Plan. Like all courts and tribunals, we also had to be agile and adapt to changing pandemic conditions to ensure we could continue to seamlessly deliver our services as far as practicable.

### Organisational Structure

Pleasingly, the Registry directorate structure established to deliver the Commission's important services has proven robust, fit-for-purpose and only required minimal adjustment across the year. Recruitment of new staff to positions within the structure has brought fresh eyes and energy to the Commission, augmenting the deep subject matter expertise and knowledge of the staff who transitioned into the Commission from the legacy organisations at inception. It has been wonderful to witness the welcoming attitude and supportive approach that these groups have afforded each other as they have come together to form a collaborative and service-focused team.

### Strategic Plan

Another major achievement during the year was the launch of the Commission's inaugural Strategic Plan in May 2022. The clear formulation of the Commission's Vision, Mission, Purpose and Values is a vital, foundational pillar for the Commission that speaks to who we are, what we stand for aligned to our legislated objects, and where we're heading. The Strategic Priorities in the Plan will also guide the Commission's activities in the short to medium term and enable us to track our progress against clear deliverables and our new Key Performance Indicators published on 1 July 2022.

## Digital Service Offerings

Another key focus during the year has been harmonising the Commission's digital service offerings for dispute resolution events. The ability to conduct proceedings online via audiovisual platforms has been essential to maintaining service during pandemic-related restrictions and will remain a key pillar of the Commission's service offering into the future. The Commission transitioned from multiple teleconference and audiovisual platforms to a single platform – Microsoft Teams. With this single platform for online events now in place, Commission users across both the Motor Accidents and Workers Compensation Divisions have a single and consistent way of engaging with the Commission's Members, Mediators and partners for online events.

The President in his report also highlighted the great strides the Commission has made in harmonising its legacy case management systems into a single digital platform. This new platform once completed will create a seamless digital journey for injured people and all tribunal users and a single entry point to engage in the dispute resolution process. This exciting digital transformation will be supported through extensive engagement, communication and training prior to launch in the first half of 2023.

## Refurbishment and Reopening of the Commission Premises

This year, we also celebrated the completion of a state-of-the-art refurbishment of the Commission premises at 1 Oxford Street Darlinghurst. COVID-19 safety features were built into the office design itself, with a brand new, advanced air filtration air conditioning system and other features including touch-free doors, lockers and taps. The renovation also included the creation of a brand-new President's Court, suitable for large hearings, and additional new hearing rooms, all fitted with the latest technology and fully integrated with Microsoft Teams.

The refurbishment included new medical suites which opened on 1 June 2022. The suites provide a modern, independent space for the Commission's Medical Assessors to conduct medical assessments with injured claimants and workers on-site. The suites are fully operated and supported by Commission staff and will, over time, enable significant numbers of in-person medical assessments to be conducted on-site to help reduce the backlog of medical disputes.

This major new service offering will afford operational efficiencies and also a consistent service experience for injured people who attend the rooms.

Finally, the President and I were pleased to welcome staff and full-time Members safely back to working at 1 Oxford Street in a hybrid-working pattern with stringent COVID safety protocols in place in March 2022. They were supported in their return to the office with a comprehensive change management program. It has been wonderful to witness the buzz of the Commission's people gathering in one place, many meeting each other for the first time, in our beautiful new office environment. We also took the opportunity to bring our staff, Members and partners together in person for conferences and key events so they could get to know each other and build effective working relationships across and between divisions and directorates. I am confident that the increased exposure our team is having with each other in person will rapidly build culture and cohesion within the Commission.

In conclusion, I can report the Commission has truly made great progress in its first full year which you will see documented in this Annual Review. I would like to personally thank the President and Division Heads for their support, as well as all the staff, Members, Merit Reviewers, Mediators and Medical Assessors for their patience and resilience over this challenging year. I acknowledge the dedication, commitment and hard work of the Commission's staff in leaning in and continuing to deliver dispute resolution services while adapting to changing pandemic conditions and new ways of working in the Commission. I would also like to express my gratitude to all the Commission's users for their continued patience as we have adjusted our procedures and practices to changing pandemic conditions.

I am genuinely looking forward to the year ahead to continue to deliver our key programs and see the service experience we provide to injured people and our users improve even more.

**Marianne Christmann**  
Principal Registrar

## 2. Achievements in the Reporting Year

### Applications



14,509

dispute applications  
registered



13,667

dispute applications  
finalised

### Dispute Resolution Activity



7,201

preliminary conferences  
held



2,053

conciliation conferences/  
arbitration hearings held



4,961

medical assessments held



312

assessment conferences  
held



1,621

mediation conferences  
held

### Dispute Resolution Outcomes



91%

of workers compensation  
disputes resolved without  
formal determination



72%

of motor accident  
damages disputes  
settled without formal  
determination



70%

of work injury damages  
cases which proceeded  
to mediation were settled

## Published Decisions



50

Presidential decisions published



682

Member and Merit Reviewer decisions published



291

Medical Review and Medical Appeal Panel decisions published



19

Presidential Delegate decisions published

## Service



16,571

calls to 1800 PIC NSW enquiry line assisted



14,148

emails to [help@pi.nsw.gov.au](mailto:help@pi.nsw.gov.au) enquiry inbox assisted

## Communications and Engagement



49

editions of the *Legal Bulletin* published



21

reference group meetings held with Commission stakeholders



24

editions of *Personal Injury Commission News* published



## 2. Achievements in the Reporting Year (continued)



### One Commission One Vision

- Launched the Commission's inaugural Strategic Plan in May 2022
- Opened the Commission's new, modern, state-of-the-art premises in March 2022, following extensive renovations
- Returned staff and Members to the office
- Refined the Commission's operations, including alignment of roles and harmonisation of processes.



### Our Users

- Completed the Strategic Platform Review and tender process for the Single Digital Platform, selected the successful vendor and commenced building the platform
- Established a single digital service offering for virtual proceedings – Microsoft Teams
- Fitted the Commission's new President's Court and hearing rooms with state-of-the-art technology that fully integrates with Microsoft Teams
- Enhanced and strengthened the Commission's Rules after an Initial First Year Review of the Rules that confirmed the majority of Rules in place were fit-for-purpose
- Adjusted Procedural Directions to align to legislative changes and changing pandemic conditions.



## Our People

- Launched staff Award and Recognition and wellbeing programs
- Convened our inaugural staff, Member and Merit Reviewer, and Mediator conferences in April and May 2022
- Completed reappointment and appointment processes for Merit Reviewers, Mediators and Medical Assessors
- Launched extranet for Medical Assessors.



## Our Services

- Recommended in-person hearings in April 2022
- Launched brand new medical suites on-site at the Commission premises on 1 June 2022
- Kept everyone safe through stringent safety protocols for the Commission's offices, in-person hearings, medical suites and in-person medical assessments to mitigate the risks of COVID-19 transmission.



## Our Performance

- Published the Commission's inaugural Key Performance Indicators on 1 July 2022
- Commenced monthly organisational performance reporting.

# 3. The Work of the Commission

## Achieving Outcomes for the Injured People of NSW

The Personal Injury Commission is an independent statutory tribunal within the justice system of NSW. It replaced the State Insurance Regulatory Authority's Dispute Resolution Services and the Workers Compensation Commission when it commenced operations on 1 March 2021.

The Commission's primary function is to resolve disputes between people injured in motor accidents or workplaces in NSW and insurers and employers.

The Commission is committed to resolving disputes justly and efficiently in the shortest timeframe possible and works with all parties (injured persons, insurers and employers, where relevant) to discuss ways of achieving this.

In cases where the parties are not able to reach their own resolution, the Commission will decide the dispute. If a party is not satisfied with a decision of the Commission, they may seek an appeal or review.

## The Commission's Objectives

The Commission's objectives, as set out in the *Personal Injury Commission Act 2020*, are:

- a) to establish an independent Personal Injury Commission of New South Wales to deal with certain matters under the workers compensation legislation and motor accidents legislation and provide a central registry for that purpose,
- b) to ensure the Commission —
  - i) is accessible, professional and responsive to the needs of all of its users, and
  - ii) is open and transparent about its processes, and
  - iii) encourages early dispute resolution,
- c) to enable the Commission to resolve the real issues in proceedings justly, quickly, cost-effectively and with as little formality as possible,
- d) to ensure that the decisions of the Commission are timely, fair, consistent and of a high quality,
- e) to promote public confidence in the decision-making of the Commission and in the conduct of its members,
- f) to ensure that the Commission —
  - i) publicises and disseminates information concerning its processes, and
  - ii) establishes effective liaison and communication with interested parties concerning its processes and the role of the Commission,
- g) to make appropriate use of the knowledge and experience of members and other decision-makers.

## Relevant Legislation

- *Personal Injury Commission Act 2020*
- *Personal Injury Commission Rules 2021*
- *Personal Injury Commission Regulation 2020*
- *Motor Accidents Compensation Act 1999*
- *Motor Accidents Compensation Regulation 2020*
- *Motor Accident Injuries Act 2017*
- *Motor Accident Injuries Regulation 2017*
- *Workers Compensation Act 1987*
- *Workplace Injury Management and Workers Compensation Act 1998*
- *Workers Compensation Regulation 2016*.







*“The Government’s focus is to improve the customer experience for all users of the system and reduce any process trauma for injured people navigating disputes in the workers compensation and motor vehicle accidents schemes.”*

The Hon Victor Dominello MP, Minister for Digital, Minister for Customer Service – Second Reading Speech for the Personal Injury Commission Bill 2020, Legislative Assembly, 3 June 2020

Photo: Ceremonial Sitting for the Personal Injury Commission opening on 1 March 2021

## 4. Strategic Plan

The Commission's inaugural Strategic Plan was developed in early 2022 and launched to our people in May. The clear formulation of the Commission's Vision, Mission, Purpose and Values is a vital, foundational pillar for the Commission that defines who we are, what we stand for, aligned to our legislated objects, and where we're heading as a Commission.

The Strategic Priorities in the Plan also guide the Commission's activities in the short to medium term and enable us to track our progress against clear deliverables and our new Key Performance Indicators published on 1 July 2022.

We are now incorporating the Strategic Plan in directorate and individual performance plans and embedding the values in our culture, daily operations and practices (e.g. awards and recognition program).

### Vision

To lead the way in delivering quality, timely, innovative, and cost-effective justice for personal injury disputes.

### Mission

To deliver just, quick, cost-effective outcomes for injured people, employers, and insurers, in a way that is responsive, timely, fair, consistent and of the highest quality, with as little formality as possible.

### Purpose

To make the path to quality justice clear, accessible, timely and cost-effective.

### Our Values

We take seriously our commitment to act ethically, with integrity and in the public interest, and embrace the NSW Government core values of **Integrity, Trust, Service** and **Accountability**.

Our own values adhere to those values and define the essential behaviours we uphold at the Personal Injury Commission:

**People:** We support our people, so we can deliver service excellence in personal injury disputes.

**Independence:** We maintain our independence, gaining the trust and respect needed from all parties to deliver excellence in personal injury disputes.

**Continuous Improvement:** We are committed to improving the path to justice through innovation and professional development.



## Strategic Priorities

### One Commission – One Vision

1. Inspire one team, one vision, where all our people contribute to the just, timely and cost-effective resolution of personal injury disputes
2. Embrace innovation, excellence in dispute resolution and thought leadership in personal injury law, with strong foundations to grow and respond to future needs.

### Our Users

1. Reduce process trauma for injured people navigating the current disputes systems and consider all users – injured people, employers, insurers, legal practitioners – in the design of systems and procedures
2. Be proactive and responsive to the needs of tribunal users, maintaining regular, respectful and meaningful engagement with them
3. Create a seamless digital journey for injured people and tribunal users through a single digital platform, engaging all users in the digital transformation journey and never compromising operational excellence
4. Create fit for purpose venues – both physical and virtual – for all our dispute resolution events to ensure accessibility and a quality experience for all users.

### Our People

1. Inspire an aligned leadership team united in their endeavour to achieve the Commission's purpose and empower and support our people
2. Attract and retain a highly capable specialist workforce and foster a high-performance, inclusive work culture which rewards excellence, public service and Commission values
3. Ensure our people benefit from professional and skills development along with a focus on wellbeing to create a great environment for our people to thrive
4. Undertake workforce planning to promote a diverse and talented workforce, ensuring we sustain a high-performance work culture and excellence in service delivery.

### Our Services

1. Deliver integrated and efficient tribunal services which are responsive to all our users and harmonise rules, systems and procedures wherever possible, maintaining specialisation when needed
2. Transform our medical services through the innovative use of our new medical suites and process redesign
3. Ensure all 'digital' needs of the Commission are successfully delivered with strong cyber security measures in place to protect users.

### Our Performance

1. Be respected for our independence, the quality and durability of our decisions and excellence in dispute resolution
2. To meet (and in future exceed) the Commission's key performance indicators, with the immediate priority being to reduce motor accidents disputes on hand (caused by the COVID-19 pandemic) without compromising the quality of decisions
3. Optimise organisational performance, including timely and accurate performance reporting and financial reporting against each of the operational funds.

# 5. The Commission's Response to Pandemic Conditions

## A note from Judge Gerard Phillips, President of the Personal Injury Commission

Given that much of this reporting year has been significantly affected by the ongoing COVID-19 pandemic, I have detailed in this chapter the full impact it has had on our operations and our response.

The government announced lockdown measures which encompassed areas of the Eastern Suburbs and the Sydney CBD, including the Commission's premises, on 25 June 2021. These measures were expanded as the then Delta outbreak began in earnest. Additional measures were applied in August 2021 when Sydney residents were restricted to a radius of 5km from their homes. Various Public Health Orders which constituted the Sydney lockdown were not lifted until 11 October 2021.

During this period, the Commission kept all legal practitioners and Commission users informed as to our response to these challenges in the *Personal Injury Commission News*. The Commission had to suspend in-person medical examinations as a consequence of the Delta outbreak. It is important to note that an in-person medical examination with a Medical Assessor deliberately breaches social distancing requirements and creates added challenges for injured claimants who often have to travel long distances, sometimes on public transport and then home again after their medical assessment. For claimants who are already impacted by their injuries, this was judged to be too great a risk and it was the Commission's approach to comply with each and every Public Health Order to the letter. During this period the Commission offered different ways for such assessments to be conducted, whether on the papers, virtually or by consent mediations. Unfortunately the take-up of these options was very small.

Additionally, these Public Health Orders led to the closure of the 1 Oxford Street premises with all staff and Members working remotely. No in-person hearings could take place and the restrictions directly delayed the commencement of the long awaited renovation of the Commission's 1 Oxford Street premises.

Once the lockdown was lifted in October and citizens were able to move more freely around the city, many of the necessary precautions did remain in place after formal lockdown orders had ended. The Commission announced the recommencement of in-person medical assessments from 25 October 2021 under strict controls, which had been published. This lasted until the Omicron outbreak which once again led to an interim pause of in-person assessments which covered January and February 2022.

By March 2022, in-person medical assessments were back in full swing, except for unvaccinated claimants. In May 2022 it was announced that from 1 June 2022, Commission Medical Assessors (on a voluntary basis) would examine unvaccinated claimants in person.

All in-person medical examinations during this period were conducted under strict COVID protocols, which we are pleased to say were almost universally complied with by all claimants, interpreters and support persons. Unfortunately though, the first six months of 2022 did prove to be extremely challenging in terms of the recommencement of in-person medical examinations. For example, in the Motor Accidents Division alone, the Commission booked approximately 3,600 appointments during this period. Of these, approximately 1,800, or 50%, were unable to proceed for various reasons. For example, the claimant or the Medical Assessor had COVID or were a close contact, the claimant could not travel, the claimant simply did not show up, or the capacity for the examination to go ahead was adversely affected by other matters such as train strikes, floods or the very bad flu season.



A very pleasing development during this period though related to in-person psychiatric assessments. These were moved to an online examination, and by all reports from both the Commission's psychiatrists and injured claimants and workers, this has been such a success that in the future it is likely that the majority of psychiatric assessments will remain online. The psychiatrists are of the view that such an assessment is as effective as an in-person assessment and it has served to lessen any concern or anxiety on the part of claimants and workers undertaking such examinations.

*Another pleasing aspect of contending with the pandemic was the enormous assistance provided to the Commission by not only its Medical Assessor Reference Group and Stakeholder Reference Group but also the Bar Association and Law Society. As the Commission's responses had to be changed and tailored to rapidly developing situations, we were most fortunate to have access to these groups and were able to consult with them about the various steps we were proposing to mitigate risks to claimants and workers, Medical Assessors and the legal profession alike.*

## 5. The Commission's Response to Pandemic Conditions (continued)

It is to be noted that for most of this period, applications for in-person medical assessments continued to be made in strong numbers. These filings did dip for a short period of time as a result of claimants' and workers' lawyers being unable to have claimants and workers examined during the strict lockdown in the second half of 2021. Consequent upon the end of the Public Health Orders, this situation abated and filings for medical disputes across both divisions have increased.

However, as at the date of this report, the Commission, like the rest of the community, continues to be affected by the COVID-19 pandemic. Not only are we having to contend with the challenge of the COVID-created backlog, but also during the winter of 2022 with soaring infection rates, we experienced much dislocation in our operations by additional calamities of floods and train strikes. Of necessity, staff and Members who had acquired the virus had to isolate. Claimants and workers, and their lawyers were also affected meaning that medical assessments had to be cancelled and rescheduled or moved online; the same result also affected and continues to affect our hearings.

On current indications, our operations will continue to be affected by the pandemic into 2023. The advent of yet more variants of this dreadful disease is a matter of concern for the entire community and could still lead to further adverse effects on our operations for some time.

Whilst delays in both medical assessments and hearings are part and parcel of the COVID-19 landscape, much has been achieved. As can be seen from the figures reported later in this Annual Review, the Commission disposed of 13,667 matters during this reporting period. All of this was done in the middle of the worst pandemic our community has suffered since the 1919 Spanish Flu.

*Whilst I do not like to single out a single group, I must pay tribute to our Medical Services staff and the Medical Assessors that they work so closely with. These groups' work has been the most affected by the pandemic. They have had to constantly adjust to the various challenges associated with the pandemic, especially during periods where appointments had to be cancelled and rescheduled. This group of dedicated public servants and doctors has the thanks of the Commission and its users for their hard work and dedication during what were exceedingly trying times.*

No matter how long this pandemic and its insidious effects upon our society lasts, the Commission is confident that it can continue to serve the citizens of New South Wales. We might not be able to undertake these tasks as quickly as we would otherwise like, but that is an unfortunate and inevitable by-product of this situation.

**Judge Gerard Phillips**  
President

## 6. Renovation and Reopening of the Commission Premises

The Commission's 1 Oxford Street premises were renovated between October 2021 and March 2022. The result is a modern environment with state-of-the-art facilities and technology for staff, Members, service providers and Commission users, befitting the State's newest tribunal.

The spaces today include:

- A large President's Court and three additional hearing rooms with the latest technology to support in-person, virtual and hybrid dispute resolution events
- Member chambers which also double as virtual hearing spaces
- Medical suites to conduct medical assessments with injured persons on-site for the first time
- Vibrant open plan office and collaboration spaces for staff
- Multiple safety features designed to reduce airborne and surface virus transmission including a new air conditioning system, touch-free doors, lockers and taps (making it one of the first office spaces in NSW with COVID-19 safety features incorporated in its fit-out and build).

Staff and Members returned to the office in March 2022 and in-person dispute resolution events recommenced in mid-April.

### President's Court and Hearing Rooms

These feature state-of-the-art technology, fully integrated with Microsoft Teams, enabling hybrid events and enhancing dispute resolution services.



Judge Gerard Phillips, President, Personal Injury Commission (centre) standing in the new President's Court alongside Deputy Presidents Elizabeth Wood (left) and Michael Snell (right).



A new staircase was installed to connect the floors at 1 Oxford Street to provide secure access to hearing rooms for the Commission's Members.



## 6. Renovation and Reopening of the Commission's Premises (continued)

### Medical Suites

The suites opened on 1 June 2022, marking an important milestone as they expand the range of services offered to Commission users on-site. The suites are an innovative step forward, enabling the Commission to manage medical assessments on-site and will assist in reducing the Commission's medical backlog.

They feature seven consultation rooms for medical assessments and Review Panels, designed according to the Australasian Health Facilities Guidelines.

### Collaboration Spaces

The premises now include vibrant open plan office and collaboration spaces for staff.



There are seven consultation rooms for medical assessments.



The premises feature new collaboration spaces for staff and Members.



Emma Hogan, Secretary of the NSW Department of Customer Service (left) was given a tour of the upgraded premises and medical suites in July 2022. She is featured here touring the medical suites with members of the Medical Services Directorate, John Barlow (right) and Luke Roberts (behind).

# 7. How the Commission Delivers its Services

## Our Role

The Commission resolves disputes between people who are injured in motor accidents or in their workplaces in NSW, insurers and employers. It is mandated under the *Personal Injury Commission Act 2020* to encourage the early resolution of disputes and resolve the real issues in proceedings justly, quickly, cost-effectively and with as little formality as possible.

## Dispute Resolution Pathways

The Commission deals with a wide range of disputes every day. Disputes lodged with the Commission will follow slightly different pathways depending on the scheme and legislation under which they are lodged, as outlined below. The Commission will work to harmonise these pathways in future years, acknowledging the current differences in enabling legislation.

### Workers Compensation

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

**Expedited Assessments** – Disputes for past 10 weeks and future 12 weeks of weekly compensation benefits and/or past medical expenses incurred up to \$9,995.60 (as of 30 June 2022) are fast-tracked to a teleconference before a delegate of the President. Disputes regarding work capacity and injury management are also expedited in this way. If the parties are unable to resolve the dispute, the delegate will determine the issues and make an interim direction.

**Legal Disputes** – Disputes for weekly compensation exceeding 12 weeks, past and future medical and related expenses exceeding \$9,995.60 (as of 30 June 2022) and all other compensation types are heard by a Member and are usually resolved by informal conciliation conferences conducted by an audio link, audio-visual link, in person or a combination of these formats. If a dispute cannot be resolved by conciliation, the Member will hold a formal arbitration hearing and will decide whether a claim should be paid and the extent of any entitlement to workers compensation benefits.

**Medical Disputes** – Medical disputes in respect of the extent of permanent impairment resulting from an injury are generally referred to a Medical Assessor for assessment. In certain circumstances, a dispute in relation to the degree of permanent impairment may be referred to a Member for conciliation and/or determination. Medical disputes in respect of past and future medical expenses are generally referred to a Member for conciliation and/or determination.

**Work Injury Damages Disputes** – Mediation of work injury damages disputes by a Commission-appointed Mediator is mandatory before an injured worker can commence court proceedings. The Mediator must use their 'best endeavours' to bring the worker and employer to agreement. If the parties are unable to reach an agreement at mediation, the injured worker may then commence court proceedings. The Commission is also responsible for resolving pre-trial disputes relating to thresholds for entitlement to work injury damages, defective pre-filing statements, directions for access to information and premises, and pre-filing strike-out applications.

**Appeals** – A party to a dispute about compensation may appeal against a Member's decision. An appeal is limited to the determination of whether the Member's decision is affected by an error of fact, law or discretion and to the correction of any such error. The appeal is referred to the President or a Deputy President of the Commission for determination. A party may also appeal against a medical assessment concerning permanent impairment. If the President's delegate is satisfied, on the face of the application and submissions, that a ground of appeal has been made out, the matter is referred to a Medical Appeal Panel, consisting of a Member and two Medical Assessors, for determination.

## 7. How the Commission Delivers its Services (continued)

### Motor Accidents

Motor accident dispute pathways are dependent on the scheme and legislation under which the application is lodged, namely the *Motor Accidents Compensation Act 1999* or the *Motor Accident Injuries Act 2017*.

#### 1999 Scheme

**Damages Assessment** – A Member will undertake an assessment of a claim for damages which includes an assessment of the issue of liability, unless the insurer accepts liability, and the amount of damages for that liability. A certificate and statement of reasons are issued.

#### Further Damages Claims Assessments –

A claim for damages may be remitted by the Court to the Member who determined the matter if the Court considers that evidence provided in the proceedings may have materially affected the assessment made by the Member if it had been made available to the Member when the initial claims assessment was made. A further certificate and statement of reasons are issued.

#### Exemption of a Claim from Assessment –

A mandatory exemption application is determined by the President, who, if satisfied, may issue an exemption certificate which allows the parties to proceed to the District Court (the Court) for determination of the claim. A Member may make a recommendation to the President regarding whether a claim is unsuitable for assessment. If the President approves the Member's recommendation, an exemption certificate will be issued which allows the parties to proceed to the Court for determination of the claim.

#### Special Assessment of Certain Disputes in Connection with a Claim –

These disputes include whether a late claim can be made, whether there has been due search and enquiry to establish the identity of the motor vehicle, or whether a claim is taken to have been withdrawn. The dispute is determined by a Member and a certificate and statement of reasons are issued.

**Medical Disputes** – Medical disputes include whether the degree of permanent impairment resulting from an injury caused by the motor accident is over 10% or whether the treatment provided or to be provided is reasonable and necessary and related to the injuries caused by the accident. Such disputes are determined by a Medical Assessor and are generally determined before, or concurrent with, the assessment of the damages claim by a Member. A binding certificate is issued to the parties.

**Medical Reviews** – Reviews are available if it is shown that the medical assessment is incorrect in a material respect. If a delegate of the President is satisfied that the review application can proceed, the matter will be referred to a Medical Review Panel constituted by two Medical Assessors and one Member who will conduct a new assessment. A new certificate will be issued which will either confirm the certificate of assessment of the single Medical Assessor or revoke that certificate.

**Further Medical Assessment** – A party may apply for a further medical assessment on the grounds that deterioration of the injury or additional relevant information about the injury, is capable of having a material effect on the outcome of the previous assessment. A delegate of the President determines whether the further medical assessment application can proceed. If it can proceed, a Medical Assessor, the same who conducted the original assessment, if possible, will consider the dispute by way of a fresh examination, or, if suitable, on the papers. A new certificate and statement of reasons will be issued.

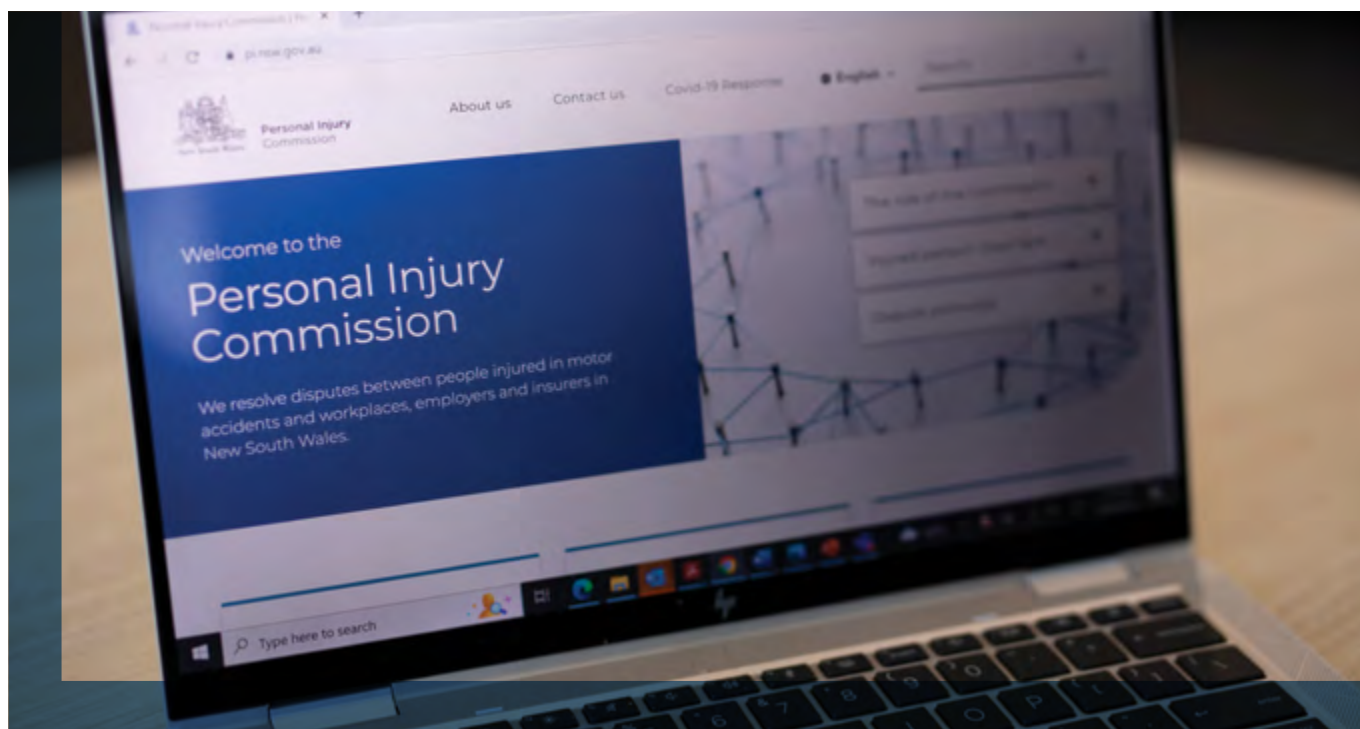
#### 2017 Scheme

**Merit Reviews** – A claimant may apply for a merit review of a decision made by an insurer. The types of disputes that can be considered for review include the amount of statutory benefits payable, whether the cost of treatment and care is reasonable and necessary, and whether the insurer has given the required notice before suspending or ending weekly payments. The review is undertaken by a Merit Reviewer and a certificate and statement of reasons are issued.





## 7. How the Commission Delivers its Services (continued)



**Merit Review Panels** – A claimant or an insurer may apply to the President to refer a decision of a single Merit Reviewer determining a merit review application to a Review Panel of Merit Reviewers for review, on the grounds that the decision was incorrect in a material respect. The Review Panel may confirm the decision of the single Merit Reviewer, or set aside the decision and make a decision in substitution for the decision the Review Panel set aside.

**Miscellaneous Claims Assessment** – A variety of disputes may be referred to the Commission for assessment by a Member. These include whether the accident was mostly caused by the injured person, whether the insurer is entitled to reduce the statutory benefits payable in respect of the motor accident, and whether a late claim can be made.

**Damages Assessments and Exemption of a Claim from Assessment** – These disputes follow the same pathway as under the 1999 scheme.

**Damages Settlement Approvals** – The Commission must approve the settlement of a claim for damages in which a claimant is not represented by an Australian legal practitioner.

A Member will consider the proposed settlement and may approve the proposed settlement, reject the proposed settlement or approve an amended proposed settlement. A certificate and statement of reasons are issued.

**Medical Disputes** – As with the 1999 scheme, disputes may concern permanent impairment and/or treatment matters. Disputes under this scheme also arise in relation to whether an injury is a 'minor injury'. Such disputes are determined by a Medical Assessor and are generally determined before, or concurrent with, the assessment of the damages claim by a Member. A binding certificate is issued to the parties.

**Medical Reviews** – Reviews follow the same pathway as under the 1999 scheme.

**Further Medical Assessment** – As with the 1999 scheme, applications can be made on the grounds that deterioration of the injury or additional relevant information about the injury, is capable of having a material effect on the outcome of the previous assessment. A limit of one further assessment per medical dispute is imposed by the 2017 scheme, and the process is the same as under the 1999 scheme.



## How Disputes are Resolved

The Commission employs a combination of informal alternative dispute resolution methods, such as conciliation and mediation, and more formal hearings, to reach outcomes for the parties to disputes. Many of the Commission's disputes are resolved by alternative dispute resolution without the need to proceed to formal hearings. Medical assessments are utilised for disputes about the extent of injuries or impairment.

### Preliminary Conferences

Members conduct preliminary conferences with the parties. This is one of the quick and simple methods the Commission employs for disputes that involve legal issues, and a preliminary conference is usually the first step in the dispute pathway. Members use their skills to assist the parties to identify the real issues in the dispute, explore settlement options and outcomes, and attempt to find a solution acceptable to all parties.

### Conciliation

If a legal dispute has not been resolved at the preliminary conference, the parties will meet again at a conciliation conference in the Workers Compensation Division. These are held via audio link, audio-visual link, in person or a combination of these formats. A Member, usually the same Member who held the preliminary conference, tries to assist the parties to reach a resolution. Each party can move to separate rooms to discuss settlement options and explore ways to resolve the dispute privately with their lawyers. The Member is neutral and does not communicate with one party without the other party also being present.

### Hearings and Assessment Conferences

If a dispute is not resolved through conciliation in the Workers Compensation Division, the Member will make a binding determination following an arbitration hearing. In some circumstances, the dispute might be determined on the papers without a formal hearing.

In the Motor Accidents Division, if a damages assessment matter is not resolved at the preliminary conference, the Member will conduct an assessment conference with the parties and undertake an assessment of damages. A certificate and statement of reasons are issued.

Other disputes in the Motor Accidents Division, such as special assessments under the 1999 Scheme and merit reviews and miscellaneous claims assessments under the 2017 Scheme, may be determined on the papers, or may involve a preliminary conference or hearing.

### Mediation

The Commission's Mediators conduct mediations to assist the parties to reach a settlement in work injury damages disputes. The Mediator's role is to facilitate discussion between the parties to reach a resolution, not to give advice or make decisions. The Mediator will have separate private conversations with each of the parties, if necessary, as this can help in resolving deadlocks in the negotiations. If the parties are unable to reach an agreement, the injured worker may then commence court proceedings.

### Medical Assessments

Medical assessments usually involve a Medical Assessor conducting an examination of the injured person to gain an understanding of the circumstances and extent of their injury, their medical history and treatments they may have received. A Medical Assessor reviews the medical reports from the doctors who have provided opinions for the insurer and the injured person, as well as any investigations such as X-rays, MRIs, ultrasounds, CT scans and other documents that may help them to get a full picture of the injury and its effects. In some circumstances, the assessment may be conducted on the papers. After completing their assessment, a Medical Assessor prepares a certificate that sets out their opinion, and the dispute is then resolved based on that assessment.

## 7. How the Commission Delivers its Services (continued)

### How the Commission Ensures Excellence in Decision-making

Excellence in decision-making is a high priority for the Commission in delivering its services for the injured people of NSW. The *Personal Injury Commission Act 2020* requires the Commission to:

- Ensure that the decisions of the Commission are timely, fair, consistent and of a high quality
- Promote public confidence in the decision-making of the Commission and in the conduct of its Members, and
- Make appropriate use of the knowledge and experience of Members and other decision-makers.

The Commission employs multifaceted strategies to achieve these objectives, including the following.

#### Recruiting and Retaining the Right People

The Commission recruits and retains highly skilled decision-makers who are selected using rigorous and competitive merit-based appointment practices. They are retained based on performance reviews conducted in advance of reappointment.

#### Responding to the Changing Environment

The Commission, like many tribunals, has increased its use of online hearing venues during the pandemic and will continue to use a mix of audio, audio-visual, in person or a combination of these formats after the pandemic. The Commission has trained and supported its decision-makers to ensure their efficient and effective use of technology and the continued delivery of excellent decisions in challenging circumstances.

#### Building a Culture of Excellence

The Commission is building a culture that demands the ongoing development and maintenance of core decision-making skills. This includes not only formal training and instruction about hearing processes, evidence and principles of administrative law but also continuing updates on developments in law and policy within the Commission and its jurisdictions.

The Commission requires its decision-makers to continuously improve their decision-making processes in relation to such matters as timing issues, the formal requirements of a decision, burden and standard of proof, using Commission knowledge, structuring decision-making, making findings of fact, assessing credibility, evaluating expert information, weighing evidence, exercising discretion, and providing reasons.

#### Ensuring Consistency

Consistency in decision-making is critical to the Commission meeting its objective of being open and transparent about its processes. Consistency in decision-making means that similarly situated claimants and workers receive similar treatment and outcomes. This in turn means that parties with comparable disputes experience the similar range of procedural treatment, from case management broadly to conciliation and different forms of hearing processes more specifically.

Consistency is promoted through providing tools such as style guides and through encouraging interaction between Members, which is assisted by electronic document management. However, consistency does not mean that all Members share identical views and perspectives on all issues. Rather, the Commission is comprised of Members who represent the diverse and varied backgrounds for which it is responsible. The Commission understands that consistency is not solely obtained by requiring Members to observe certain protocols. The Commission is building a culture that values consistency, coupled with support for the robust exchange of different views.

#### Managing Community Expectations

Community expectations are managed through written formal communications such as the Rules, Procedural Directions, newsletters and manuals. If the parties and their representatives have a clear set of expectations around process and issues of law and policy, these expectations will be expressed in the way in which cases are prepared and presented to Members.

## Publishing Decisions

The Commission is required to publish the details of its decisions under s 58 of the *Personal Injury Commission Act 2020*, subject to any successful application for de-identification or redaction of publishable decisions. Publication of decisions promotes open justice and helps to ensure the Commission is open and transparent about its processes, as specified in the Act.

The Commission is committed to open justice because it is a fundamental attribute of a fair hearing.<sup>1</sup> The High Court has said that “the rationale of the open court principle is that court proceedings should be subjected to public and professional scrutiny, and courts will not act contrary to the principle save in exceptional circumstances”.<sup>2</sup>

The Commission also promotes awareness of its decisions by giving easy access to decisions through the weekly publication of the *Legal Bulletin*, which provides links to the Commission’s latest decisions. Stakeholders are encouraged to subscribe to the *Legal Bulletin*.

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<sup>1</sup> *John Fairfax & Sons Limited v Police Tribunal of NSW* (1986) 5 NSWLR 465, 476–477 (McHugh JA, Glass JA agreeing).

<sup>2</sup> *Commissioner of the Australian Federal Police v Zhao* [2015] HCA 5; 316 ALR 378, [44] (French CJ, Hayne, Kiefel, Bell and Keane JJ).

# 8. How the Commission Supports and Engages its Communities

Aligned to its Vision to lead the way in delivering quality, timely, innovative and cost-effective justice for personal injury disputes, the Commission places the needs of injured people and its other users at the centre of everything it does and is committed to efficiency and responsiveness in its engagement with all parties. In addition to meeting its legislative requirements to educate its staff and service providers, the Commission values and proactively fosters open and effective relationships with the communities it interacts with on an ongoing basis. To this end, it provides substantial engagement, education and support for each stakeholder cohort across the year through a variety of mechanisms.

## Reference Groups

The Commission has multiple standing reference groups with representatives of its key stakeholder cohorts and meets with them regularly to provide updates, consult on key issues, gather feedback and answer questions. The reference group members participate on behalf of the cohorts they represent and serve as a conduit for their cohorts' views. The reference group members are very important to the Commission and we are very grateful for their participation and collaboration.

The reference groups are:

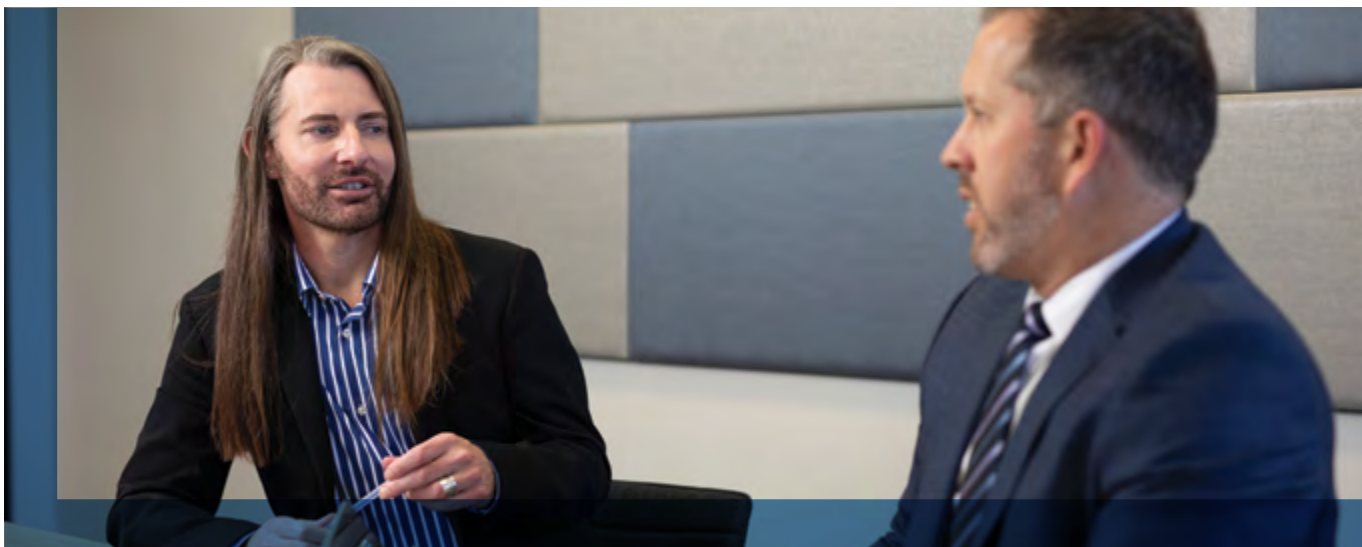
- Stakeholder Reference Group, with representatives from insurance industry and legal profession peak bodies, unions, the State Insurance Regulatory Authority and icare
- CTP (compulsory third party) Insurer Reference Group, with representatives from multiple CTP motor accident insurance companies, their legal representatives, and the insurance industry peak body
- Medical Assessor Reference Group, with representatives from the Commission's Medical Assessor panel
- Mediator Reference Group, with representatives from the Commission's cohort of Mediators.

Reference group membership as at 30 June 2022 is shown in Appendices G-J.

## Insurance Industry Consultation, Education and Engagement

The Commission regularly consults and engages with CTP and workers compensation insurers given their key role as parties to disputes. It proactively educates and communicates with them about the Commission and its operations and engages with them about proposed changes to operations and legal instruments. It is also responsive to any concerns raised. In addition to the industry's representation on the Stakeholder and CTP Insurer Reference Groups, the Commission undertakes multiple initiatives to support and educate the industry:

- The President regularly corresponds and meets with the Insurance Council of Australia (ICA)
- The President and Principal Registrar meet with icare on a quarterly basis
- The Commission engages with the ICA and insurer delegates regarding changes to legal instruments, operations and process and procedure. Examples of engagement during 2021/22 have included the review of the Commission Rules, impacts related to federal jurisdiction, the Commission's digital platforms and the formulation of the Commission's Key Performance Indicators
- The Commission regularly publishes the *Personal Injury Commission News* that provides the industry with information and updates about the Commission's operations and changes that impact the role the industry plays in the dispute resolution process
- The Commission publishes a weekly *Legal Bulletin*, to keep the industry abreast of recent decisions
- The Commission's website, which is currently being refreshed and enhanced, provides news updates and houses all practice and procedure information relevant to the industry's interactions with the Commission.



## Legal Profession Consultation, Education and Engagement

As representatives of the parties to disputes, legal professionals play a major role in the dispute resolution process. The Commission recognises the importance of a collegiate relationship with the profession and that legal professionals need a good understanding of how the Commission works and what is required of them to ensure the smooth progression of disputes through the resolution process. As such, the Commission engages with the profession in a variety of ways each year. In addition to the profession's representation on the Stakeholder Reference Group, the Commission undertakes multiple initiatives to support and educate the profession:

- The President consults regularly with the New South Wales Bar Association and the Law Society of New South Wales regarding its operations and proposed changes to legal instruments and values their collegiate engagement and support
- The Commission's Division Heads conduct regular roadshows with a variety of legal firms to educate them about Commission operations and encourage positive two-way communication
- The President and Division Heads regularly participate in legal profession conferences, forums and other educational events
- The President contributes articles to legal industry publications

- The *Personal Injury Commission News* provides the profession with updates about operations and changes that impact the role the profession plays in the dispute resolution process
- The weekly *Legal Bulletin* keeps the profession abreast of recent decisions
- The Commission's website provides updates and houses all practice and procedure information relevant to the profession's interactions with the Commission.

## Engagement and Consultation with NSW Government and its Agencies

The Commission regularly engages with representatives of the NSW Government and its departments and agencies to update them about the Commission's operations and consult with them on cross-agency matters. These include:

- District Court of NSW
- Independent Review Office
- NSW Department of Customer Service
- Office of the Minister for Customer Service and Digital Government
- State Insurance Regulatory Authority.



# 9. The Commission's People



Left to right: Glenn Capel, Head of the Workers Compensation Division; Marianne Christmann, Principal Registrar; President Judge Gerard Phillips; and Marie Johns, Head of Motor Accidents Division.

## Executive Leadership Team

### President

President Judge Gerard Phillips is the President of the Personal Injury Commission and a Judge of the District Court of NSW. The President is appointed by the Minister under the *Personal Injury Commission Act 2020*. The President works closely with the Principal Registrar and Division Heads to provide strategic leadership to the Commission. He is responsible for appointing Medical Assessors, Merit Reviewers and Mediators, determining novel or complex questions of law, issuing procedural directions, and other administrative and legal tasks. The President also exercises a variety of functions under legislation, which can be delegated to Members of the Commission or staff. In addition, the President also hears appeals against decisions made by Members in the Workers Compensation Division.

### Principal Registrar

Ms Marianne Christmann is the Principal Registrar of the Commission. The Principal Registrar provides high-level, executive strategic leadership and strategic advice to the President and assists the President in managing the business and affairs of the Commission. The Principal Registrar leads the

Commission's public servants and is responsible for the Commission's Registry, operations and administrative functions and the Commission's Medical Assessors. The Principal Registrar also focuses on strategic and operational planning, governance, and evaluation of service delivery performance.

### Division Heads

Ms Marie Johns and Mr Glenn Capel are the Division Heads of the Motor Accidents Division and Workers Compensation Division respectively. The Division Heads are responsible for managing the business of the Commission in their respective divisions under the President's direction. A key part of their role is ensuring there is specialised jurisprudence, knowledge, practice and procedures appropriate to the divisions.

The Motor Accidents Division Head is responsible for the Motor Accidents Members and Merit Reviewers.

The Workers Compensation Division Head is responsible for the Workers Compensation Members and Mediators.

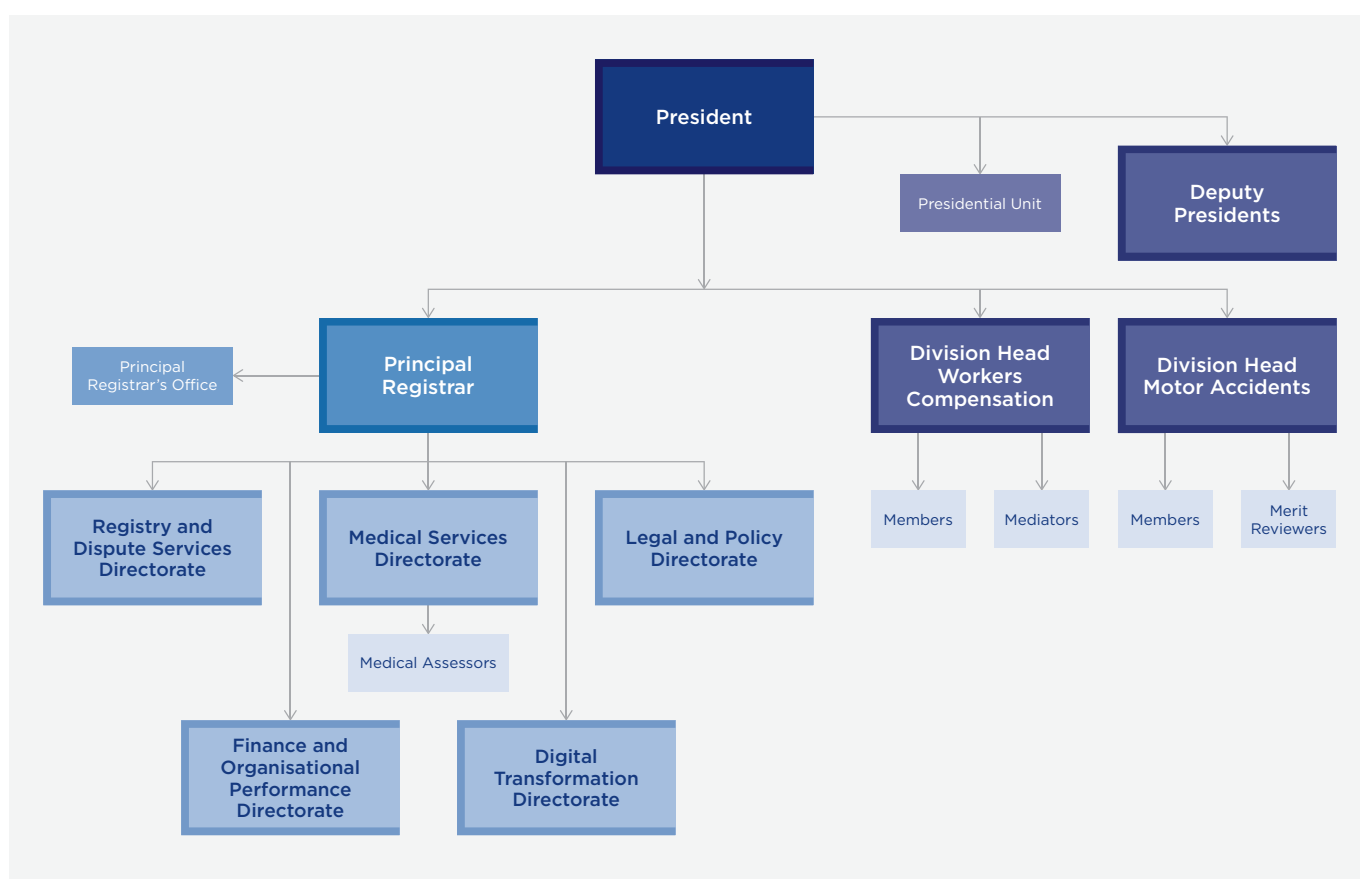
## Organisational Structure

The Commission's structure reflects two streams:

- The two divisions, led by the Division Heads and comprising the Members, Mediators and Merit Reviewers, and
- The Registry, led by the Principal Registrar and comprising the Commission's public servants and the Medical Assessors.

The Commission had a total of 427 Members, staff and partners as at 30 June 2022, comprising:

- 56 Members (including the President, Deputy Presidents and Division Heads)
- 30 Mediators
- 28 Merit Reviewers
- 157 Medical Assessors
- 156 staff (including the Principal Registrar)



## 9. The Commission's People (continued)

### Members of the Commission and Partners

#### Deputy Presidents

The Deputy Presidents are Presidential Members who are appointed by the Minister under the *Personal Injury Commission Act 2020*. They hear appeals against decisions made by Members in the Workers Compensation Division.

See Appendix B for a list of the Commission's Deputy Presidents as at 30 June 2022.

#### Members

Members are experienced, independent decision-makers who are appointed to resolve disputes. The Commission's membership includes Presidential Members, Principal Members, Senior Members and General Members. They have a detailed understanding of the motor accidents and/or the workers compensation jurisdiction.

Members aim to conduct Commission proceedings in a way that is fair to all parties. At each stage, the Member will encourage and assist parties to resolve their dispute by finding a solution that is agreeable to everyone involved. If the parties cannot agree on a solution, the Member will decide the dispute, after hearing the submissions of the parties and considering the evidence filed.

Members also sit on Appeal Panels and Review Panels, which determine appeals and reviews of decisions made by Medical Assessors and Merit Reviewers.

See Appendix B for a list of the Commission's Members as at 30 June 2022.

#### Merit Reviewers

The Commission's Merit Reviewers exercise functions in the Motor Accidents Division. They determine statutory benefit disputes under Schedule 2, 1 of the *Motor Accident Injuries Act 2017*.

All Members of the Motor Accidents Division also hold a dual appointment as a Merit Reviewer.

See Appendix C for a list of the Commission's Merit Reviewers as at 30 June 2022.

#### Mediators

The Commission's Mediators exercise functions in the Workers Compensation Division. They assist parties to resolve work injury damages disputes.

See Appendix D for a list of the Commission's Mediators as at 30 June 2022.

#### Medical Assessors

Medical Assessors are highly experienced medical and allied health practitioners who are qualified in a range of specialities. They conduct medical assessments to determine certain aspects of a dispute, such as assessing the degree of permanent impairment resulting from an injury. They can also provide decisions about an injured person's medical condition, whether an injury is a minor injury, for the provision of medical treatment and their fitness for employment.

Medical Assessors are engaged directly by the Commission and are independent of any party to a dispute. They are appointed to provide independent assessments and do not give clinical advice or provide treatment to the injured person.

Medical Assessors also sit on Medical Appeal Panels and Medical Review Panels. Medical Assessors may be appointed to one or both divisions of the Commission.

See Appendix E for a list of the Commission's Medical Assessors as at 30 June 2022.

*“Everything that has been done to establish the new Tribunal has been done to put the decision-makers, whether legal or medical, in the best possible position to do justice to the litigants.”*

*Ultimately, this Commission will be judged by the quality of its decision making, the fairness of how cases are heard and conducted, or resolved.”*

Judge Gerard Phillips, President, Personal Injury Commission – Ceremonial Sitting of the Personal Injury Commission, 1 March 2021







## 9. The Commission's People (continued)

### Staff

The Commission's staff are employed by the Department of Customer Service and report to the Principal Registrar through five directorates and two support offices, as described below.

See Appendix M for a brief staff profile.

### Registry and Dispute Services Directorate

The Registry and Dispute Services Directorate is the Commission's largest directorate and is the 'front door' of the Commission. The team:

- Provides front-line services to tribunal users, including claimants, workers, legal representatives, employers and insurers, via the Commission's reception, telephone enquiry line and email enquiry inbox
- Registers applications, processes documents received through digital systems, and triages applications to the appropriate area of the Commission for case management
- Case-manages Motor Accidents claims and merit disputes and all Workers Compensation disputes
- Supports Members and internal stakeholders throughout the life of proceedings to facilitate the fair, timely and cost-efficient disposition of matters.

### Medical Services Directorate

The Medical Services Directorate oversees the Commission's medical disputes and Medical Assessor panel. The team:

- Provides case management services to support the delivery of timely decisions in the Motor Accidents medical disputes and coordinates Workers Compensation medical disputes
- Leads the recruitment, engagement and support of the Commission's Medical Assessor panel
- Provides performance management, education and continuous improvement of the Medical Assessor panel to ensure high-quality and robust single medical, Medical Review and Medical Appeal Panel decisions
- Manages the Commission's on-site medical suites including all the facilities and the scheduling of appointments.

### Legal and Policy Directorate

The Legal and Policy Directorate makes decisions and delivers legal advice, policy and governance services. The team:

- Makes decisions under enabling and related legislation/rules, and privacy and access laws
- Provides legal advice about business issues including work health and safety, delegations, inter-agency arrangements, privacy and protected interest disclosures
- Delivers legal advice about practice and procedure, case management and jurisdiction, together with procedural directions, protocols and templates
- Conducts various projects, including reviews of the Rules and Delegations
- Delivers secretariat services to the Rule Committee and training to Medical Assessors and staff
- Reviews publishable decisions against the Style Guide and publishes the *Legal Bulletin*
- Ensures the proper representation of the Commission when its decisions are appealed.

### Finance and Organisational Performance Directorate

The Finance and Organisational Performance Directorate manages important whole-of-Commission functions, including finance, organisational performance reporting and business support. The team:

- Maintains a robust, accurate and compliant finance function for the Commission and provides accurate financial and organisational performance reporting, internally and externally
- Creates and maintains processes and procedures, identifies continuous improvement opportunities and oversees audit and compliance functions
- Manages the office accommodation and provides procurement and contract support
- Ensures the Commission has guidelines and mechanisms to capture and utilise corporate knowledge
- Manages communications, stakeholder engagement, events and media liaison
- Supports and enables the divisions and directorates of the Commission to achieve their business outcomes.



William Murphy, Deputy Secretary, NSW Department of Customer Service presenting at the In-Person All Staff Meeting.

## Digital Transformation Directorate

The Digital Transformation Directorate drives strategic and operational digital and IT outcomes for the Commission. The team:

- Leads the digital transformation strategy for the Commission, including the design, development and implementation of the new single digital case management platform
- Ensures the stability, performance and cyber security of the Commission's core technology systems and manages governance of all data and system changes
- Provides timely support for end users of the Commission's systems and ensures support requirements are met using appropriate channels and processes
- Collaborates with the Commission's divisions and directorates to ensure service levels, systems and processes meet business needs.

## Presidential Unit

The Presidential Unit is a small, specialist unit that supports the Commission's Presidential Members. The team conducts legal research, case-manages appeals and other matters, and supports the President in his leadership functions.

## Principal Registrar's Office

The Principal Registrar's Office provides executive support functions for the Principal Registrar to enable the effective operations of the Commission as a whole. The team manages liaison with the Minister's Office, the Department of Customer Service and other government agencies, coordinates and prepares stakeholder correspondence, undertakes strategic planning and project manages Commission-wide projects.

## 9. The Commission's People (continued)

### Supporting Our Members, Partners and Staff

All our Members, partners and staff play a vital role in contributing to the just, timely and cost-effective resolution of personal injury disputes. We brought our people together from time to time over the year, both virtually and in person, for conferences, events and meetings to build the culture and social fabric of the Commission and also for education and professional development. This section outlines some of those activities and the support we offered our people.

#### Staff

The Commission's staff came together for only the second time in May 2022 to participate in the Commission's strategic planning process, connect to its vision, mission and values and build social connection across the Commission. Staff were also supported through:

- Wellbeing programs and workshops to develop the capability of leaders, managers and staff, to foster a culture of care and inclusion to support mental health and resilience
- Workplace safety initiatives to keep staff 'COVID-19 safe' in the office, such as a hybrid working program, the provision of Rapid Antigen Tests (RATs), and safe office facilities that include advanced-filtration air conditioning, touch-free doors and taps and Perspex barriers
- Regular communication from the leadership team via multiple in-person and virtual communication channels
- Engagement opportunities such as monthly All Staff meetings run virtually and in person, providing connectivity and a forum to share news and ideas
- An official reward and recognition program aimed at acknowledging and celebrating the contribution of staff and teams
- Learning and development programs available through the Department of Customer Service's myCareer digital platform.



Digital Team Design Thinking workshop featuring staff with Marianne Christmann, Principal Registrar and George Bullock, Director Digital Transformation.





Staff at the In-Person All Staff Event.

## Members, Merit Reviewers and Mediators

The Annual Conferences for Members, Merit Reviewers and Mediators provided an opportunity for professional networking, updates on the Commission's policies and operations and an opportunity to hear from external experts in personal injury and vicarious trauma. The Commission also:

- Conducted regular briefings, education and professional networking sessions
- Invested in ongoing skills development via relevant professional education courses and access to professional subscriptions e.g. LexisNexis legal analytics
- Provided mediation training for full-time Members
- Invested in attendance at professional conferences for full-time Members, including Council of Australasian Tribunals (COAT) events
- Provided an on-site legal library at the Commission's premises and a comprehensive Decision Style Guide.

## Medical Assessors

The Commission provided a comprehensive education program for Medical Assessors to meet its obligations under s 37 of the *Personal Injury Commission Act 2020* and promote high quality decision-making in medical disputes. Our Medical Panel Officer team also supported Medical Assessors with all aspects of their role. Activities undertaken included:

- A comprehensive induction and mentorship program for newly appointed Medical Assessors
- Bi-monthly virtual education and briefing sessions
- A bi-monthly e-newsletter that details aspects of the Commission's policies and operations relevant to the cohort
- A dedicated extranet containing information and reference material to support Medical Assessors
- A dedicated help desk for Medical Assessor enquiries.



# 10. The Commission's Operations

## – Section 66 Requirements

Section 66 of the *Personal Injury Commission Act 2020* prescribes not only the timetable for the provision of this Annual Review but details (sub-section 4) the metrics and information that must be reported on in the Annual Review:

- a) The number and type of proceedings instituted in each Commission Division during the year
- b) The sources of those proceedings
- c) The number and type of proceedings that were made during the year but not dealt with
- d) The extent to which the operations of the Commission are funded by each operational fund
- e) Any other information that the President considers appropriate to be included or the Minister directs to be included.

This section reports on the above requirements to meet our obligations under the Act while chapter 11 reports more fully on the Commission's performance in handling dispute applications.

### Operational Funds

The Commission resolves dispute applications which are funded from three operational funds:

- a) The Motor Accidents Operational Fund (the SIRA Fund) under the *Motor Accident Injuries Act 2017*
- b) The Motor Accidents Operational Fund under the *Motor Accidents Compensation Act 1999*
- c) The Workers Compensation Operational Fund under the *Workplace Injury Management and Workers Compensation Act 1998*.

The *Motor Accidents Compensation Act 1999* scheme is in its run-off stage, and over the next six to 12 months lodgments from this scheme are expected to cease.

The Commission must demonstrate how much of its operations are funded by each operational fund. This is because, under the enabling legislation, money from these funds can be used only for a fund purpose.

### Cost Distribution Methodology

The Commission has developed a cost distribution methodology which drives funding allocation and cost distribution to meet its reporting obligations under s 66(4)(d). The methodology and expenditure reported have been subject to external review and found to be reasonable by Ernst & Young's (EY's) Assurance Team. EY's 'Agreed-Upon Procedures Report' is in Appendix K.

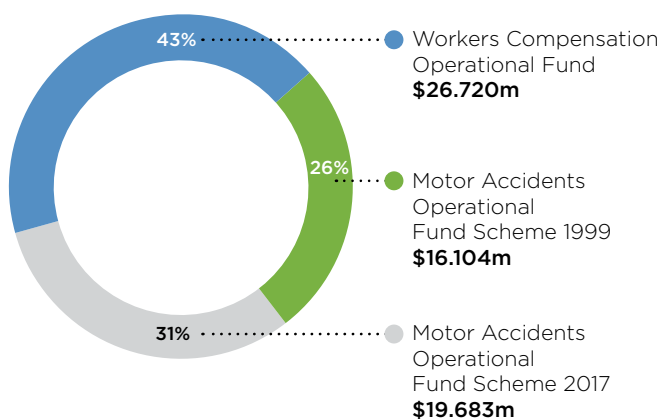
With rises and falls in filing across the schemes and continued pandemic-induced delays, the contribution is a changeable figure depending upon the point in time it is observed. However, the formula under which the methodology is based is a reasonable and appropriate means of calculating each scheme's contribution.

Wherever possible, when an expenditure is incurred, it is accounted for in either a Workers Compensation or Motor Accidents scheme cost centre. Other shared costs are isolated in general cost centres and distributed between the three schemes, based on the proportion of matters finalised within each.

### Contributions by Operational Fund

In the financial year from 1 July 2021 to 30 June 2022, 43% (\$26.720m) of the total cost (\$62.507m) was attributed to the Workers Compensation Operational Fund (WCOF), 26% (\$16.104m) to the Motor Accidents Operational Fund Scheme 1999 (MAOF Scheme 1999), and 31% (\$19.683m) to the Motor Accidents Operational Fund Scheme 2017 (MAOF Scheme 2017).

### Cost Distribution



Details of the operating expenses and income related to each operational fund are shown below. It is important to note that these figures do not reflect a standard financial year. Medical assessments were postponed during the NSW lockdown from June to October 2021 and paused in January and February 2022 due to the Omicron outbreak. This not only reduced Medical Assessor fees, but also other service provider costs as many cases could not proceed without a medical assessment. This may result in higher service partner costs reported in future years.

## Operating Expenses and Income Related to Each Operational Fund

Personal Injury Commission	2022 \$'000	WCOF \$'000	MAOF Scheme 2017 \$'000	MAOF Scheme 1999 \$'000
<b>Expense</b>				
<b>Personnel Services</b>				
Salaries and Allowances (including Annual Leave) <sup>3</sup>	26,274	9,529	9,210	7,535
Other <sup>4</sup>	1,342	456	487	399
<b>Total Personnel Services</b>	<b>27,616</b>	<b>9,985</b>	<b>9,697</b>	<b>7,934</b>
<b>Other Operating Expenses</b>				
Accommodation Expenses	4,264	1,953	1,271	1,040
Payments to Service Partners <sup>5</sup>	20,799	10,135	5,865	4,799
Software Expenses <sup>6</sup>	2,831	1,049	980	802
Other Miscellaneous Expenses <sup>7</sup>	6,997	3,598	1,870	1,529
<b>Total Other Operating Expenses</b>	<b>34,891</b>	<b>16,735</b>	<b>9,986</b>	<b>8,170</b>
<b>Total Expenditure</b>	<b>62,507</b>	<b>26,720</b>	<b>19,683</b>	<b>16,104</b>
<b>Income</b>				
Contributions (WCOF)	26,720	26,720	-	-
Contributions (MAOF Scheme 2017)	19,683	-	19,683	-
Contributions (MAOF Scheme 1999)	16,104	-	-	16,104
<b>Total Income</b>	<b>62,507</b>	<b>26,720</b>	<b>19,683</b>	<b>16,104</b>
<b>Net Result</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

3 The Motor Accidents Operational Funds contribute more towards personnel services than the Workers Compensation Operational Fund as higher numbers of staff are required to manage the motor accidents portfolio. This is a true reflection of the personnel engaged in activities for their respective funds.

4 'Other personnel services' are contractor expenses.

5 Payments to service partners comprise those to Sessional Members, Medical Assessors, Mediators and sessional Merit Reviewers. Medical assessments were postponed during the NSW lockdown from June to October 2021 and paused in January and February 2022 due to the Omicron outbreak. This has resulted in reduced service provider costs in 2021/22 and increases the number of medical assessments required in 2022/23.

6 The incumbent case management systems and supporting software packages will remain in place until the Commission implements its new single digital platform in 2023. The Motor Accidents system is relatively new and complex and has higher software expenses to support its multifunctional capabilities than the Workers Compensation system, which has lower operating costs.

7 'Other miscellaneous expenses' represent other operating expenses incurred, including final one-off establishment costs and the planning and design of the single digital platform and medical suites operations.

## 10. The Commission's Operations – Section 66 Requirements (continued)

### Section 66(4)(a), (b) and (c) Reporting Obligations

The following tables summarise the number and type of proceedings instituted in each division during the year, the number and type of proceedings that were made during the year but not dealt with (in progress), and the source of those proceedings.

#### Motor Accident Proceedings FY2021/22

Legislation	Jurisdiction	Instituted	In Progress
1999 MACA	Medical Assessment Service	681	1,019
1999 MACA	Claims Assessment & Resolution Service	299	848
<b>1999 MACA</b>	<b>Total</b>	<b>980</b>	<b>1,867</b>
2017 MAIA	Medical	3,231	3,689
2017 MAIA	Merit Review	135	85
2017 MAIA	Claims Assessment	1,968	1,724
2017 MAIA	Misc. Claims Assessment	150	108
<b>2017 MAIA</b>	<b>Total</b>	<b>5,484</b>	<b>5,606</b>
<b>Total</b>		<b>6,464</b>	<b>7,473</b>

#### Workers Compensation Proceedings FY2021/22

Application Type	Instituted	In Progress
Application to Resolve a Dispute (Form 2)	5,300	1,813
Application for Expedited Assessment (Form 1)	366	25
Workplace Injury Management Dispute (Form 6)	24	0
Application for Assessment of Costs (Form 15)	4	1
Registration of Commutation (Form 5A)	29	4
Application for Mediation (Form 11C)	1,853	229
Application to Cure a Defective Pre-filing Statement (Form 11B)	5	0
Application for Assessment by a Medical Assessor (Form 7)	107	46
Appeal Against Decision of a Member (Form 9)	80	59
Appeal Against a Decision of Medical Assessor (Form 10)	277	104
<b>Total</b>	<b>8,045</b>	<b>2,281</b>

#### The Source of Proceedings by Division

Source of proceedings	Workers Compensation	Motor Accidents
Legally represented claimant	98%	86%
Unrepresented claimant	0.1%	3%
Insurer	1.9%	11%

## Section 66(4)(e) Reporting Obligations

The Minister in his letter to the President of 20 July 2022 (Appendix L), suggested the following be included in the Commission's 2021/22 Annual Review:

- Any significant legal change, including significant decisions which have impacted the schemes or operations of the Commission
- The efficiency and effectiveness of dispute resolution (including performance measures where available)
- The number of appeals and judicial reviews of Commission decisions.

The Commission has included an outline of the significant legal changes that have occurred during the reporting period, in *Chapter 12 Notable Decisions*.

Efficiency and effectiveness is addressed in *Chapter 11 The Commission's Performance*, where a summary of performance measures, relating to the resolution of workers compensation and motor accident scheme matters is provided.

Appeals and their outcomes speak to the quality and durability of the decisions that are made within the Commission and are included in *Chapter 11 The Commission's Performance*.

The Minister also recommended that the Commission consider including several other relevant matters in the Commission's Annual Review, including more information and data about the number of staff employed and information in relation to *Government Information (Public Access) Act* (GIPA) applications and *Privacy and Personal information Protection Act* (Privacy) complaints.

A summary of the number of full-time Members, senior executives and staff, working in the Commission, has been compiled and can be found in Appendix M.

Information relating to GIPA applications and Privacy complaints raised with the Commission can be found in Appendix N.



# 11. The Commission's Performance

## How Performance is Reported

The Commission's performance data reflects its performance in its first full year of operation, from 1 July 2021 to 30 June 2022.

Data is presented for the Commission as a whole and for its two distinct operational areas, the Motor Accidents Division, which resolves motor accidents disputes, and the Workers Compensation Division, which resolves workers compensation disputes.

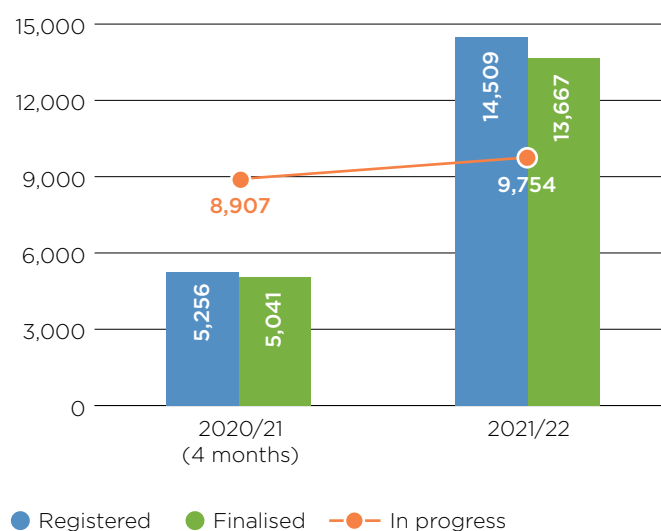
When it commenced operations on 1 March 2021, the Commission inherited the in progress caseloads of Dispute Resolution Services and the Workers Compensation Commission. As such, the Commission's Motor Accidents Division began operating with 6,680 applications on hand and the Workers Compensation Division began operating with 2,015 applications on hand.

The performance data reflects the Commission's management of both the legacy applications and those received since 1 March 2021.

## Dispute Applications Registered, Finalised, and In Progress

For the year 2021-22 the Commission as a whole:

- Had 8,907 dispute applications in progress as at 1 July 2021
- Registered 14,509 new dispute applications
- Finalised 13,667 dispute applications
- Had 9,754 in progress dispute applications on hand at 30 June 2022.



Workload on hand increased over the year. There were 842 more dispute applications registered than finalised.

In the Motor Accidents Division, finalisation timeframes were impacted by the inherited backlogs and the suspension of in-person medical assessments due to COVID. The Commission continues to prioritise the finalisation of backlog disputes. Overall, 59% of dispute applications were resolved within 12 months.

In the Workers Compensation Division, the Commission maintained strong performance in relation to the timely resolution of workers compensation disputes. Decisions made by Members and assessments made by Medical Assessors proved to be durable, with low revocation rates. Overall, 98% of dispute applications were resolved within 12 months.

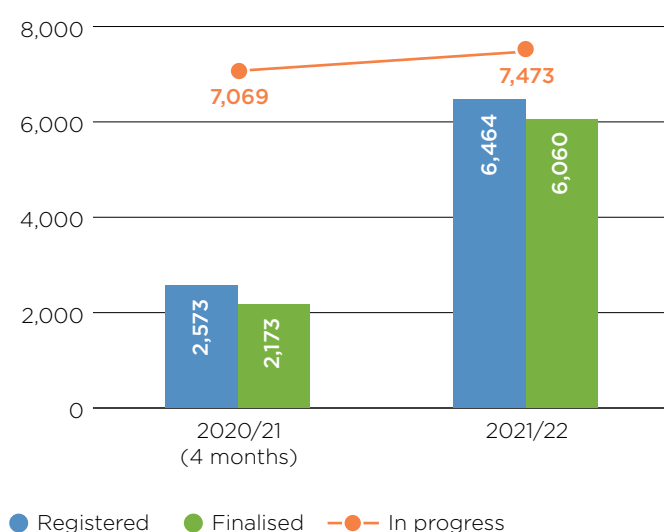
## Motor Accidents Division

In the Motor Accidents Division, the majority of disputes registered related to claims under the *Motor Accident Injuries Act 2017* (85%). Disputes registered in relation to claims under the *Motor Accidents Compensation Act 1999* continue to decline and now only account for 15% of all dispute registrations.

In the first full year of operation, finalisations were less than registrations by 6%. As a result the volume of disputes in progress increased, and as at 30 June 2022 there were 7,473 motor accident disputes in progress, as shown below.

Motor Accidents Dispute Applications		2021/22		
Legislation	Jurisdiction	Registered	Finalised	In progress
1999 MACA	Medical Assessment Service	681	1,336	1,019
1999 MACA	Claims Assessment and Resolution Service	299	1,009	848
<b>1999 MACA</b>	<b>Total</b>	<b>980</b>	<b>2,345</b>	<b>1,867</b>
2017 MAIA	Medical	3,231	2,098	3,689
2017 MAIA	Merit Reviews	135	216	85
2017 MAIA	Claims Assessment	1,968	1,205	1,724
2017 MAIA	Misc. Claims Assessment	150	196	108
<b>2017 MAIA</b>	<b>Total</b>	<b>5,484</b>	<b>3,715</b>	<b>5,606</b>
<b>Total</b>		<b>6,464</b>	<b>6,060</b>	<b>7,473</b>

### Motor Accident Dispute Applications Registered, Finalised and In Progress



## 11. The Commission's Performance (continued)

### Workers Compensation Division

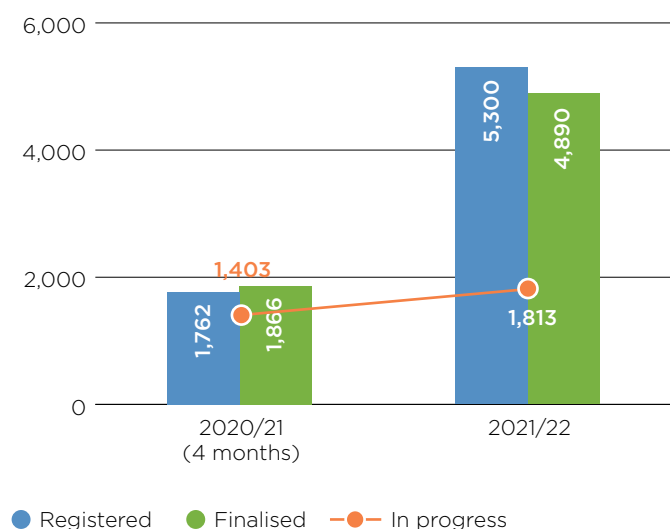
Most of the workers compensation dispute applications registered in the Commission are Applications to Resolve a Dispute (Form 2).

An average of 442 Form 2 dispute applications were registered per month, and an average of 408 were finalised per month.

Workers Compensation Dispute Applications	2021/22		
	Registered	Finalised	In progress
Application to Resolve a Dispute (Form 2)	5,300	4,890	1,813
Application for Expedited Assessment (Form 1)	366	360	25
Workplace Injury Management Dispute (Form 6)	24	25	0
Application for Assessment of Costs (Form 15)	4	4	1
Registration of Commutation (Form 5A)	29	30	4
Application for Mediation (Form 11C)	1,853	1,829	229
Application to Cure a Defective Pre-filing Statement (Form 11B)	5	5	0
Application for Assessment by a Medical Assessor (Form 7)	107	104	46
Appeal against decision of a Member (Form 9)	80	57	59
Appeal against decision of a Medical Assessor (Form 10)	277	303	104
<b>Total</b>	<b>8,045</b>	<b>7,607</b>	<b>2,281</b>

Year on year performance for Application to Resolve a Dispute (Form 2) processing is shown in the figure below. As at 1 July 2021, there were 1,403 in progress Form 2 dispute applications on hand, and as at 30 June 2022 there were 1,813.

### Form 2 Dispute Applications Registered, Finalised and In Progress (Month-on-Month Performance)



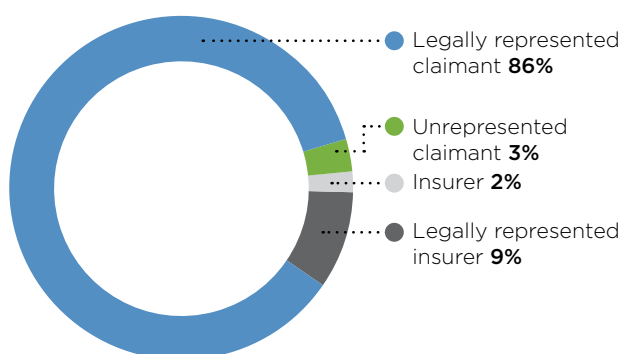
## Source of Dispute Application Registrations

The Commission receives dispute application registrations from a combination of legally represented motor accidents claimants and workers, unrepresented claimants and workers, insurers and legally represented insurers.

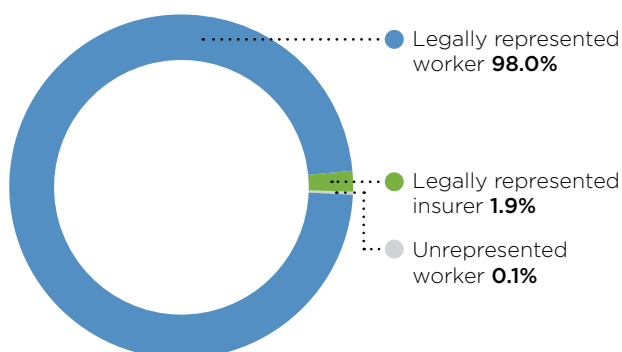
The sources of registrations by operational division are detailed below.

### Source of Applications in Motor Accidents Division and Workers Compensation Division

#### Source of Applications – Motor Accidents



#### Source of Applications – Workers Compensation



In the Motor Accidents Division, 86% of dispute applications were registered by claimant legal representatives. Unrepresented claimants registered 3% of applications, insurers registered 2% of applications; and 9% of applications were registered by insurer legal representatives. Of applications for panel review of a single medical assessment, 37% were registered by insurers or insurer legal representatives.

In the Workers Compensation Division, 98% of dispute applications were registered by legal representatives of injured workers. Unrepresented workers accounted for 0.1% of applications. The remaining 1.9% of applications were registered by insurers. Arbitral appeals and medical appeals had higher percentages of applications registered by the insurers, at 37% and 33% respectively.



11. The Commission’s Performance (continued)

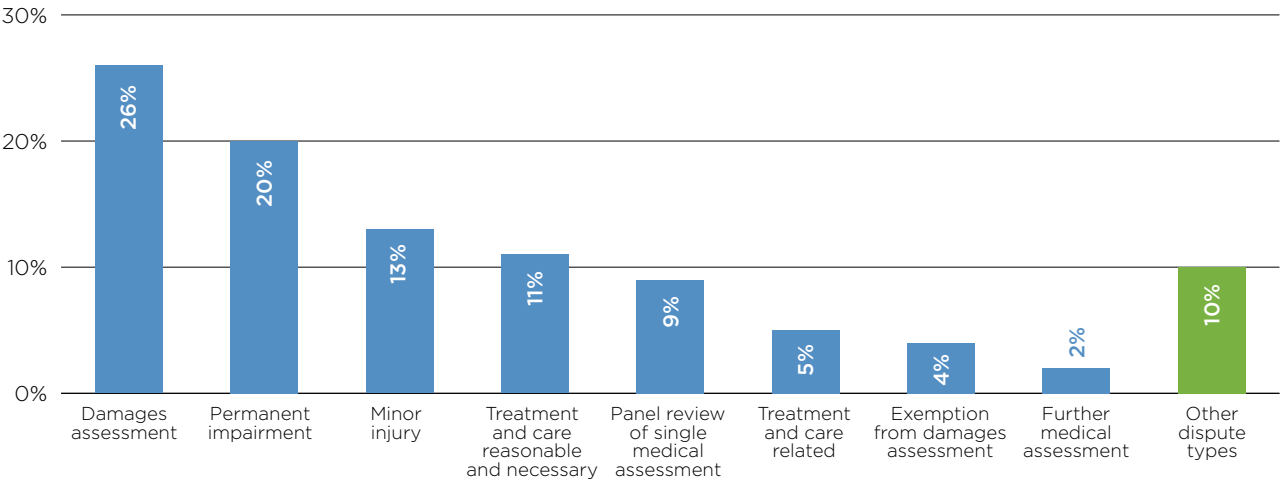
Dispute Application Types and Outcomes

Motor Accidents Division

Medical disputes across the two schemes account for about 61% of all motor accident disputes registered, with disputes about permanent impairment, minor injury, and treatment and care being the most common.

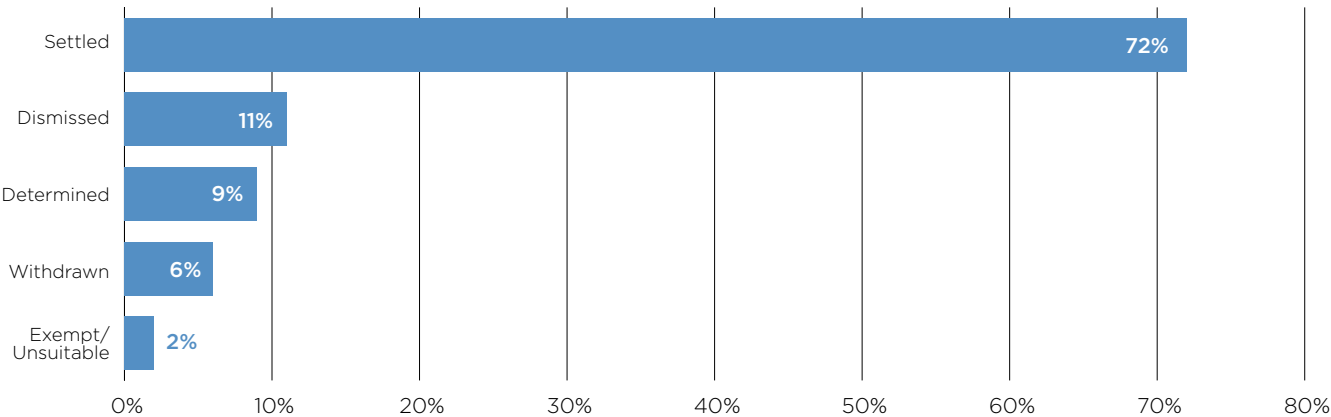
Damages assessments continue to be the most commonly registered dispute type, making up 26% of all disputes registered.

Dispute types lodged



Most damages assessments are resolved prior to a decision being made. Of the damages assessments finalised in the year, 72% were settled by the parties and 9% were determined. The proportion of damages assessment disputes that were dismissed (11%) increased in the year. This increase can be attributed to a high proportion of federally impacted matters that were dismissed in the year.

Damages Assessment Outcomes



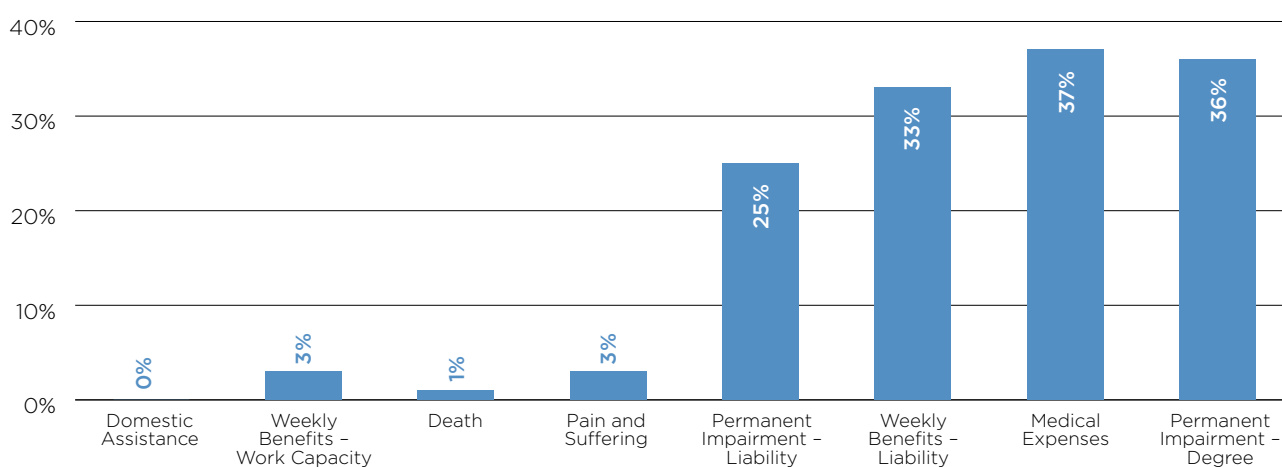
## Workers Compensation Division

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

Most Form 2 dispute applications involve claims for more than one type of compensation benefit.

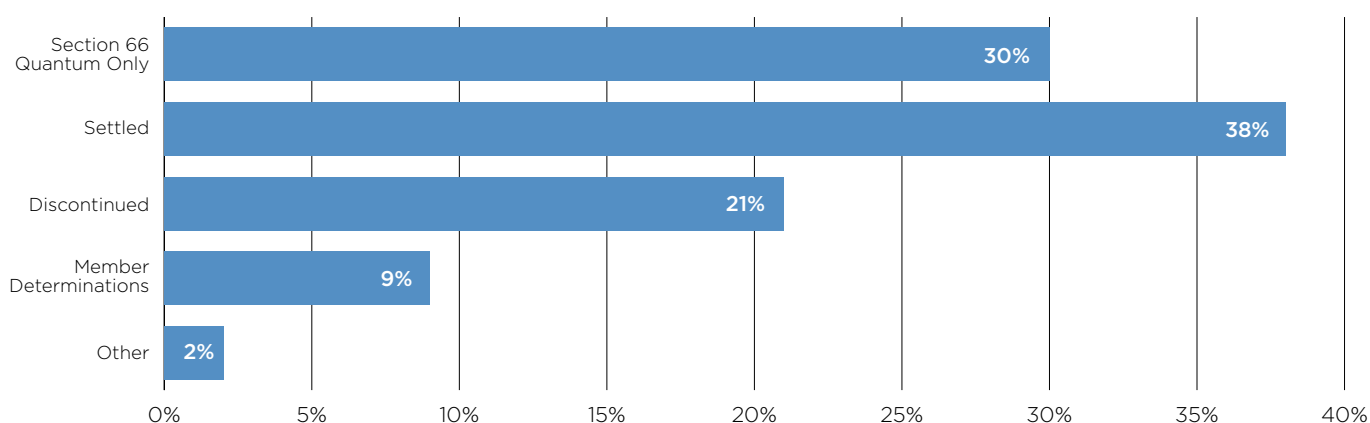
Weekly payments compensation, medical and related expenses compensation and permanent impairment compensation make up most of the disputed compensation types.

### Form 2 - Compensation in Dispute



Disputes limited to the degree of permanent impairment (quantum only) made up 30% of all resolutions for Form 2 dispute applications. Settlements accounted for 38% of all resolutions. Members were only required to determine 9% of disputes finalised.

### Form 2 - Outcomes



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

A total of 1,853 Applications for Mediation to Resolve a Work Injury Damages Claim (Form 11C) were registered by the Commission.

Mediation conferences were held in 1,621 matters, of which 1,127 (70%) were settled.

## 11. The Commission's Performance (continued)

### Appeals

#### Motor Accidents Division

##### Medical Reviews

There were:

- 2,844 reviewable Medical Certificates issued
- 629 Applications for Panel Review of single medical assessment made
- 491 Applications for Panel Review of single medical assessment finalised.

##### Judicial Review of Decisions

There were 20 applications for judicial review of motor accident decisions registered in the Supreme Court of New South Wales.

In the same period, 10 applications for judicial review of motor accident decisions were finalised, of which:

- One application was dismissed
- Five applications set aside the original decision
- One application was quashed
- One application concerning two decisions resulted in one decision being quashed and one decision set aside, and
- Two applications were discontinued.

#### Workers Compensation Division

##### Arbitral Appeals

A total of 80 Applications to Appeal Against a Decision of a Member (Form 9) were registered, and Presidential Members determined 51 appeals.

Overall, 4% of appellable decisions by Members were revoked on appeal.

##### Medical Appeals

There were:

- 1,802 appellable Medical Assessment Certificates issued
- 277 Applications to Appeal Against Decision of a Medical Assessor (Form 10) registered
- 303 medical appeals finalised.

##### Judicial Review of Decisions

A total of 13 applications for judicial review of workers compensation decisions were registered in the Supreme Court of New South Wales. Of those matters, 11 were against the decisions of Medical Appeal Panels, one was against a decision of a President's delegate, and one was against a decision of the Division Head.

In the same period seven applications for judicial review of workers compensation decisions were finalised, of which:

- Two appeals were dismissed
- Two decisions set aside the original decision
- Two decisions were quashed and remitted for redetermination, and
- One application concerning two decisions resulted in one decision being quashed and one decision set aside.

##### Appeals to the Court of Appeal from Presidential Decisions

In 2021/22, six appeals against Presidential decisions were made to the Court of Appeal. Two Notices of Intention that were lodged with the Court of Appeal ultimately expired.

In the same period, two appeals were discontinued. The Court of Appeal did not issue any decisions determining appeals against Presidential decisions.

## Time Taken to Resolve Disputes

The Commission aims to resolve disputes as quickly, efficiently and cost-effectively as possible. As a whole, the Commission took on average 243 days to resolve a dispute application, an increase of 44 days compared with 2020/21. This increase can be attributed to Motor Accident disputes and is directly related to the delays in resolving medical disputes due to inherited backlogs and the suspension of in-person medical assessments due to COVID-19.

In the Motor Accidents Division, 59% of dispute applications were resolved within 12 months. In the Workers Compensation Division, 98% of dispute applications were resolved within 12 months.

### Motor Accidents Division

Timeliness		2021/22
<b>% of Dispute Applications resolved, within:</b>		
3 months		19%
6 months		31%
9 months		45%
12 months		59%
Average days to resolution for Dispute Applications		350
Durability		
% of Medical Certificates revoked on appeal <sup>8</sup>		4%

### Workers Compensation Division

Timeliness		2021/22
<b>% of Form 2 Dispute Applications resolved (no appeal), within:</b>		
3 months		57%
6 months		87%
9 months		96%
12 months		98%
Average days to resolution for Form 2 Dispute Applications with no appeal		102
<b>% of Form 2 Dispute Applications resolved (with appeal), within:</b>		
3 months		52%
6 months		81%
9 months		91%
12 months		95%
Average days to resolution for Form 2 Dispute Applications with an appeal		122
Durability		
% of determined Dispute Applications revoked on appeal <sup>9</sup>		4%
% of Medical Assessment Certificates revoked on appeal <sup>10</sup>		7%

8 This measure represents the number of Medical Certificates revoked by a Medical Review Panel expressed as a percentage of the total number of Medical Certificates issued.

9 This measure represents the number of Member decisions revoked, expressed as a percentage of the total number of appellable non-Presidential Member decisions (i.e. excluding s 66 determinations).

10 This measure represents the number of Medical Assessment Certificates revoked by a Medical Appeal Panel expressed as a percentage of the total number of Medical Assessment Certificates issued.



## 11. The Commission's Performance (continued)

### Key Performance Indicators

A comprehensive set of Key Performance Indicators (KPIs) for the Commission was finalised during the financial year.

The KPIs are a range of measures the Commission will use to quantify and monitor its performance and track how it is meeting its statutory objectives, set out at s 3 of the *Personal Injury Commission Act 2020*. They also provide Commission users with indicative information about the timeframes, quality and efficiency they can expect when engaging with Commission services.

The KPIs were developed acknowledging the practice and procedures in the legacy organisations and set consistent standards across major areas of operation in both the Motor Accidents and Workers Compensation Divisions.

The KPIs cover areas including:

- **Workflow** - how we are keeping pace with the volume of disputes lodged, measured by our finalisations being greater than or equal to lodgments.
- **Lifecycles** - how long our most common dispute types in both divisions should take from lodgment to resolution. Note the initial KPIs only cover the dispute types we deal with in the highest volume. KPIs for other, less common disputes will be established in the future.
- **Quality** - the quality of and confidence in the Commission's decision-making, measured in terms of the appeal and revocation rate of decisions internally and externally, including decisions challenged in the NSW Supreme Court, and Presidential Member decisions challenged in the NSW Court of Appeal.
- **Outcomes** - the Commission's success in encouraging early dispute resolution, measured by the percentage of disputes successfully settled without proceeding to formal determination.
- **User Expectation** - the timeframes in which the Commission meets key steps in the dispute resolution process. The aim is to ensure consistency in dispute management across both divisions, with consistent listing times, medical assessment scheduling, and the issuing of Member and Medical Assessor decisions.

Measurement against the KPIs commenced on 1 July 2022 and will be reported against in next year's Annual Review.

## 12. Notable Decisions

The Commission and related courts have produced many notable decisions during the review period. Here is a selection of key decisions that address federal jurisdiction and the Commission, the Commission's capacity to determine claims about future treatment and care expenses, as well as employer liability for COVID-related illness.

### ***Obeid v AAI Ltd t/as AAMI* [2022] NSWPICMP 76**

[www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWPICMP/2022/76.html](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWPICMP/2022/76.html)

Personal Injury Commission, 5 April 2022

Principal Member John Harris, Dr Drew Dixon, and Dr Geoffrey Stubbs

#### **Summary**

Neither a Medical Assessor nor a Review Panel has power to determine a claim under section 3.24 of the *Motor Accident Injuries Act 2017* (MAI Act) about future treatment and care expenses in relation to a motor vehicle accident. This power was subsequently conferred by the Motor Accident Injuries Amendment Regulation 2022.

#### **Detail**

Mr Obeid was injured in a motor accident on 20 March 2020. The insurer insured the owner and driver of the other motor vehicle for liability to pay Mr Obeid any damages and/or statutory compensation entitlements under the MAI Act.

This decision concerns whether a Medical Assessor, and on review, a Review Panel can determine whether treatment not yet provided or incurred is “reasonable or necessary in the circumstances” and/or “relates to the injury caused by the motor accident”. The issue arises from that part of the definition of “medical assessment matters” in Schedule 2 clause 2(b) of the MAI Act which provides:

“whether any treatment and care provided to the injured person is reasonable and necessary in the circumstances or relates to the injury caused by the motor accident for the purposes of section 3.24 (Entitlement to statutory benefits for treatment and care)”.

The insurer accepted that Mr Obeid had suffered a non-minor injury and that the liability to make statutory payments for the claim extended beyond the 26-week period. However, the insurer declined to cover the cost of recommended treatment and care. Mr Obeid therefore made application for payment of specified treatment and care costs that had not been incurred (Future Treatment and Care Application).

The Future Treatment and Care Application was referred to a Medical Assessor to determine whether the proposed treatments were related to the injury caused by the motor accident and whether they are reasonable and necessary in the circumstances. The Medical Assessor issued a Medical Assessment Certificate and concluded that Mr Obeid aggravated a pre-existing injury and sustained a soft tissue injury in the motor accident. The Medical Assessor otherwise concluded that neither of the treatments sought related to the injury caused by the motor accident or were reasonable and necessary in the circumstances.

Mr Obeid made application to review the Medical Assessment Certificate and it was referred to a Review Panel. Pursuant to s 7.26 of the MAI Act, a medical assessment is determined on review by a Review Panel (as long as the delegate of the President is satisfied that there is reasonable cause to suspect that the medical assessment was incorrect in a material respect).

The insurer submitted that the application must be dismissed because the dispute was not a “medical assessment matter” for the purposes of Schedule 2 clause 2(b) of the MAI Act. Rather, the matter in issue was the question of the insurer declining to fund proposed treatment and that a fair reading of those provisions concern treatment already “provided” to the claimant. Mr Obeid noted in response, that if there is no jurisdiction then “both the assessment of [Medical Assessor] Woo and any Review cannot stand”.

The Review Panel concluded that the dispute about payment of future treatment was not a “medical assessment matter” under the MAI Act. This is because a medical assessment matter is limited to “treatment and care provided to the injured person” and by extension in s 3.24, to expenses incurred in providing treatment

## 12. Notable Decisions (continued)

and care for the injured person. As the relevant treatment had not been provided, liability to pay for it had not been incurred. It followed that the Medical Assessor, and the Review Panel, did not have the power to determine the dispute and the original Medical Assessment Certificate was revoked.

The Motor Accident Injuries Amendment Regulation 2022 subsequently provided that the jurisdiction to deal with certain disputes under the MAI Act about treatment and care provided to an injured person, extends to disputes about treatment and care proposed to be provided to the person.

### ***Stanton v Winning* [2022] NSWDC 104**

***Stanton v Winning* [2022] NSWDC 104 (11 April 2022) ([austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWDC/2022/104.html](http://austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWDC/2022/104.html))**

District Court, 11 April 2022

Priestley SC, DCJ

#### **Summary**

An application to determine a medical dispute under section 60 of the *Motor Accidents Compensation Act 1999* (MAC Act), was dismissed by the Personal Injury Commission because the determination may require the exercise of federal jurisdiction. The plaintiff sought orders that the medical dispute be remitted to the Commission, arguing that its determination would not involve the exercise of federal jurisdiction – federal jurisdiction involves exercising the judicial power of the Commonwealth, including the power to determine disputes between:

- States; or
- residents of different States; or
- a State and a resident of another State.

The Court found that the parties to the medical dispute were the plaintiff and the CTP insurer NRMA (not the defendant) and that the NRMA was *not* a part of the State of NSW. The Court determined that as the parties were a natural person and a corporation, federal jurisdiction was not invoked, and the medical dispute was remitted to the Commission.

#### **Detail**

The plaintiff claimant, Ms Stanton, was injured in a motor accident in 2014. The plaintiff and the defendant, the at fault driver, reside in Queensland. The proceedings were commenced in the District Court because the plaintiff was a minor.

The plaintiff made a claim for damages under the MAC Act and a dispute emerged in the course of the claims process about whether the plaintiff's degree of permanent impairment arising from the injury was greater than 10% (Medical Dispute). The Medical Dispute was referred to the Commission for determination under section 60 of the MAC Act. The determination of the Medical Dispute was important because the MAC Act provides that the plaintiff cannot make a claim for non-economic loss unless the injuries she suffered are assessed as being 10% or more of 'whole person impairment'.

The Commission dismissed the application to determine the Medical Dispute because in the opinion of the decision-maker, the determination of the Medical Dispute may require the exercise of federal jurisdiction. This opinion was based on findings that one party to the Medical Dispute was a natural person residing in Queensland, the other party to the Medical Dispute was the insurer NRMA, which *could* be a part of the State of NSW and if so, federal jurisdiction may be invoked under s 75(iv) of the Constitution. In the absence of judicial authority on the latter point, the decision-maker concluded that the Commission did not have power to determine the Medical Dispute and dismissed the application.

The plaintiff subsequently brought a motion seeking orders that the Medical Dispute be remitted to the Commission for determination, arguing that any such determination would not involve the exercise of federal jurisdiction. The Court asked four questions:

1. Who are the parties to the Medical Dispute? The options being:
  - a. The plaintiff/claimant and the defendant driver of the vehicle – two natural persons; or
  - b. the plaintiff/claimant and the CTP Insurer (NRMA) as agent for the defendant driver of the vehicle – two natural persons; or
  - c. the plaintiff/claimant and the CTP Insurer (NRMA).

2. If NRMA is a party to the Medical Dispute, is NRMA a part of the State of NSW?
3. Will the determination of the Medical Dispute involve the exercise of federal jurisdiction?
4. Should the Medical Dispute be remitted to the Commission for determination?

**In relation to question 1** – The Court determined that the parties to the Medical Dispute were the plaintiff and the insurer, NRMA. The Court said that NRMA's status was beyond that of an agent due to the provisions of the MAC Act which gave significant power to the insurer, akin to, if not actually subrogating the rights of the defendant to the insurer. The Court noted that a claim for damages under the MAC Act does not mean that all disputes that emerge in the course of the claims process are between the plaintiff and the defendant.

**In relation to question 2** – The Court determined that the NRMA is *not* a part of the State of NSW. It said that the characteristics of SIRA, which Gibbs DCJ in *Ritchie v Nominal Defendant* NSW DC, found resulted in SIRA being a part of the State of NSW, are not present with NRMA. The court said that the NRMA is a registered public company, and it does not become part of the State, merely by participating in the relevant scheme.

**In relation to question 3** – The Court found that the determination of the Medical Dispute did *not* require the exercise of federal jurisdiction because the parties to the Medical Dispute were a natural person and a corporation, and the words *resident* and *residents* appearing in s 75(iv) of the Constitution refer only to natural persons and not corporations (per *Crouch v Commissioner for Railways (Qld)* (1985) 62 ALR 1).

**In relation to question 4** – The Court remitted the Medical Dispute to the Commission for determination because its determination did *not* require the exercise of federal jurisdiction.

## ***Condon v Bartley; Hayes v RACQ Insurance Limited; Smith v Allianz Australia Insurance Ltd; Ward v QBE Insurance (Australia) Ltd; Hackett v Allianz Australia Insurance Ltd [2022] NSWDC 282***

***Condon v Bartley; Hayes v RACQ Insurance Limited; Smith v Allianz Australia Insurance Ltd; Ward v QBE Insurance (Australia) Ltd; Hackett v Allianz Australia Insurance Ltd [2022] NSWDC 282 (22 July 2022)***  
([austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWDC/2022/282.html](http://austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWDC/2022/282.html))

District Court, 22 July 2022  
Wilson SC DCJ

This decision deals with five proceedings (details below), each involving a claim by a natural person under the *Motor Accidents Compensation Act 1999* (MAC Act) for damages or a claim by a natural person under the *Motor Accident Injuries Act 2017* (MAI Act) for statutory benefits or damages (Applications). The responding insurers in four of the proceedings are NSW licensed CTP insurers and in one proceeding, the responding insurer is an interstate non-government owned CTP insurer, namely RACQ Insurance Limited. The NSW CTP insurers are AAI Limited (trading as GIO), Allianz Australia Insurance Ltd and QBE Insurance (Australia) Ltd.

The Personal Injury Commission dismissed each of the Applications because their determination may require the exercise of federal jurisdiction – federal jurisdiction involves exercising the judicial power of the Commonwealth, including the power to determine disputes between:

- States; or
- residents of different States; or
- a State and a resident of another State.

In each of the five proceedings, orders were sought from the Court, that the Applications be remitted to the Commission for determination, arguing that this would *not* involve the exercise of federal jurisdiction.

The Court made these key findings:

1. The parties to each of the Applications are the claimants (the injured person) and the insurer (per *Stanton v Winning* [2022] NSWDC 104)



## 12. Notable Decisions (continued)

2. Each of the responding NSW CTP insurers (AAI Limited (trading as GIO), Allianz Australia Insurance Ltd and QBE Insurance (Australia) Ltd) are *not* part of the State of NSW because each of them is a corporation that participates in the respective motor accident schemes established by the MAI Act and its predecessor, the MAC Act but do so on a commercial basis. The Court asked that this finding be applied to these additional insurers: AAI Limited trading as AAMI, AAI Ltd trading as Suncorp, CIC Allianz Insurance Limited and Youi Pty Limited.
3. The responding interstate non-government owned CTP insurer, namely RACQ Insurance Limited, is not part of a State, because it too is a corporation that participates in the motor accident schemes on a commercial basis.
4. Federal jurisdiction is not invoked under s 75(iv) of the Constitution in relation to any of the Applications as the parties to each Application were a natural person and a corporation, and the words *resident* and *residents* appearing in s 75(iv) of the Constitution refer only to natural persons and not corporations (per *Crouch v Commissioner for Railways (Qld)* (1985) 62 ALR 1).
5. As federal jurisdiction was not invoked under s 75(iv) of the Constitution, the Court remitted the Applications to the Commission for determination.

### Short details of each of the five proceedings

*Condon v Bartley* concerned a claimant injured in a motor vehicle accident in NSW in 2017. The claimant was a resident of Queensland and the CTP Insurer for the defendant, AAI Limited trading as GIO, is a corporation with its registered office in the State of NSW.

*Hayes v RACQ Insurance Limited* concerned a claimant injured in a motor vehicle accident in NSW in 2019. The claimant was a resident of NSW and the vehicle at fault was insured in Queensland by RACQ, a corporation and licensed CTP insurer with its registered office in the State of Queensland.

*Smith v Allianz Australia Insurance Ltd* concerned a claimant injured in a motor vehicle accident in NSW in 2019. The claimant was a resident of Victoria and the CTP Insurer for the vehicle at fault, Allianz Australia Insurance Ltd is a corporation with its registered office in NSW.

*Ward v QBE Insurance (Australia) Ltd* concerned a claimant injured in a motor vehicle accident in NSW in 2018. The claimant was a resident of Victoria and the CTP Insurer for the vehicle at fault, QBE Insurance (Australia) Ltd is a corporation with its registered office in NSW.

*Hackett v Allianz Australia Insurance Ltd* concerned a claimant injured in a motor vehicle accident in NSW in 2016. The claimant is now a resident of Queensland and the CTP Insurer for the vehicle at fault, Allianz Australia Insurance Ltd, is a corporation with its registered office in NSW.

### *Citta Hobart Pty Ltd v Cawthorn* [2022] HCA 16

[austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2022/16.html](https://austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2022/16.html)

High Court of Australia, 4 May 2022

Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

#### Summary

The High Court provided that where a tribunal is not a “court of a State”, the Tribunal *does* have incidental jurisdiction to decide whether the hearing and determination of the matter is within its legislated jurisdiction [see para 25] however, when making that decision, the Court said the Tribunal must merely decide if there is *genuine controversy* about whether the hearing and determination of the matter is within its legislated jurisdiction and if yes, the Tribunal does not have power to determine the matter [see para 35].

#### Detail

This was an appeal from the Full Court of the Supreme Court of Tasmania. The main issue was whether the Anti-Discrimination Tribunal had jurisdiction under the *Anti-Discrimination Act 1998* (Tas) (State Act) to determine a complaint made by the respondent that he had been discriminated against by the appellants, in circumstances where the appellants had asserted that parts of the State Act were inconsistent with the *Disability Discrimination Act 1992* (Cth) (Commonwealth Act) and a standard made under the Commonwealth Act, and were therefore inoperative under s 109 of the Constitution. This issue arose in the context of the High Court’s decision in *Burns v Corbett* (2018) 265 CLR 304, which held that a State Parliament cannot confer on a State tribunal, that is not a court of a State,

within the meaning of the Constitution, judicial power with respect to any matter of a description in ss 75 and 76 of the Constitution including, relevantly, ss 76(i) (matters arising under the Constitution) and 76(ii) (matters arising under a Commonwealth law).

The first appellant was completing a development in Hobart on land owned by the second appellant. On completion, one of the entrances would provide stair access only. The respondent complained to the Tribunal that this restricted form of entry constituted direct and indirect disability discrimination under the State Act. The appellants argued that these provisions were inconsistent with the federal scheme for disability access and therefore those provisions of the State Act were inoperative because of s 109 of the Constitution (the constitutional defence). Applying *Burns v Corbett*, the Tribunal formed the opinion that as it was not a court of a State, it did not have jurisdiction to hear the matter because of the constitutional defence. Accordingly, the Tribunal dismissed the complaint on the ground that it did not have jurisdiction. The Full Court, on appeal, considered the merits of the constitutional defence and rejected it. The Full Court set aside the order of the Tribunal dismissing the complaint and remitted the complaint for determination. The High Court found that the Tribunal had acted correctly when it dismissed the complaint. The Court, by majority, held that for a claim or defence in reliance on the Constitution or a Commonwealth law to give rise to a matter of a description in ss 76(i) or 76(ii) of the Constitution, it is enough that the claim or defence be genuinely raised. The constitutional defence had been genuinely raised in answer to the complaint in the Tribunal and it was capable on its face of legal argument.

## ***Sara v G & S Sara Pty Ltd* [2021] NSWPIC 286**

[austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWPIC/2021/286.html](https://austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWPIC/2021/286.html)

Personal Injury Commission, 10 August 2021  
Principal Member Harris

### **Summary**

This was the first Commission decision regarding the contraction of the COVID-19 virus in the workplace and was complicated by employment

issues. The decision confirmed that employers may be liable for COVID-related illnesses contracted by employees during the course of their employment.

### **Detail**

Mr Sara worked for the respondent, G & S Sara Pty Ltd. The respondent was part of a group of companies that provided dental technician products and services across the healthcare sector in Australia and the United States.

The respondent paid the wages of the Australian employees and issued a monthly management account to Stoneglass Australia, a company that operated the business and dealt with the public.

Stoneglass US, a company incorporated in the United States, obtained work from universities and sent that work back to Australia for processing. Fees were charged by Stoneglass Australia to Stoneglass US for the work performed.

Mr Sara travelled to the United States on 15 July 2020, and he contracted the COVID-19 virus when he was working in New York. He was admitted to hospital on 23 July 2020, suffered a series of heart attacks and strokes, and he died as a result of acute respiratory distress caused by COVID-19 on 21 November 2020.

Mr Sara's widow made a claim for the lump sum death benefit, but the respondent's insurer disputed liability on the grounds that Mr Sara had contracted the virus in a social setting outside the course of employment and/or the work performed by him was for Stoneglass US, which was not covered by the *Workers Compensation Act 1987*.

Principal Member Harris determined that Mr Sara had died as a result of an injury sustained in the course of his employment with the respondent when he was engaged in prescribed employment, and he contracted COVID-19 within the meaning of s 19B of the *Workers Compensation Act 1987*.

Principal Member Harris was satisfied that the virus was probably contracted during the period of the travel to the US which included passing through customs at San Francisco, because of the onset of symptoms, Mr Sara's reluctance to wear masks, the likely exposure to many people during the period of travel, and the medical evidence as to the likely incubation period of the virus.

Principal Member Harris accepted that the company group organised its administration in

## 12. Notable Decisions (continued)

a manner consistent with the respondent being the employer, and there was no suggestion that this arrangement was a sham. The Member concluded that Mr Sara did not work exclusively for Stoneglass US because some of the work was in the name of Stoneglass Australia, he received his normal pay according to payslips issued by Stoneglass Australia, and that company received a direct benefit from Stoneglass US. Further, there was no evidence that Mr Sara's employment was transferred to Stoneglass US.

Principal Member Harris determined that Ms Sara was entitled to receive the lump sum death benefit of \$834,200, funeral expenses including the cost of transporting her husband's body back to Australia, and weekly compensation for the period after he contracted the virus until his death.

### *Apps v Secretary, Department of Communities and Justice [2022] NSWPIC 190*

[austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWPIC/2022/190.html](https://austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWPIC/2022/190.html)

Personal Injury Commission, 29 April 2022  
Member Nicholas Read

#### Summary

This decision clarified the approach to take regarding referrals to a Medical Assessor in circumstances where a worker has not suffered an assessable whole person impairment of a body part as a result of an injury.

#### Detail

Ms Apps suffered injuries to her neck, left shoulder, knee, ankle and foot, and her back in a fall at work on 2 December 2016. In December 2021, she made a claim for lump sum compensation in respect of 18% whole person impairment, based on a report of Dr Bodel.

Dr Bodel assessed 0% whole person impairment of Ms Apps' lumbar spine, an assessment that mirrored that of Dr Ho, who was qualified by the respondent.

In late December 2021, Ms Apps filed an application in the Personal Injury Commission seeking a referral to a Medical Assessor.

The body systems claimed in the Application to Resolve a Dispute included the lumbar spine.

In February 2022, the respondent advised Ms Apps that it accepted her claim in respect of the lumbar spine and disputed that this body part could be referred to a Medical Assessor for assessment. There was no "medical dispute" as defined in s 319 of the Workplace Injury Management and *Workers Compensation Act 1998* (1998 Act), meaning that the Commission did not have jurisdiction to refer the applicant's lumbar spine for assessment.

The matter was listed for hearing before Member Read to determine whether Ms Apps had made a valid claim for lump sum compensation in respect of her lumbar spine that would allow the body part of the lumbar spine to be referred to a Medical Assessor. Determination of this issue required a review of the SIRA NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment (the Guidelines), the provisions in the 1987 and 1998 Acts, and the American Medical Association's Guides to the Evaluation of Permanent Impairment, fifth edition (AMA5), together with relevant authorities concerning what constituted a claim.<sup>11</sup>

Relying on the authorities of *Abou-Haidar*, *Stafford* and *Sukkar*, Member Read determined that Ms Apps' claim in respect of her lumbar spine was not valid, because monetary benefits were not payable under the 1987 Act and could not form the basis of a medical dispute in terms of s 319 of the 1998 Act.

Member Read distinguished the Presidential decision in *Shankar* on the grounds that in that decision, the reasoning of Acting Deputy President Parker presupposed that Mr Shankar's claim was a valid claim for which compensation may be payable. Further, in that matter, the Acting Deputy President was not directed to the relevant authorities regarding the need to make a valid claim for compensation.

Member Read declined to refer the applicant's lumbar spine to the Medical Assessor and restricted the referral to the applicant's cervical spine, left upper extremity (shoulder), lower left extremity (knee, foot and ankle).

<sup>11</sup> *Abou-Haidar v Consolidated Wire Pty Ltd* [2010] NSWCCPD 128 (*Abou-Haidar*); *Woolworths Limited v Stafford* [2015] NSWCCPD 36 (*Stafford*); *Sukkar v Adonis Electrics Pty Ltd* [2014] NSWCA 459 (*Sukkar*); *Shankar v Ceva Logistics (Australia) Pty Ltd* (2021) NSWPCPD 18 (*Shankar*), and *Skates v Hill Industries Ltd* [2021] NSWCA 142.

# 13. Importance of Legacy in Personal Injury Justice

## Retirement of Rod Parsons, Inaugural Division Head, Workers Compensation

Rod Parsons recently retired as Head of the Workers Compensation Division of the Personal Injury Commission after a high-quality public service career spanning 42 years.

With a Bachelor of Laws and Master of Administrative Law and Policy, his career in public service was focused on workers compensation. Rod's career spanned all three workers compensation dispute resolution bodies – the original Workers Compensation Commission, the Compensation Court and the later Workers Compensation Commission. This was punctuated by periods of employment at the Attorney General's Department and WorkCover NSW.

Many of the “older” Members and practitioners will remember Rod as frequently appearing in the Compensation Court including in fiercely contested uninsured matters.

Rod was appointed as Deputy Registrar of the newly established Workers Compensation Commission in 2002. That role continued until Rod was appointed Registrar of the Workers Compensation Commission in 2014, a role he held until the establishment of the Personal Injury Commission in 2021.

Rod's expertise in workers compensation is demonstrated by his contributions as an author of *Workers Compensation Law Manual, NSW* and *The Law Handbook*, 12th edition, as well as numerous publications issued by the Workers Compensation Commission and the Personal Injury Commission including the Arbitrator Practice Manual and Approved Medical Specialist Practice Manual.

With the growth in Tribunals throughout Australia, Rod served for various periods as a committee member of the Council of Australasian Tribunals – NSW Chapter, including as its Secretary. Rod also served as a committee member of the Government Solicitors Committee of The Law Society of NSW.

In 2009 Rod was the recipient of the Excellence in Government Legal Service Award from The Law Society of New South Wales.



On his retirement the President of the Personal Injury Commission stated:

*“I have nothing but admiration and gratitude for Rod. As the Registrar of the Workers Compensation Commission, he was of great assistance to me when I became President. Since that time, he played a pivotal role in the remarkably successful development of the Workers Compensation Commission digital portal, which greatly assisted our new ways of working in the early days of the pandemic in 2020. To be working alongside Rod at the start of the COVID-19 turbulence was an asset for our field in adapting to the changes we have faced in the last two years.*

*Rod also played a pivotal role in the establishment of the Personal Injury Commission. He has been here since day one, working with dedication on the mammoth task of merging legacy organisations, commencing operations without an office, uplifting digital practices and services, all amidst the pandemic and associated restrictions.”*



## 13. Importance of Legacy in Personal Injury Justice (continued)

I worked with Rod in the late 1990s when he instructed me before the Compensation Court and again when I joined the Workers Compensation Commission in 2013. Rod imparted qualities of efficiency and integrity with compassion during our work together. During his time as Registrar, the Commission showed outstanding results in structural efficiency indicators which were in part due to Rod's leading position.

Rod was a colleague, mentor and friend to many. He commences his retirement after his 42 years of public service with his wife, Janene, and daughter, Stephanie. He is looking forward to having more time to pursue his interests, volunteer activities, travel and to work on his golf handicap.

### **John Harris**

Principal Member  
Personal Injury Commission

## **A Century of Dispute Resolution**

Statutory schemes for workers compensation benefits were established in Australia at the beginning of the 20th Century, following the lead of European countries.

The first enactment in New South Wales was the *Workmen's Compensation Act 1910* (1910 Act). The definition of a "workman" in the Act curiously stated that it included "either sex". The workman must have suffered a "personal injury by accident arising out of and in the course of the employment". The entitlement to compensation was limited to injuries in certain identified occupations<sup>12</sup> or any other employment which was declared by proclamation to be dangerous. Compensation was limited to weekly payments for total or partial incapacity for work (provided the workman was disabled from earning full wages for a period of at least two weeks) and a sum payable in respect of the death of a workman. Proceedings for the recovery of compensation could be taken in the District Court if the claim was for more than 30 pounds, and before a stipendiary or police magistrate for claims of a lesser amount.

The 1910 Act was replaced by the *Workmen's Compensation Act 1916* (1916 Act). The 1916 Act retained the expression "workman" but expanded the definition to include any person who entered into or worked under a contract of service or apprenticeship, whether by manual labour, clerical work, or otherwise. It however excluded any person whose annual remuneration exceeded 312 pounds and "any member of the employer's family [who was] dwelling in his house". The definition of injury was also amended to include specified diseases that were "due to the nature of any employment". Resolution of disputes underwent some enhancements, with the introduction of arbitrators to settle and determine disputes, the use of legally qualified medical practitioners to sit with District Court judges as assessors, and the power of Medical Assessors to give binding certificates as to a worker's condition and fitness for employment.

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<sup>12</sup> Section 3 provided that the Act applied to employment on, in or about any railway, tramway, factory, workshop, mine, quarry, wharf, vessel, engineering, or building work, any building used for dumping or storing wool, carried on by the employer as part of the employer's trade or business.

Significant reforms came a decade later with the passing of the *Workers' Compensation Act 1926* (1926 Act). The 1926 Act further expanded the definition of injury and compensation entitlements but was most important in two other respects. Firstly, it introduced a compulsory insurance scheme. Secondly, it established a specialist tribunal, The Workers' Compensation Commission of New South Wales, to hear and determine all matters and questions arising under the 1926 Act. In addition to its judicial functions, the Commission had a number of administrative functions including administering the insurance scheme and managing trust monies invested on behalf of dependants of deceased workers.

The Commission originally consisted of three members – a chairman, who had the rank, title and status of a judge of the District Court, and two lay members who were appointed for terms of seven years. In 1939, the lay members were replaced by judicial members, so that all members of the Commission had the same rank as District Court judges.

In 1984, the Commission was abolished and its judicial and administrative functions were vested in two new bodies. Administrative functions were moved to a new entity called the State Compensation Board and the Compensation Court of New South Wales was established to undertake judicial functions. A chief judge was head of jurisdiction. In addition to judges, the legislation provided for the appointment of commissioners to hear and determine cases where the compensation in dispute was unlikely to exceed \$40,000.

Sweeping reforms to the workers compensation scheme were introduced in 1987. The reforms were identified as necessary to address unsustainable cost increases and the litigious nature of disputes in workers compensation cases. The *Workers Compensation Act 1987* (1987 Act) replaced the 1926 Act. The 1987 Act was the government's first substantial attempt to introduce less formal dispute resolution procedures.

Jurisdiction to hear and determine first instance disputes was given to commissioners who were no longer, in the exercise of their jurisdiction and functions, subject to the control or direction of the Compensation Court. The arrangement of business of commissioners was by a senior commissioner. Review officers were appointed to conciliate in disputes. The jurisdiction of judges of the Compensation Court was limited to hearing appeals from decisions of commissioners in point of law or exercise of a statutory discretion, and to hearing first instance disputes if transferred by the senior commissioner to the Court. It was intended that complex disputes would be transferred but this power was rarely exercised.

The legislation allowed proceedings before commissioners to be conducted with as little formality and technicality as the proper consideration of the matter permitted and commissioners were not bound by the rules of evidence. The concepts of informality and absence of rules of evidence were not well understood. Without more guidance, commissioners, who were not required to be legally qualified and were not experienced in the jurisdiction, were unprepared for the technicality of law and esoteric arguments presented by experienced counsel.

It was an unharmonious time in the history of workers compensation dispute resolution in New South Wales. The new system of dispute resolution did not achieve the desired goals and, in 1989, original jurisdiction (and commissioners) was returned to the Compensation Court.

This was the status quo until 2001, when further significant reforms to the dispute resolution model were brought about by the *Workers Compensation Legislation Amendment Act 2001*. While the Compensation Court had established a reputation for excellence in dispute resolution, and there was a strong emotional connection to the court which was fondly described as the "workers' court", the tide of change was upon the court system in civil litigation. The legislative amendments set about the abolition of the Court and the establishment of a new body to replace it, the Workers Compensation Commission of New South Wales.

## 13. Importance of Legacy in Personal Injury Justice (continued)

The move to a tribunal to resolve workers compensation disputes followed the growth of tribunals in Australia. As the Hon Keith Mason AC QC, then President of the New South Wales Court of Appeal, observed in a paper delivered to the inaugural meeting of the New South Wales Chapter of the Council of Australasian Tribunals in 2003<sup>13</sup>:

The law of evidence started off as judicial common sense practised in context. But by the mid-twentieth century it had hardened and atrophied. Its rules had become traps for the unwary rather than guideposts to facilitate the orderly gathering and testing of relevant information.

The *Evidence Act 1995* is a much more flexible and task-oriented tool than the corpus of black and white technical rules found in Phipson's Law of Evidence. That is not to say that the Evidence Act is free from complexity and arcana. Nevertheless, it arrived on the scene too late to stem a major shift from courts to tribunals. There are many good and understandable reasons why this shift occurred. However, one reason was that the courts were too slow in adapting the rules formulated for criminal trial by jury to the quite different context of civil disputes tried by judge alone.

The less formal dispute resolution model introduced by the new Commission was a substantial shift away from the established model it replaced, and it took a period of adjustment. It had what one senior legal practitioner sensitively described as a "difficult birth". However, it learned fast lessons and was able to continue the tradition of excellence established by its predecessors while incorporating the flexibility and informality for which its creation was intended.

The success of the new Commission was in no small part due to the quality of its decision-makers. While decision-makers and decision-making were the face of the Commission, such a narrow focus fails to recognise all the moving parts that worked in harmony to achieve optimal performance. The Commission's success did not rest solely on its decision-makers but on its people collectively and on the way it embraced the challenge. The Commission's operations were distinguished by active case management, supportive rules, enthusiastic use of technology, flexibility, adaptability, and constructive relationships with stakeholders.

The Workers Compensation Commission has now morphed into a division of the newly created Personal Injury Commission. That is the next logical step in personal injury dispute resolution. It provides a valuable opportunity to develop greater consistency and uniformity across different jurisdictions dealing with the same issue – resolving disputes for injured people.

Changes to the dispute resolution model in workers compensation have not always been popular and some have been met with resistance and even derision. However, the continued strong performance and public recognition of the current dispute resolution model are proof that a less formal, non-judicial model was right for our time.

The Personal Injury Commission has been entrusted with a jurisdiction that has a proud history. It continues that proud history as it meets the current challenges of the 21st Century and contemplates its next evolution in the digital age.

### **Rod Parsons**

Former Division Head,  
Workers Compensation Division  
Personal Injury Commission

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13 The Hon Justice Keith Mason AC QC, 'The Bounds of Flexibility in Tribunals', 24 February 2003.

## Vale The Hon Dr Frank McGrath AM, OBE

### Reflections on Father — by Emeritus Professor Rosalind Frances Croucher AM (McGrath)

My sisters and I will each offer our own reflections on our father.

I will speak as his eldest daughter, and also as a member of the profession of which he was so proud.

He began his legal career as a solicitor, with Carroll and O'Dea, having been articled to the legendary Cecil O'Dea. Father was to become an outstanding industrial lawyer and the champion of those who were fighting Communist control in the unions after the War. His role in that struggle has become legendary – indeed John McCarthy QC said that Frank's contributions, even during his articles, "makes him the most significant articulated clerk in Australian legal and political history".

He probably changed the course of Australian history and released mighty forces that have shaped our society since the 1940s. He is admired with gratitude by many who, over the years, have understood just how vital and decisive the work of the young Frank McGrath had been. If this had been a feat on a battlefield, Frank would have been awarded the Victoria Cross.

From 1966, Frank served 27 years on the bench, the last 11 as Chief Judge of the Compensation Court of NSW. On his retirement in 1993 (at the then mandatory age of 72), father said that he was proud of the court which he had the honour to serve, and that his life on that bench had been one of "fulfilment and enjoyment".

Born in Birkenhead, England, Frank was the only child of James McGrath, a shipwright, and Mary Broadfield, a tailoress and fine soprano. The family came to Australia in 1924. Although not yet three years old, he remembered being shown the oranges in the hold of the ship. It was an early sign of a prodigious memory.

After attending Canterbury Boys' High School, Frank went to Sydney University, completing his BA (Hons) in History, with the University Medal in 1942, then his MA and LLB. At university, he met Amy Cumpston and they married in 1944, a marriage which lasted until mother's death in September 2019, a few weeks shy of their 75th wedding anniversary.



On hearing the sad news of father's passing, the responses from the legal profession have been very much of one voice.

Her Excellency, the Hon Margaret Beazley AC QC, who honours father in her presence today, said:

*Frank is the one judge whom I hold most dearly in my legal memories. He was smart and generous spirited. He knew when I ..., as a young barrister, was foundering and would, so deftly, slide a platform underneath so that I didn't fall over. I am sure I was not the only one to whom he was so kind, supportive and always, always so judicial.*

The Honourable Michael Campbell QC, father's successor-in-title as Chief Judge, said that Frank passed on to him a well organised, smoothly functioning and efficient Court, and that he provided a role model as to how the Court should be led in the future.

Judge Gerard Phillips, President of the Personal Injury Commission, spoke of him as "a complete gentleman to appear in front of, and every party always felt that they received a thorough and fair hearing".



## 13. Importance of Legacy in Personal Injury Justice (continued)

The Hon Michael Kirby AC CMG, in similar vein, described father as “a just and accurate Judge” and one of his own mentors.

Father’s inclusiveness in his courtroom is evident in a story that Colin Davidson, a former judge of the Compensation Court, shared for Frank’s 90th birthday.

On one occasion a highly respected doctor appeared before Frank, dressed somewhat casually, having come directly from a hospital round, for which he apologised. Frank said, “There is no need to apologise, doctor. Witnesses in this Court can appear in the nude so long as they tell the truth. That is the important thing.”

Frank was universally regarded as a true gentleman. He was also humble, unpretentious, and embracing of all people – and proud of his origins. While his mother never happily settled here, and they were faced with the bitter travails of the Great Depression, father loved this country, father found his own sense of identity after his first long trip back to England in the 1960s – it was as an Englishman *in Australia*. That made sense of things for him.

Many remarked to me about father’s patience.

In a family of women, you need a great deal of patience. Especially having grown up as an only child. And his patience was tested at times. He had occasion to “read the Riot Act”, although to my childish ears I heard this as “RIOTAT”. I had no idea what it was, but the way it was presented certainly conveyed its meaning and brought us to order.

All the qualities that others have testified to, informed the way that father was on the Bench. I know of his particular reputation for delivering *ex tempore* judgments. To do that, you have to be a great listener, to have a great memory and an ability to process information in the moment.

Remembering this ability, over this last year especially, I read to father from the newspaper, especially on subjects political and legal. He was particularly interested in the peculiar and not-to-be-emulated approach of the Americans in their method of appointment of the judges to their highest court.

I expanded our repertoire of readings to include high court judgment summaries. Most recently, I read to him the summary of a case concerning amendments to the *Commonwealth Electoral Act*. Reading commentary regarding the rather fine-grained arguments that can accompany the implied freedom of political communication, father stopped me to say, “I’m not quite following that point, Rozzie”, to which I replied, after a moment’s reflection, “Neither am I”.

My husband, Professor John Croucher, and I had the privilege of ten years with Amy and Frank living with us on our property in the Blue Mountains. Their separate residence, named ‘The Lodge’ (which mother thought was hilarious), and their being with us, became the centrepiece for so many joyous times – for me and John and for the wider family.

The property has large grounds, including acres of lawns. Early on, father announced, “Ros, I think I can manage the ride-on mower”. He could.

I remember the first day we got the mower out. There was father, John and myself, with five PhDs between us at the time, three of them John’s, and only *me* reading the manual. Eventually, together, we mastered its operation!

Father established his own distinctive mowing style. From above, I am sure it resembled the crop circles of Britain. For Christmas one year, we presented him a work-shirt embroidered “Frank’s Mowing Services”, which he wore as best for tea.

Father also became the scorer for our cricket matches. After all, who could challenge father’s rulings, given his standing?

Father was determined to reach the century milestone on 30 December last year. A soothsayer in India had once told him he would die at the age of 92, which made him nervous for a while. All his ‘benchmark men’ had died before reaching 100: Gough Whitlam, at 98; Jack Slattery, at 96; the Duke of Edinburgh, at 99.

The cards to mark his birthday started coming a couple of months early. This made him nervous again – “what if I don’t ‘earn’ them”, he would say. But he did: from the Queen, the Governor-General, the Governor, the Prime Minister, the Premier, his local member, the President and Executive Director of the Bar.

His four daughters, seven of the eight grandchildren, and all ten great-grandchildren were there to celebrate with him.

After that, father somewhat lost his 'mojo' and, I believe, he was really missing mum. When I assisted him to bed while he was still living at The Lodge, his last ritual was to reach out and pat the pillow next him — saying goodnight to mum.

One of father's carers said that his passing "has left a hole in her heart". That was the impact that he had on people.

Father was a reserved man, very much a man of his generation. A man who showed his love in the doing, like replacing sashcords on windows (a skill he learned from his father).

We are all so fortunate to have shared some of this great century of contributions and of love with him.

For us, as his daughters, and for his wider family, our memories are rich and full. The hole in our hearts is indeed immense. And we will keep filling it with those wonderful memories as we each find the place for that loss.

His passing will be marked today by a tolling of the bells for the full one hundred. He would have loved that.

### **Frank McGrath – by Michael O'Dea KCSG AM**

Frank McGrath had a significant influence in preserving our democratic institutions.

In the 1940s after WWII communism was rampant throughout the Western World including Australia. Following Russia's very relevant part in ensuring the success of the Allies in WWII it was no surprise that Russia, driven particularly by Stalin's insatiable appetite for a worldwide spread of communism, sought the spread of communism in Australia.

The Communist Party of Australia (CPA) sought to obtain control of trade unions as a way of increasing the political consciousness of workers as a prelude to an anti-capital revolution. The CPA wanted revolutionary change and accordingly the trade unions had to be political. The CPA sought to infiltrate trade unions to obtain leadership of them and to use control of key industrial unions for subversive activities in pursuit of their main objective of overthrowing the capital economy. In this way CPA officials obtained leadership positions in unions such

as the Federated Ironworkers (FIA), Waterside Workers, Miners Union and others.

Frank McGrath's initial involvement in the contest of union control was fortuitous. In 1945 Frank obtained work as a striker in the "Morts Dock" blacksmith shop. He thus became involved with the Balmain branch of the FIA; he had recently graduated with First Class Honours in History at Sydney University, winning the University medal in History. Frank was thus with his university education well equipped to readily comprehend the anti-democratic manoeuvrings of CPA officials in seeking control of the Balmain branch of the FIA.

Frank rejected all forms of Marxism and played an active role in resisting the spread of communistic influence in the Balmain branch of the FIA. He eventually became Secretary of that branch. At about this time Tom Dougherty, Federal Secretary of the Australian Workers Union and ardent opponent of communism, asked Cecil O'Dea of the firm, then known as JJ Carroll Cecil O'Dea and Co to provide help to the opponents of communism within the Balmain branch of the FIA. Cecil O'Dea agreed to act as an honorary solicitor to the anti-communism cause, which Cecil O'Dea's firm provided to that cause for the next seven years, largely on a pro bono basis.

Shortly thereafter Frank McGrath decided to study Law. At Tom Dougherty's request, Cecil O'Dea agreed to accept Frank McGrath as an articled clerk. Frank McGrath himself was determined to play a role in the legal side of the fight for control of the FIA. The continuing skirmishes, both legal and otherwise, between factions within the FIA continued but came to a head with the election for official holders of the FIA, held in December 1949.

The election was for both FIA National officials and Sydney branch officials. Ernie Thornton was the leader for the communist group and Laurie Short the leader of the opponents. The communistic officials were the declared winners of the ballot. Laurie Short, Frank McGrath and Cecil O'Dea were convinced that the ballot had not been properly conducted and pursuant to a recently passed law sought an inquiry into the ballot. Eric Miller, KC with Alec Stevens and later John Kerr, were retained by Cecil O'Dea for Short and Simon Isacacs, KC appeared for Thornton.

## 13. Importance of Legacy in Personal Injury Justice (continued)

The onus to upset the ballot result rested on the applicant. Evidence was given of a formidable array of irregularities but Justice Dunphy quickly found that the formidable array of alleged irregularities was only secondary to the examination of the ballot papers themselves.

Cecil O'Dea assigned the responsibility for instructing in the case to Frank McGrath. The hearing was spread over a period of 16 months from July 1950 to December 1951. During this time there was plenty of evidence by handwriting experts with a view to demonstrating ballot papers had been filled in multiple times by the one person. However, to persuade the court on the balance of probability that there had been ballot rigging, was a very high standard to satisfy. As the enquiry before Justice Dunphy dragged on, the prospect of Short overturning the ballot remained dim.

Then at a crucial stage Frank McGrath sitting in the Court leafed through a stack of ballot papers. As it happened light shining through the window revealed an imprint of an X on a host of ballot papers. The clear inference was that a person exercising the first vote had beneath him a stack of ballot papers allowing the imprint of the first X to pass to the papers below. This was the conclusive evidence that Short's legal team had been looking for.

Indeed, in combing through the ballot papers Frank not only found impression marks on a large number but also found an identical matching pair in which an error had been made by the person who filled in the superimposed paper.

Some considerable difficulty was experienced in demonstrating this factual matter to Justice Dunphy, but when eventually the picture was clear, the Judge forthwith made an Order declaring the earlier ballot null and void. There then followed a court controlled ballot which led to the defeat of Thornton and his communistic comrades.

But for Frank McGrath's initial influence on resisting the CPA at the Balmain branch of the FIA and then for so perceptively observing the imprint on ballot papers there is every reason to believe that the communistic influence of the FIA would have continued to grow.

Success in the ballot case before Mr Justice Dunphy was a very significant step in the breaking of communistic influence in the unions and preservation of our democracy.

*Michael O'Dea KCSG AM has been in practice as a solicitor in NSW for over 50 years. He was the long-time managing partner of Carroll & O'Dea Solicitors and is the son of Cecil O'Dea described in the article.*

## Vale The Hon Ramon (Ray) Francis Burke

**19 March 1929 – 16 March 2022**

Ramon Burke was a long-time judge of the Compensation Court sitting between 1982 and 2003.

It was no surprise that he became a lawyer. He excelled at school and ranked so well in the leaving certificate that he was offered a full academic scholarship to study law at the University of Sydney. Curiously, his father would not give consent for Ray to undertake this study and so he took a job as a laboratory assistant in order to save enough money to go to university. In his third year, he took a position at MA Simon & Co Solicitor as an articled clerk being paid the princely sum of two pounds per week.

Ray graduated from Sydney University with a Bachelor of Laws in 1956. Ray married Patricia in 1957, the same year that he was admitted to practice as a solicitor. Ray subsequently completed his Masters of Laws in 1968, also awarded by the University of Sydney.

Ray was a contemporary at MA Simon & Co of former High Court Judge the Hon Michael J Kirby AC CMG. Indeed, Ray was Michael Kirby's master solicitor. Upon Ray's retirement, Michael Kirby described his judicial reasons in the following way:

*"They were direct, forcefully expressed and intellectually engaged."*

For this reason, many of Ray's decisions remain in constant use by Members of the Personal Injury Commission, almost 20 years after his retirement. To pick one, and there are many, *Rose v Health Commission (NSW)* [1986] NSWCC 2, remains the binding authority with regards to the medical treatment that an injured worker is entitled to. This decision is not surprising. Ray once said that compensation law was what he referred to as people's law and that's why it was important. The result of the case would have a great effect, either positive or negative, for the injured person's life, hence its importance.



Ray was a stalwart of the Catholic Church, being active in his local parish and as secretary of the Sydney Archdiocese and Pastoral Council under Cardinals Freeman and Clancy.

He was buried from St Augustine's Church in Balmain on 29 April 2022.

**Judge Gerard Phillips**

President

Personal Injury Commission

## 13. Importance of Legacy in Personal Injury Justice (continued)

### Vale Former Deputy President Bill Roche

Bill Roche grew up in Sydney, a member of a large and talented family. Following the untimely death of his father, the family was raised with determination and love by Bill's mother, to whom he was close during her long life. Bill graduated from the University of Sydney with degrees in Economics and Law and was admitted as a solicitor in 1979. He practised initially in Wagga Wagga in a varied general litigation practice and then moved to Sydney to head up the in-house legal unit of Royal Insurance. He was experienced in a broad range of litigation matters, both large and small. Bill was admitted to the Sydney Bar on 8 February 1985 and he practised from Edmund Barton Chambers. He developed a healthy and varied practice with an emphasis on personal injuries, both common law and workers compensation.

At one point, as a young counsel, his practice included appearing in criminal trials for legally aided defendants. He recalled a District Court trial, before a judge with a reputation for irascibility, in which he needed to make an application in the absence of the jury. Annoyed by the interruption, the judge directed the Sheriff's Officer to "Take them out, but don't take them far".

Bill as a counsel was a perfectionist. His cases were impeccably prepared and carefully presented, with an attention to detail. He could be a determined opponent, but he was scrupulously fair and honest. He had difficulty understanding practitioners whose standards were lower than his own.

Bill was appointed as an Acting Deputy President of the then Workers Compensation Commission of NSW in April 2006. He was appointed a Deputy President later in that year, a position he held until his final retirement due to ill-health in early 2017. He had a voracious appetite for work and issued decisions at a great rate. His well-researched decisions were grounded in settled authority from the High Court and Courts of Appeal. The Commission was still a relatively new jurisdiction and many areas of its jurisprudence were not fully formed. Bill was important in remedying that. To this day his decisions are probably those most referred to by Members, a first port of call in addressing legal issues. By way of example, decisions still cited on virtually a daily basis would include *Diab v NRMA Ltd* [2014] NSWCCPD 72 (the recovery of medical expenses), *Mateus v Zodune Pty Ltd* [2007] NSWCCPD 227 (dispute notices and the Commission's jurisdiction), *Attorney General's Department v K* [2010] NSWCCPD 76 (the proof of psychological



injury) and *Murphy v Allity Management Services Pty Ltd* (the proof of causation).

In April 2016 Bill was diagnosed with a highly malignant cancer and was given a prognosis measured in months. He ceased working and responded to the disease with the bravery and determination that were typical of him. He underwent multiple major surgical procedures and bouts of chemotherapy. He participated in clinical trials of experimental treatments. He worked to maintain a healthy lifestyle and diet which he thought was important in improving his chances. He had periods of improvement. He recovered to a point where he was able to spend significant time with his large extended family, which he loved. He holidayed to England and Wales with family. He was a loyal friend and continued to socialise with his old friends from the profession. He never complained about his situation, he was simply grateful for the extra years that followed his diagnosis. Eventually the disease claimed his life on 2 December 2021.

Bill had many long-term friends who he was loyal to over decades. He had a large extended family who he loved. He was a passionate traveller who journeyed to sometimes remote places – he had his appendix removed in a hospital in South America after falling ill on a boat travelling up the Amazon. He was a serious and talented photographer, which combined well with his interest in travel. He took marvellous photographs of the wildlife in Africa. He was interested in the law. He was committed to the Commission and to making it as good as it could be. He never lost sight of its overall function and those it was established to serve.

#### Michael Snell

Deputy President  
Personal Injury Commission



## Vale Geraldine Daley AM

The Personal Injury Commission was saddened to learn of the death of Geraldine Daley on 30 April 2022.

In 2000 Geraldine was one of the first cohort of claims assessors appointed to the Claims Assessment and Resolution Service ('CARS') which subsequently formed part of the Dispute Resolution Service (DRS) of the State Insurance Regulatory Authority ('SIRA').

Geraldine assumed the role of senior claims assessor in CARS and was often allocated the most complex CARS assessments. She was a long-time respected member of the claims assessors' practice group at CARS and she contributed to the development of guidelines, forms, processes and procedures for determining motor accident disputes under the *Motor Accidents Compensation Act 1999*.

Geraldine was committed to the inquisitorial process of claims assessment. She had a high settlement rate and a low further assessment rate. She was the subject of only two judicial review challenges out of over 400 claims assessments. One assessment was set aside, and one was upheld, a very impressive record and testament to the quality of her dispute resolution work.

Outside of CARS and DRS, Geraldine was admitted as a solicitor in 1977, and went on to serve as a Law Society Councillor between 2001 and 2010. Geraldine became an Accredited Specialist in Personal Injury Law in 1993 and proudly maintained her accreditation for almost 30 years. Geraldine served as Chair of the Law Society's Ethics Committee, a Chair of the Specialist Accreditation Board and a longstanding member of the Injury Compensation Committee and Licensing Committee. Geraldine was also a contributor to many other Law Society Committees over the course of her career.



Geraldine was acknowledged as one of the key thought leaders in motor accidents law and in the field of personal injury law in general and delivered seminars to other members of the profession, delivering relevant information to motor accidents practice over many years.

Geraldine had a Masters of Law and completed mediation training and courses at Bond University and Harvard Law School. In 2017 she became a Member of the Order of Australia for her extraordinary contribution to the legal profession and to the personal injury field in particular. She remained, until her death, a director of Colin Daley Quinn and the head of that firm's personal injury compensation team.

While she did not seek appointment as a Member of the Personal Injury Commission, the Commission wishes to acknowledge her contribution to the success of the Commission's Motor Accidents Division's forebears and the Commission expresses our condolences to all who knew her and worked with her.

**Information provided from multiple sources and authors.**



# Appendices

## Appendix A – Executive Leadership Team

### President

Judge Gerard Phillips

### Division Heads

#### Division Head, Motor Accidents Division

Ms Marie Johns

#### Division Head, Workers Compensation Division

Mr Glenn Capel

### Principal Registrar

Ms Marianne Christmann

## Appendix B – Members

### Presidential Members

#### Deputy Presidents

Mr Michael Snell

Ms Elizabeth Wood

#### Acting Deputy Presidents

Mr Geoffrey Parker SC

Ms Kylie Nomchong SC

#### Dual Principal Members

Ms Josephine Bamber

Mr John Harris

#### Senior Members

Ms Elizabeth Beilby

Ms Kerry Haddock

## Appendices (continued)

### General Members

#### *Full-Time*

Workers Compensation Division	Motor Accidents Division	Dual appointment
Mr Cameron Burge	Mr Alexander Bolton	Ms Susan McTegg
Ms Rachel Homan	Ms Belinda Cassidy	Mr Terence O'Riain
Mr John Isaksen	Mr Raymond Plibersek	
Ms Jacqueline Snell	Mr Brett Williams	
Mr Gaius Whiffin		

#### *Sessional*

Workers Compensation Division	Motor Accidents Division	Dual appointment
Mr Brett Batchelor	Mr Stephen Boyd-Boland	Mr Michael Inglis
Mr William Dalley	Mr Terrence Broomfield	Mr Anthony Scarcella
Mr Marshal Douglas	Mr Maurice Castagnet	Mr Cameron Thompson
Ms Karen Garner	Mr Allan Cowley	Mr Philip Young
Ms Catherine McDonald	Mr Robert Foggo	
Mr Michael McGrowdie	Mr David Ford	
Ms Deborah Moore	Mr Hugh Macken	
Ms Jane Peacock	Ms Elizabeth Medland	
Mr Richard Perrignon	Ms Bridie Nolan	
Mr Michael Perry	Mr Gary Patterson	
Mr Nicholas Read	Ms Shana Radnan	
Ms Carolyn Rimmer	Mr Terence Stern	
Mr Paul Sweeney	Ms Elyse White	
Ms Jill Toohey		
Mr Christopher Wood		
Mr Michael Wright		
Mr Christopher Wynyard		

## Appendix C – Merit Reviewers

Ms Josephine Bamber  
Mr Alexander Bolton  
Mr Stephen Boyd-Boland  
Mr Terrence Broomfield  
Ms Belinda Cassidy  
Mr Maurice Castagnet  
Mr Allan Cowley  
Mr Robert Foggo  
Mr Stavros Georgiadis  
Mr John Harris  
Mr Michael Inglis  
Mr Hugh Macken  
Ms Susan McTegg  
Ms Elizabeth Medland  
Ms Bridie Nolan  
Mr Terence O’Riain  
Mr Gary Patterson  
Mr Raymond Plibersek  
Ms Shana Radnan  
Ms Katherine Ruschen  
Mr Anthony Scarcella  
Mr Kriesen Seeneevassen  
Mr Michael Sofoulis  
Mr Terence Stern  
Mr Cameron Thompson  
Ms Elyse White  
Mr Brett Williams  
Mr Philip Young

## Appendix D – Mediators

Mr Ross Bell  
Ms Lara Bishkov  
Professor Laurence Boulle  
Mr Jak Callaway  
Mr Philip Carr  
Ms Janice Connelly  
Ms Catherine Davidson  
Ms Geri Ettinger  
Mr David Flynn  
Mr Robert Foggo  
Ms Nina Harding  
Mr John Ireland  
Ms Kathryn Ireland  
Dr Katherine Johnson  
Dr John Keogh  
Ms Bianca Keys  
Mr Stephen Lancken  
Ms Margaret McCue  
Mr Michael McGrowdie  
Mr John McGruther  
Mr Garry McIlwaine  
Mr Chris Messenger  
Mr Dennis Nolan  
Ms Phillipa O’Dea  
Mr Richard Perrignon  
Mr Anthony Scarcella  
Ms Karen Stott  
Mr Paul Sweeney  
Mr John Tancred  
Mr John Whelan



## Appendix E – Medical Assessors

Medical Assessor	Speciality	Division
Dr Nigel Ackroyd	General Surgery	Workers Compensation and Motor Accidents
Ms Lauren Alach	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Martin Allan	Psychiatry	Workers Compensation and Motor Accidents
Dr Timothy Anderson	Occupational Medicine	Workers Compensation
Dr Douglas Andrews	Psychiatry	Workers Compensation and Motor Accidents
Dr Mohammed Assem	Rehabilitation Medicine	Workers Compensation and Motor Accidents
Dr John Baker	Psychiatry	Workers Compensation
Dr Leslie Barnsley	Rheumatology	Motor Accidents
Dr Melissa Barrett	Psychiatry	Motor Accidents
Dr Jennifer Batchelor	Neuropsychology	Workers Compensation and Motor Accidents
Dr Neil Berry	General Surgery	Workers Compensation and Motor Accidents
Dr Graham Blom	Psychiatry	Workers Compensation
Dr James Bodel	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Mark Burns	Occupational Medicine	Workers Compensation
Dr Gregory Burrow	Orthopaedic Surgery	Workers Compensation
Professor Ian Cameron	Rehabilitation Medicine	Workers Compensation and Motor Accidents
Professor John Carter	Endocrinology	Workers Compensation and Motor Accidents
Ms Anna Castle-Burton	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Norman Chan	Gynaecology	Workers Compensation and Motor Accidents
Dr Wing Chan	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Gerald Chew	Psychiatry	Workers Compensation and Motor Accidents
Ms Fiona Condie	Physiotherapy	Motor Accidents
Dr Michael Couch	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Terry Coyne	Neurosurgery	Workers Compensation and Motor Accidents
Dr David Crocker	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Geoffrey Curtin	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Ms Judith Davidson	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Michael Davies	Neurosurgery	Workers Compensation
Dr Russel Davies	Psychiatry	Workers Compensation and Motor Accidents
Dr Sathish Dayalan	Psychiatry	Workers Compensation and Motor Accidents
Dr Drew Dixon	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Sylvester Fernandes	ENT	Workers Compensation and Motor Accidents
Adjunct Professor Robin Fitzsimons	Neurology	Workers Compensation and Motor Accidents
Dr Paul Friend	Psychiatry	Workers Compensation and Motor Accidents
Dr Atsumi Fukui	Psychiatry	Workers Compensation and Motor Accidents
Dr John Garvey	General Surgery	Workers Compensation and Motor Accidents
Dr Peter Giblin	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Margaret Gibson	Occupational Medicine	Workers Compensation and Motor Accidents

Medical Assessor	Speciality	Division
Dr John Giles	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Professor Nicholas Glozier	Psychiatry	Workers Compensation and Motor Accidents
Dr David Gorman	General Medicine	Workers Compensation and Motor Accidents
Dr Todd Gothelf	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Associate Professor Christopher Grainge	Respiratory Medicine	Workers Compensation and Motor Accidents
Dr Rhys Gray	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr David Greenberg	Psychiatry	Workers Compensation and Motor Accidents
Dr Graham Gumley	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Richard Haber	Cardiology	Workers Compensation and Motor Accidents
Dr Peter Haertsch	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Dr Christopher Harrington	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Henley Harrison	ENT	Workers Compensation
Dr Jonathan Herald	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Samuel Herman	Cardiology	Workers Compensation and Motor Accidents
Dr Roland Hicks	Orthopaedic Surgery	Workers Compensation
Dr Yiu Key Ho	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Adeline Hodgkinson	Rehabilitation Medicine	Workers Compensation and Motor Accidents
Dr Alan Home	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Michael Hong	Psychiatry	Workers Compensation and Motor Accidents
Dr Nigel Hope	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Kenneth Howison	ENT	Workers Compensation and Motor Accidents
Dr Murray Hyde-Page	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Louis Izzo	Gynaecology	Workers Compensation and Motor Accidents
Dr Mark Jones	General Medicine	Workers Compensation
Dr Matthew Jones	Psychiatry	Motor Accidents
Dr Gregory Kaufman	Respiratory Medicine	Workers Compensation and Motor Accidents
Dr Clive Kenna	Musculoskeletal Medicine	Motor Accidents
Dr Sikander Khan	General Surgery	Workers Compensation and Motor Accidents
Dr Edward Korbelt	Urology	Workers Compensation and Motor Accidents
Dr John Korber	Diagnostic Radiology	Workers Compensation and Motor Accidents
Dr Robert Kuru	Orthopaedic Surgery	Workers Compensation
Dr John Lam-Po-Tang	Psychiatry	Workers Compensation
Mr Andrew Leaver	Physiotherapy	Workers Compensation and Motor Accidents
Dr David Lewington	Rehabilitation Medicine	Workers Compensation
Dr Samuel Lim	Psychiatry	Workers Compensation and Motor Accidents
Dr James Linklater	Diagnostic Radiology	Workers Compensation and Motor Accidents
Dr Malcolm Linsell	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Dr Thomas Long	General Surgery	Workers Compensation and Motor Accidents
Dr Jane Lonie	Neuropsychology	Workers Compensation and Motor Accidents

## Appendices (continued)

Medical Assessor	Speciality	Division
Dr Frank Machart	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Mr Anup Mangipudi	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Wayne Mason	Psychiatry	Workers Compensation and Motor Accidents
Dr Tommasino Mastroianni	Occupational Medicine	Workers Compensation
Dr Andrew McClure	Psychiatry	Workers Compensation and Motor Accidents
Dr Michael McGlynn	Plastic and Reconstructive Surgery	Workers Compensation and Motor Accidents
Dr David McGrath	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Gregory McGroder	Occupational Medicine	Workers Compensation
Dr John McKee	General Surgery	Workers Compensation and Motor Accidents
Dr Ian Meakin	Orthopaedic Surgery	Workers Compensation
Dr Ross Mellick	Neurology	Workers Compensation and Motor Accidents
Dr Nigel Menogue	Musculoskeletal Medicine	Motor Accidents
Dr Geoffrey Miller	General Surgery	Workers Compensation and Motor Accidents
Dr Robin Mitchell	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Shane Moloney	Musculoskeletal Medicine	Motor Accidents
Dr Patrick Morris	Psychiatry	Workers Compensation
Dr Jonathan Negus	Orthopaedic Surgery	Workers Compensation
Dr Thomas Newlyn	Psychiatry	Motor Accidents
Dr Bradley Ng	Psychiatry	Workers Compensation and Motor Accidents
Dr Paul Niall	ENT	Workers Compensation
Dr Paul Nichols	Dentistry	Workers Compensation and Motor Accidents
Dr Christopher Oates	Occupational Medicine	Workers Compensation and Motor Accidents
Dr John O'Neill	Neurology	Workers Compensation and Motor Accidents
Dr Shannon Paisley	Psychiatry	Workers Compensation and Motor Accidents
Dr Enrico Parmegiani	Psychiatry	Motor Accidents
Dr Brian Parsonage	Psychiatry	Workers Compensation and Motor Accidents
Dr Robert Payten	ENT	Workers Compensation and Motor Accidents
Dr Samuel Perla	Musculoskeletal Medicine	Motor Accidents
Ms Dawn Piebenga	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Roger Pillemer	Orthopaedic Surgery	Workers Compensation
Dr Andrew Porteous	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Daniel Posel	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Sally Preston	Rheumatology	Motor Accidents
Dr Thandavan Raj	ENT	Workers Compensation and Motor Accidents
Dr Adam Rapaport	General Surgery	Workers Compensation and Motor Accidents
Associate Professor Trudy Rebbeck	Physiotherapy	Workers Compensation and Motor Accidents
Dr Loretta Reiter	Rheumatology	Workers Compensation and Motor Accidents
Dr Sharon Reutens	Psychiatry	Motor Accidents
Dr Christopher Rikard-Bell	Psychiatry	Workers Compensation and Motor Accidents
Dr Samson Roberts	Psychiatry	Workers Compensation and Motor Accidents

Medical Assessor	Speciality	Division
Associate Professor Michael Robertson	Psychiatry	Workers Compensation and Motor Accidents
Dr Michael Rochford	Urology	Workers Compensation and Motor Accidents
Dr Tania Rogers	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Thomas Rosenthal	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Doron Samuell	Psychiatry	Workers Compensation and Motor Accidents
Dr John Schmidt	Gynaecology	Workers Compensation and Motor Accidents
Dr Siddarth Sethi	Gastroenterology	Workers Compensation and Motor Accidents
Dr Farhan Shahzad	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Yu Tang Shen	Psychiatry	Workers Compensation and Motor Accidents
Dr Doron Sher	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Alexey Sidorov	Psychiatry	Workers Compensation and Motor Accidents
Dr Clayton Smith	Psychiatry	Workers Compensation and Motor Accidents
Ms Gillian Smith	Occupational Therapy	Workers Compensation and Motor Accidents
Dr Peter Spittaler	Neurosurgery	Workers Compensation and Motor Accidents
Dr Michael Steiner	Ophthalmology	Workers Compensation and Motor Accidents
Dr John Brian Stephenson	Orthopaedic Surgery	Workers Compensation
Ms Jeanette Stewart	Neuropsychology	Workers Compensation and Motor Accidents
Dr Geoffrey Stubbs	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Aman Suman	Psychiatry	Workers Compensation and Motor Accidents
Dr David Sykes	Dentistry	Workers Compensation and Motor Accidents
Dr Ash Takyar	Psychiatry	Workers Compensation
Dr Bernard Tamba-Lebbie	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Stephen Thornley	Endocrinology	Workers Compensation and Motor Accidents
Dr Philip Truskett	General Surgery	Workers Compensation and Motor Accidents
Dr Ahamed Veerabangsa	Rehabilitation Medicine	Motor Accidents
Dr Raymond Wallace	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Dr Tai-Tak Wan	Rehabilitation Medicine	Motor Accidents
Mr Michael Ward	Physiotherapy	Motor Accidents
Mr Andrew Webster	Physiotherapy	Workers Compensation and Motor Accidents
Dr Ian Barry Wechsler	Ophthalmology	Workers Compensation and Motor Accidents
Dr Nelukshi Wijetunga	Occupational Medicine	Workers Compensation and Motor Accidents
Dr Brian Williams	ENT	Workers Compensation and Motor Accidents
Ms Jennifer Wise	Occupational Therapy	Workers Compensation and Motor Accidents
Dr James Wong	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Associate Professor Siu Kin Cyril Wong	General Surgery	Workers Compensation and Motor Accidents
Dr Alexander Woo	Orthopaedic Surgery	Workers Compensation and Motor Accidents
Mr David Young	Physiotherapy	Workers Compensation and Motor Accidents
Dr Peter Young	Psychiatry	Workers Compensation and Motor Accidents
Dr Peter Yu	Occupational Medicine	Workers Compensation and Motor Accidents

## Appendix F – Rule Committee

### Chair

Judge Gerard Phillips, President

### Membership

Representative	Organisation Represented
Ms Marie Johns, Division Head, Motor Accidents	Personal Injury Commission
Mr Glenn Capel, Division Head, Workers Compensation	Personal Injury Commission
Mr Adam Dent	State Insurance Regulatory Authority (SIRA)
Ms Natasha Flores	Unions NSW
Ms Elizabeth Greenwood	Ai Group, Australian Federation of Employers and Industries, NSW Business Chamber
Ms Elizabeth Welsh	Council of the NSW Bar Association
Mr Ross Stanton	Council of the NSW Bar Association
Mr Ian Jones	Council of the Law Society of NSW
Mr Shane Butcher	Council of the Law Society of NSW
Adjunct Professor Robin Fitzsimons	Royal Australasian College of Physicians (RACP), The Royal Australian and New Zealand College of Psychiatrists (RANZCP) and The Royal Australasian College of Surgeons (RACS)

### Secretariat

Ms Siobhan Flores-Walsh



## Appendix G – Stakeholder Reference Group

### Chair

Judge Gerard Phillips, President

### Membership

Representative	Organisation Represented
Ms Marianne Christmann, Principal Registrar	Personal Injury Commission
Ms Marie Johns, Division Head, Motor Accidents Division	Personal Injury Commission
Mr Glenn Capel, Division Head, Workers Compensation Division	Personal Injury Commission
Ms Helen Wall	NSW Bar Association
Mr Timothy Concannon	The Law Society of New South Wales
Mr Leigh Davidson	The Law Society of New South Wales
Mr Stephen Harris	The Law Society of New South Wales
Ms Katherine Toshack	The Law Society of New South Wales
Mr Joshua Dale	Australian Lawyers Alliance
Ms Madeleine Hibberd	Insurance Council of Australia
Ms Mary Maini	icare NSW
Ms Sheri Hayward	Unions NSW
Dr Petrina Casey	State Insurance Regulatory Authority (SIRA) Motor Accidents Insurance Regulation
Mr Darren Parker	State Insurance Regulatory Authority (SIRA) Workers & Home Building Compensation Regulation

## Appendix H – CTP Insurer Reference Group

### Chair

Ms Marie Johns, Division Head, Motor Accidents Division

### Membership

Representative	Organisation Represented
Ms Marianne Christmann, Principal Registrar	Personal Injury Commission
Ms Betty Taleski	Allianz Australia Insurance Ltd
Ms Diana Farah	Carroll & O'Dea Lawyers
Mr Scott Frazer	Enstar Australia
Ms Annette Buterin	icare NSW
Ms Megan McDonald	icare NSW
Ms Madeleine Hibberd	IAG
Mr Tom Lunn	Insurance Council of Australia
Mr John Cooper	Moray & Agnew
Mr James Dunwoody	QBE Insurance Group
Ms Jane Toole	QBE Insurance Group
Mr Darren Chew	Suncorp
Mr Peter Tran	Suncorp
Ms Rachel Ford	Suncorp
Ms Elizabeth Marinopoulos	Transport Accident Commission (TAC)
Ms Lauren Johnson	Transport Accident Commission (TAC)
Mr Glen Robinson	Youi
Ms Julia Allcock	Youi
Ms Courtney Archer	Youi

## Appendix I – Medical Assessor Reference Group

### Chair

Ms Marianne Christmann, Principal Registrar

### Membership

Representative	Specialty
Dr Neil Berry	General Surgery
Dr Mark Burns	Occupational Medicine
Professor Ian Cameron	Rehabilitation Medicine
Dr Michael Couch	Occupational Medicine
Dr Drew Dixon	Orthopaedic Surgery
Dr John Garvey	General Surgery
Dr Peter Giblin	Orthopaedic Surgery
Dr Margaret Gibson	Occupational Medicine
Professor Nicholas Glozier	Psychiatry
Dr Henley Harrison	Ear, Nose and Throat
Dr Chris Oates	Occupational Medicine
Associate Professor Trudy Rebbeck	Physiotherapy
Dr Julian Parmegiani	Psychiatry
Dr Brian Parsonage	Psychiatry
Dr Nel Wijetunga	Occupational Medicine

Appendix J – Mediator Reference Group

Chair

Mr Glenn Capel, Division Head, Workers Compensation Division

Membership

Representative	Organisation Represented
Ms Marianne Christmann, Principal Registrar	Personal Injury Commission
Mr Philip Carr, Mediator	Personal Injury Commission
Ms Geri Ettinger, Mediator	Personal Injury Commission
Ms Nina Harding, Mediator	Personal Injury Commission
Ms Bianca Keys, Mediator	Personal Injury Commission
Mr John McGruther, Mediator	Personal Injury Commission
Ms Philippa O’Dea, Mediator	Personal Injury Commission

## Appendix K – Ernst & Young Agreed-Upon Procedures Report



### Agreed-Upon Procedures Report on the Expenses of the Personal Injury Commission ("PIC")

To:

Marianne Christmann  
Principal Registrar  
Personal Injury Commission  
Level 21, 1 Oxford Street,  
Darlinghurst, NSW 2010

#### *Purpose of this agreed-upon procedures report*

We have performed the procedures agreed with the Personal Injury Commission (the "Engaging Party" and "PIC") solely to assist you in understanding the expenses incurred by PIC ("Subject Matter"), for the year ended 30 June 2022, and may not be suitable for another purpose. The procedures performed are detailed in our engagement agreement dated 11 July 2022 and are also described below.

#### *Responsibilities of the Engaging Party*

PIC has acknowledged that the agreed-upon procedures are appropriate for the purpose of the engagement.

PIC is responsible for the Subject Matter on which the agreed-upon procedures are performed.

You and PIC are responsible for determining whether the factual findings provided by us, in combination with any other information obtained, provide a reasonable basis for any conclusions which you or other intended users wish to draw on the subject matter.

#### *Responsibilities of the practitioner*

We have conducted the agreed-upon procedures engagement in accordance with the Australian Standard on Related Services (ASRS) 4400, *Agreed-Upon Procedures Engagements*. An agreed-upon procedures engagement involves our performing the procedures that have been agreed with PIC, and reporting the findings, which are the factual results of the agreed-upon procedures performed. We make no representation regarding the appropriateness or the sufficiency of the agreed-upon procedures described below.

This agreed-upon procedures engagement is not an assurance engagement. Accordingly, we do not express an opinion or an assurance conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported.

#### *Our independence and quality control*

We have complied with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, (APESB Code) including the fundamental principle of objectivity. For the purpose of this engagement, there are no independence requirements with which we are required to comply.





*Procedures and factual findings*

It was agreed for us to undertake 22 procedures. In relation to 2 staff payroll procedures, it was agreed not to proceed with testing due to privacy issues; in relation to 2 other staff payroll procedures, alternative procedures were agreed with management, also due to privacy issues with the initially agreed procedures.

No exceptions were noted in 10 procedures; 8 were found to have variances which have been described in the context of the percentage difference to the total expense recorded; the remaining 2 procedures required the results of the procedure to be otherwise documented.

The full details of our factual findings in relation to each procedure are set out in Attachment A.

*Restriction on use of report*

As required by ASRS 4400, *Agreed-Upon Procedures Engagements*, use of this agreed-upon procedures report is restricted to PIC for the purpose set out above.

This report may be relied upon by PIC for the purpose set out above only pursuant to the terms of our engagement agreement dated 11 July 2022.

We disclaim all responsibility to any other party for any loss or liability that the other party may suffer or incur arising from or relating to or in any way connected with the contents of our report, the provision of our report to the other party or the reliance upon our report by the other party.

A handwritten signature in black ink, appearing to read 'David Jewell'.

David Jewell  
Partner

The Ernst &amp; Young logo, featuring the company name in a stylized, handwritten-style font.

Ernst & Young  
Sydney  
4 October 2022

## Attachment A - Procedures and factual findings

We have performed the procedures described in Attachment A, which were agreed upon with PIC, on the subject matter described above.

Procedures Performed	Factual Findings
<b>Expense completeness</b>	
We obtain the trial balance at 30 June 2022 and the general ledger for the period from 1 July 2021 to 30 June 2022. We confirm with management that accounts beginning with "4" were expense accounts and reconciled the total of the general ledger transactions to the corresponding trial balance accounts to ensure completeness.	No exceptions noted. Additionally, SIRA (State Insurance Regulatory Authority) engages the Audit Office of NSW to undertake the audit of their 30 June 2022 annual report. PIC's financial position is within the scope of SIRA's annual report. We have received a confirmation from Sharon Blake (CFO – SIRA) which confirms PIC's total expense amount of \$62.5m. This amount agrees to the expense total in the general ledger.
<b>Non payroll general expenses</b>	
<p>1. Select from the general ledger a random sample of 25 non payroll account expenses not covered in the specified expense account categories below, from the period 1 July 2021 to 30 June 2022.</p> <p>Vouch for each expense to evidence of:</p> <ul style="list-style-type: none"> <li>▶ Approval of purchase order/invoice</li> <li>▶ Separate review and approval of payment.</li> </ul> <p>Of our samples 2 were reversals of prior accruals and 2 were related to payroll. These were replaced with additional samples.</p>	<p>We randomly selected 25 expenses not covered within the specified expense categories below.</p> <ul style="list-style-type: none"> <li>▶ Approval of purchase order/invoice: <ul style="list-style-type: none"> <li>a. Eleven samples selected related to direct charges from the Department of Customer Service ("DCS"). Per discussion with management, DCS prepares cash settlement journals which are posted to SAP once approved by Christine Fitzgerald. We note the process to transfer the costs to SAP once approval is provided is automatic. Journals which are approved are then automatically removed from 'parked' status by the system. We have obtained evidence of approval for each sample. No exceptions noted.</li> <li>b. Nine samples selected related to payments to vendors. We met with management to understand the government procurement policy and sighted the corresponding briefing notes for each sample to ensure these were appropriately approved and that the vendor sampled was listed on the note. No exceptions noted</li> <li>c. Three samples selected related to credit card expenses. We obtained an Excel extract that management confirmed was from Expense8 (expense processing system used by PIC). The extract indicated that Christine Fitzgerald and Alexei Cormack from PIC had authorized the expenses respectively. We have also obtained copies of the invoices for all samples and agreed the amounts back to the extract. No exceptions noted.</li> <li>d. Two other samples fell outside of the categories above. We obtained evidence of</li> </ul> </li> </ul>

	<p>approval of the invoice/order. No exceptions noted.</p> <p>► Separate review and approval of payment: For the samples selected, we traced the sampled amount to its respective batch payment (by filtering the general ledger by 'ref document number' and ensuring the total of these transactions matched the batch total) and obtained evidence of payment approval for each batch. We note that these expenses were approved by Christine Fitzgerald. No exceptions noted.</p>
2. For the sample identified above, compare the amount of expense recorded in general ledger to supporting third party invoice. Report any variances.	<p>Validation of expense to supporting third party invoice</p> <p>e. We observed one instance where there was a one cent difference between the invoice and the amount recorded on the general ledger.</p> <p>f. We observed that the DCS amounts sampled did not correspond directly to the amount in the invoice or cash settlement journal. However, by summing the general ledger amounts for the same 'Ref. document number', we were able to agree the totals.</p> <p>No other exceptions noted.</p>
3. Check for evidence that management provide to demonstrate that the good or service paid for was received by the PIC.	<p>For all samples, we obtained management confirmation or agreed to the invoice that the services were provided within the period.</p> <p>No exceptions noted.</p>
4. Document the nature of the expense based on descriptions available on the invoice.	<p>We discussed with management and documented the nature of each expense as part our testing.</p>
5. Review the general ledger for the expenses described above for the months of May and June 2022. Identify a random sample of five expenses and compare the amount recorded to the supporting third party invoice.	<p>We have covered this testing within subsections 1-4 above.</p>
<b>Specified Expense Categories</b>	
<b>Staff payroll expenses</b>	
<p>1. Obtain and check a random sample of three fortnightly payroll runs for evidence of:</p> <p>► Approval of total amount of payroll through signature or email evidence.</p> <p>► Separate review and approval of payment through email approval or bank audit trail evidence.</p>	<p>DCS is the entity which employs all PIC personnel. As such, the information sought to undertake the procedures listed to the left does not belong to PIC and is therefore unavailable due to privacy and confidentiality reasons.</p> <p>We have agreed with management not to proceed with this procedure.</p>

<p>► Agree amount recorded in general ledger to supporting payroll run report. Report any differences.</p>	
<p>2. Obtain the fortnightly payroll postings for the period 1 July 2021 to 30 April 2022 and identify and report any movements of more than 10% compared to the prior payrun. Investigate and obtain managements explanations such movements. Obtain the</p> <p>3. Obtain the final fortnightly payroll posting for the financial year ended 30 June 2021 to it's posting within the general ledger.</p>	<p>Due to the confidentiality issues mentioned above, we have agreed on an alternate payroll expense procedure with management. This is detailed below:</p> <ul style="list-style-type: none"> <li>► Obtained screenshots of the DCS payroll invoice for each month of the year</li> <li>► Agreed the total of the invoices to the total of the journals posted to the appropriate salary-related accounts listed below: <ul style="list-style-type: none"> <li>Salaries</li> <li>Overtime</li> <li>Leave Loading</li> <li>Recreational Leave</li> <li>Long Service Leave</li> <li>Superannuation</li> <li>Payroll Tax</li> <li>Redundancies</li> </ul> </li> </ul> <p>We calculated a difference of \$1,332.22 between the invoices and journals posted and understand that this is due to minor timing differences between invoicing cycles. This was equivalent to a 0.01% difference to the expense recorded of \$26,274,301.</p>
<p>4. Using the month of July 2021 payrun, extrapolate an annual payroll cost for the 12 months ending 30 June 2022, taking into account PIC advised remuneration rate rises and changes in opening and closing FTE numbers. Compare the extrapolation to actual payroll expense recorded in the PIC Annual report and investigate any variance above 10%.</p>	<p>The total amounts posted to the following payroll accounts in July 2021 were extrapolated for the year with consideration for movements in FTE numbers and remuneration rate rises:</p> <ul style="list-style-type: none"> <li>Salaries</li> <li>Overtime</li> <li>Leave Loading</li> <li>Recreational Leave</li> <li>Long Service Leave</li> <li>Superannuation</li> <li>Payroll Tax</li> <li>Redundancies</li> </ul> <p>We calculated that the variance was 9.9%. As this was below our variance threshold for investigation, no further inquiries have been made.</p>
<p>5. Obtain the listing of full time employees from management and randomly sample two individual FTE. Agree the amount paid in the final April 2022 pay run to their net employee approved annual salary per contract or latest salary letter as pro rated to one fortnightly pay run.</p>	<p>DCS is the entity which employs all PIC personnel. As such, the information sought to undertake the procedures listed to the left does not belong to PIC and is therefore unavailable due to privacy and confidentiality reasons.</p> <p>We agreed with management not to proceed with this procedure.</p>

<p>6. Sample two individual redundancies recorded in the general ledger redundancy account. Obtain the related redundancy letter and compare details to the payment made and expense recorded. Report any differences.</p>	<p>Three samples were selected from the redundancy transactions within the general ledger account. For these, we obtained the redundancy letter notifying the employee of the decision. We noted that the letters did not include a calculation of the amount to be paid to the employee. As such, we obtained the corresponding 'final redundancy payment summary' detailing the components of the pay-out.</p> <p>We performed checks to ensure that the last day of service was within the AUP period. The payment amounts in the general ledger were also agreed to the 'total severance amount after tax' in the payment summary.</p> <p>No exceptions noted.</p>
<p>7. Estimate the superannuation expense for staff by applying the superannuation guarantee amount of 10% of total salaries expense recorded in the general ledger. Report recalculated balance and total difference to superannuation guaranteed amount.</p>	<p>We recalculated the expected superannuation expense for staff by multiplying the total of the salary expense account (410352) by the superannuation guarantee amount set by the Australian Government for the period 1 July 2021 to 30 June 2022 (10%) and compared the result to the superannuation expense total for the year.</p> <p>We calculated a difference of \$82,142 between our calculation and the actual expense for the year. This was equivalent to a 0.4% difference to the expense recorded of \$20,219,187.</p>
<p>8. Recalculate payroll tax by applying NSW State rate of 4.85% to gross salary cost and comparing it to the payroll expense recorded in the general ledger. Report total variances.</p>	<p>We recalculated the expected superannuation expense for staff by multiplying the total of the salary accounts by the payroll tax rate for FY22 (4.85%) and compared the result to the payroll tax recorded during the year.</p> <p>We calculated a difference of \$2,207 between our recalculation and the actual expense for the year. This was equivalent to a 0.2% difference to the expense recorded of \$1,217,464.</p>
<p><b>Non-staff salary costs</b></p>	
<p>1. Source the details for the payments made for the year from the general ledger. Sample 5 journals posted and agree to supporting documentation such as timesheets or agreements. Report any differences.</p>	<p>Six samples were selected from the population of non-staff salary cost accounts.</p> <p>These samples were each part of payment batches generated by Nexus, the system through which motor accident service partners lodge their invoices. From discussion with management, we understand the batch generated by Nexus is transferred through Mulesoft into SAP, and information detailing the assessor's name and other details are not retained through to SAP.</p> <p>As such, individual samples selected from SAP cannot be matched back to the corresponding entry in Nexus due to the process above.</p>



	<p>We obtained the Excel breakdowns downloaded from the Nexus batches above and agreed these to the batch total posted to SAP. We then agreed the individual invoice amount in the Excel spreadsheet to the sample selected.</p> <p>No exceptions were noted.</p>
<b>Rental expenses</b>	
<p>1. Obtain the head office rental agreement. Compare the lease rental expense recorded in the trial balance to the amount per the current rental agreement. Record any differences.</p>	<p>We obtained the head office rental agreement (which is entered into by DCS on behalf of PIC) including the lease rental model for the breakdown/schedule of lease payments and expenses. The head office rental model includes an estimate of the rental expenses and refurbishment costs. The amounts which are recorded in the general ledger are actual rental expenses incurred for the year (which fluctuates depending on usage and changes in utilities and services costs).</p> <p>Based on this lease rental model and its estimates therein, we recalculated the lease rental expense for the year and compared this to the amount recorded in the ledger.</p> <p>The difference between the EY calculation using the lease rental model and the general ledger was \$15,666 which was equivalent to 0.48% of the \$3,240,110 expense recorded.</p>
<p>2. Agree total additional refurbishment costs from the general ledger to supporting documentation provided from the Department of Customer Services. Report any differences.</p>	<p>We obtained the head office rental agreement including the lease rental model for the breakdown/schedule of lease payments and expenses. Based on this evidence, we recalculated the refurbishments cost expense for the year and compared this to the amount recorded in the ledger.</p> <p>The difference noted was \$208,063.03 which was equivalent to 20.64% of the \$1,008,237 expense recorded.</p> <p>The refurbishment costs which flow through the GL are accruals. While the lease rental model includes an estimate of the refurbishment cost, the project has not been finalised. Accordingly PIC management estimate accruals using the cost based off the model and with additional input from the project manager.</p> <p>This additional input from the project manager amounted to \$163,063.03, and additional medical consumables were estimated to cost \$45,000. We have obtained evidence of these amounts. We also note that the sum of these two amounts equal the difference noted above.</p>
<b>Additional account specific procedures</b>	
<p>1. Obtain documentation and evidence provided by management supporting the amounts recorded in the 'WIP Direct Project</p>	<p>Obtained the invoices for a sample of three amounts recorded in the 'WIP Direct Project Cost Settlement' account and:</p>

<p>Cost Settlement expense' general ledger account for a sample of two costs. Report any differences.</p>	<p>a) Confirmed that the invoice was directed to PIC b) Confirmed that the dates for services provided were in FY22 c) Confirmed that the invoice had been approved d) Agreed the total of the invoice to the amount recorded to the general ledger</p> <p>No exceptions noted.</p>
<p>2. Sample two costs from the 'Fees for service – other' account and agree to supporting documentation</p>	<p>Obtained the invoices for a sample of three amounts recorded in the 'Fees for Service – Other' account and:</p> <p>a) Confirmed that the invoice was directed to PIC b) Confirmed that the dates for services provided were in FY22 c) Confirmed that the invoice had been approved d) Agreed the total of the invoice to the amount recorded to the general ledger</p> <p>No exceptions were noted.</p>
<p>3. Perform inquiries as to the nature of any negative/credit balances. Document the rationale obtained.</p>	<p>We performed inquiries as to the nature of credit balances for general ledger expense accounts and have documented our findings below:</p> <p><u>Travel domestic</u> – Credits occur in this account due to reversals of accruals. Certain amounts initially recorded in the Nexus system had 'pending approval' status which could eventually be rejected, meaning the amount would not flow through to SAP general ledger. Due to these instances, the actual cost going through the account was less than the total of accrual reversals.</p> <p><u>MV Payroll Deduction Credits</u> – This account relates to a salary sacrifice arrangement in place for a parking space. Rather than income, DCS (who manage the chart of accounts and the payroll function), have reflected this arrangement as a negative expense. This is to ensure the 'cost' to employees is removed from their payroll entitlements/pay and enables a full payroll reconciliation when all payroll items are kept together in the GL/chart of accounts.</p> <p><u>PS – Leave Loading</u> – Leave Loading ("LL") is payable at the end of each 12 months' service when an employee takes 10 consecutive days of leave. The LL GL account is only used when an event creates an out-of-cycle movement - that is, an employee either leaves or transfers before the 12-month period is concluded. When an employee transfers to another government agency, their LL liability transfers with them. During FY22, more leave loading liabilities were transferred from PIC to other government agencies than transfers in, resulting in a credit balance to the account.</p> <p><u>PS – long service leave</u> – This is an accrual requested by DCS which relates to the year-end on-cost for long service leave ("LSL"). LSL is ultimately the responsibility of Treasury with the PIC allocation provided to DCS. However, we note that PIC does not have visibility over</p>

	<p>the calculation itself. Per discussion with management, the rationale behind this balance being a credit this year was a change in the actuarial value. We also note that this balance was subsequently settled in July 22.</p> <p><u>Unisys</u> – An accrual was made in June 2021 for expected PIC share of Unisys related shared costs (indirect corporate costs) with DCS. These costs were not forthcoming in FY22, hence the accrual reversal gives rise to the P&amp;L credit balance for FY22. We note that subsequent to FY22, DCS has restructured the indirect corporate costs and as such this 'Unisys' account no longer is utilised. Instead, the costs has been recognised across different accounts with different GL codes in FY22.</p>
<p>4. For a sample of five journals posted to the 'Contractors/Agency Staff Fees – Indirect costs' general ledger account obtain supporting documentation (invoices, timesheets) and compare to the amount recorded. Report any differences.</p>	<p>Contractors are managed through the Contractors Central platform. This platform is not assessable by PIC management. However, we have obtained confirmation from Contractors Central that all timesheets sampled were approved by the relevant line manager.</p> <p>Invoices are generated by a third party, "Kelly OCG", and then processed by a SIRA (State Insurance Regulatory Authority) representative. It is then approved by PIC for the total cost to be posted to SAP.</p> <p>We obtained the invoice (in batch form) from Contractor Central and agreed these to the six samples selected from the 'Contractors/Agency Staff Fees - Indirect' account.</p> <p>No exceptions noted.</p>
<b>Indirect corporate recharges</b>	
<p>1. Agree the amount recorded in this general ledger account to the third party documentation for a sample of two expenses. Report any differences</p>	<p>We tested 100% of the transactions posted to this account given there were only two actual cost (non-accrual and reversal) entries recorded during the year.</p> <p>We discussed the nature of this expense as being overhead costs allocated by DCS to PIC. Due to the confidential nature of the supporting Corporate Cost Allocation document from DCS (which details the costs allocated to multiple government entities), management provided a screenshot of a section of this which shows the amount allocated to PIC.</p> <p>We agreed this to the total in the ledger with no exception noted.</p>

## Appendix L – Letter from the Hon. Victor Dominello MP



**The Hon. Victor Dominello MP**  
Minister for Customer Service and Digital Government

OFFICIAL

Our reference: COR-03811-2022

The Hon Gerard Phillips  
President  
Personal Injury Commission  
By email: judge.phillips@pi.nsw.gov.au

Dear Judge Phillips

Thank you for your request for my suggestions for additional content to be included in the Commission's annual review.

I commend you for developing KPIs that reflect not only volumes and timeliness, but also quality, and I look forward to seeing the Commission's performance against the KPIs in the 2022-2023 annual review.

For the 2021-2022 annual review, I suggest you include:

- Any significant legal change, including significant decisions which have impacted the schemes or operations of the Commission. This would include for example the decision of *Obeid v AAMI Ltd t/as AAMI* [2022] NSWPICMP 76, as well as federally impacted matters where it has now been agreed there is lawful basis for the President (sitting as a District Court Judge) to hear matters that are federally impacted at the Commission's premises.
- The efficiency and effectiveness of dispute resolution (including performance measures where available).
- The number of appeals and judicial review of Commission decisions.

I would also like you to consider what information departments and agencies are required to include in their annual reports, available in the NSW Treasury Annual Report Compliance Checklist, at [https://www.treasury.nsw.gov.au/sites/default/files/2021-09/annual\\_report\\_compliance\\_checklist\\_sep\\_2021.pdf](https://www.treasury.nsw.gov.au/sites/default/files/2021-09/annual_report_compliance_checklist_sep_2021.pdf), and include relevant matters in the Commission's annual review, if not for 2021-2022 then for future years. For example, the Commission might include more information and data about the number of staff employed and information in relation to GIPA and Privacy in line with the Treasury checklist.

I look forward to receiving the Commission's 2021-2022 annual review.

Yours sincerely

A blue ink signature of The Hon. Victor Dominello MP.

**The Hon. Victor Dominello MP**  
Minister for Customer Service and Digital Government

Date: 20/07/22

OFFICIAL

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## Appendix M – Staff Profile

This section provides data on the number of full-time Members, Senior Executives and staff working in the Commission.

	Head Count
Full-time Members	22
Senior Executives	6
Staff (including administrative and legal officers)	150
<b>Grand Total</b>	<b>178</b>

### Notes:

The head count is the number of people in each group, shown in the Commission's establishment report, as at 30 June 2022. The head count includes contractors.

The Senior Executives and staff of the Commission are provided by the Department of Customer Service pursuant to s 22 of the *Personal Injury Commission Act 2020*.

The full-time Members are appointed by the Attorney General, pursuant to s 9 of the *Personal Injury Commission Act 2020*.

The remuneration of the President, Members and Senior Executives is determined each year by the Statutory and Other Offices Remuneration Tribunal (SOORT):

- SOORT Judges and Magistrates Group Annual Determination
- SOORT Public Office Holders Group Annual Determination
- SOORT Public Service Senior Executives Determination.

The salaries of staff members are set under the Crown Employees (Administrative and Clerical Officers – Salaries) Award and the Legal Officers, Various Departments, Agreement No. 2375 of 1982.

Information about sessional Members, Medical Assessors, Merit Reviewers and Mediators can be found in other appendices.



## Appendix N – Accessing the Commission’s Information

### Types of information held by the Commission

The Commission collects information to register applications and make decisions about personal injury disputes. This includes personal information, health information and other information provided by the parties and their legal representatives in Commission proceedings, including but not limited to:

- claim forms
- medical and investigative reports
- injury management plans, clinical notes and Medical Certificates
- witness statements
- notices issued under workers compensation or motor accidents legislation
- complying agreements
- receipts
- wage information and payslips.

The Commission also holds information relating to its decisions, proceedings, services and administration.

### Protecting personal and health information

The Commission has obligations under the New South Wales *Privacy and Personal Information Protection Act 1998* (PPIPA) and *Health Records and Information Privacy Act 2002* (HRIPA) to protect the privacy rights of customers, service providers, staff and members of the public. The Commission takes these responsibilities seriously.

The PPIPA and HRIPA contain principles about managing personal and health information which we must comply with. These principles are legal obligations that describe what we must do when we collect, store, use or disclose personal and health information. This is to ensure safeguards are in place to protect personal and health information from loss, unauthorised access, use, modification or disclosure, and against all other misuse. The Commission complies with these obligations.

While anyone can seek access, under the *Government Information (Public Access) Act 2009* (GIPA Act), to government information that is held by us, there are certain considerations that are taken into account before any information is released. We are unlikely to disclose the personal or health information of another person.

### Information that is publicly available

The GIPA Act requires the Commission to make certain information, known as “open access information”, publicly available. The Commission holds the following types of open access information which is publicly available, free of charge, on the Commission’s website:

- an information guide
- policy documents.

The GIPA Act also authorises the proactive release of information unless there is an overriding public interest against disclosure of the information. Accordingly, the Commission has made the following information publicly available, free of charge, on the website:

- procedural directions and guidelines
- decisions
- guides and codes of conduct
- policies
- annual reviews
- papers and presentations
- bulletins and brochures.

### How to access the Commission’s information

If the information you seek is not available on the Commission’s website, there are, under the GIPA Act, two mechanisms for release of government information that you may wish to use: an informal request or a formal access application.

An informal request can be made to the Commission for the release of certain information. The Commission is not obliged to consider an informal request but may do so if possible.

Much of the information that is held by the Commission, other than the publicly available information referred to above, relates to the personal information of individuals and is likely to be exempt from disclosure under the GIPA Act. However, a formal access application may be made using the formal access application form.

### **Applications for internal review of the conduct of DCS under section 53(1) of the PPIPA**

The Commission received one application under section 53 of the PPIPA and completed an internal review. The Commission notified the Privacy Commissioner about the application, kept it informed about the review's progress and informed the Privacy Commissioner about the review findings and the proposed action in response to the review. The Commission also invited the Privacy Commissioner to make submissions about the application. The applicant and the Privacy Commissioner were advised of the internal review outcome.

### **Government Information (Public Access) statistics**

The GIPA Act requires agencies to report on their obligations under the GIPA Act. During 2021-22, the Commission received five access applications to release information under the GIPA Act. There were no invalid applications during this period.

Of the five applications received, three applications were refused by the Commission, either wholly or in part, because the application was for disclosure of information for which there is conclusive presumption of overriding public interest against disclosure.

Of the five applications received, one application was refused by the Commission because it could not be accessed as it was "excluded information" under section 43 of the GIPA Act. Information is the excluded information of an agency, if it relates to any of the functions specified in Schedule 2 of the GIPA Act. In this case, the information requested was captured under clause 1 of Schedule 2, namely "judicial functions".

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**Personal Injury  
Commission**

### **Personal Injury Commission**

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