



## 2007 ANNUAL REVIEW

## Disclaimer

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)) or by contacting the free hotline service on 02 9321 3333.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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# President's Foreword

December 2007 marked the end of Commission's sixth year of operation. A great deal has been accomplished in that period. Workers compensation dispute resolution has moved from being a court-based adversarial system to the more informal arbitration model that we operate today.

The previous model had been in operation almost unchanged since 1926. The practice and procedure of the Court was well established and understood. The 2001 amendments to the Workers Compensation Acts brought significant change. My predecessor Justice Terry Sheahan was primarily responsible for establishing the new Workers Compensation Commission from the ground up, including the recruitment of Presidential members and staff and the establishment of the Commission's practices and procedures.

However, Justice Sheahan would be the first to acknowledge that although the hard work in establishing the Commission and getting it to function is behind us, more work needs to be done to hone and refine its

practices and procedures to ensure that we are achieving best practice in the way that we do things. My goal, my vision for the Commission is to firmly establish it as a benchmark to which other dispute resolution tribunals aspire.

The Commission has a high public profile. We have over 20,000 individual parties utilising the Commission's services annually. We have a statutory obligation to create a dispute resolution service that meets worker and employer expectations in relation to accessibility, approachability and professionalism.

After six years of operation and with a new President and Registrar, I think this is an ideal opportunity to take a step back from the processes and procedures the Commission has adopted to date and reconsider their appropriateness and effectiveness in the current environment.

With this in mind our projects for 2008 include a comprehensive organisational review, an extensive survey of external users and service providers, an independent assessment of our information technology platform and resources, and a detailed operational and business risk analysis.

The Commission will continue its commitment to professional development through liaison with the Law Society and presentations to the metropolitan and regional Law Society groups. The President and Deputy Presidents will also maintain their commitment to speaking engagements at various seminars and conferences throughout the year.

As the Commission enters this new phase of reflection, review and consolidation, opportunities will arise for stakeholder participation and comment. I encourage you to take up these opportunities.

I look forward to leading the Commission into the future and working with you all in 2008.

His Honour Judge Greg Keating  
**President**



# Registrar's Report

2007 has been a year of significant change for the Workers Compensation Commission. Firstly, the Commission dealt with the full impact of the 2005 legislative amendments that commenced operation in November 2006. Secondly, in April the Commission went live with its new electronic case management system, Comcase. Finally, 2007 saw the departure of the founding Registrar of the Commission, followed some months later by the founding President.

The Commission has proven to be resilient and flexible enough to cope with these changes, thanks in large part to the efforts of our people. I would like, in particular, to acknowledge Deputy President Gary Byron and Deputy Registrar Annette Farrell who so capably led the organisation while the appointment processes for the President and Registrar positions were being finalised.

I would like to also say how impressed I have been by the enthusiasm and generosity of spirit shown by people in the Commission since my arrival. This has been demonstrated in a range of ways, including examples of excellent customer service, a willingness to take on extra responsibilities and participation in a variety of fundraising and other philanthropic activities organised by committed members of staff. It reflects positively on the values of the organisation and the people in it.

Congratulations go to staff members Eleanor Lynch and Lisette Rudge who received a Highly Commended award in the 2007 Workcover CEO Staff Awards, as part of the team responsible for implementing the 2005 legislative amendments. Of course, there were many others in the Commission who also played a key role in implementing those changes and they are to be congratulated also.

Finally, I wish to acknowledge the efforts of the Commission's Arbitrators and Approved Medical Specialists who play a key role in determining disputes before the Commission. I look forward to strengthening relationships with our service providers in the coming year.

2008 is likely to be another year of significant change for the Commission. Aside from the client survey and organisational review outlined in the President's Foreword, other priorities include the implementation of a comprehensive learning, development and performance framework for staff and the launch of the Commission's eScreens facility, which will allow for electronic lodgement of applications and supporting documents.

I look forward to the challenges and opportunities that lie ahead.

Sian Leathem

**Registrar**



# The Commission

## Who we are

The Workers Compensation Commission ('the Commission') is an independent statutory tribunal within the justice system in New South Wales. The Commission is responsible to the Hon John Della Bosca MLC, Minister for Education and Training, Minister for Industrial Relations, Minister for the Central Coast, and Minister Assisting the Minister for Finance.

The Commission was established on 1 January 2002, under the *Workplace Injury Management and Workers Compensation Act 1998*, to resolve disputes between injured workers and employers regarding workers compensation claims.

## OBJECTIVES OF THE COMMISSION

The Commission has the following legislative objectives, which are set out in section 367 of the *Workplace Injury Management and Workers Compensation Act 1998*:

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

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

## What we do

The Commission's non-adversarial dispute resolution process directly involves the parties in an accessible and accountable process that ensures injured workers obtain a fair and quick resolution to disputes about workers compensation entitlements.

The main areas of dispute between parties include claims relating to:

- ❑ Weekly compensation payments
- ❑ Medical expenses compensation
- ❑ Lump sum compensation for permanent impairment/pain and suffering
- ❑ Compensation to dependents of deceased workers
- ❑ Injury management
- ❑ Work injury damages
- ❑ Costs

Recognition of staff with more than 5 years of service



## The Organisation

### MEMBERS

The Commission consists of the following Members: a President, two Deputy Presidents, five Acting Deputy Presidents, a Registrar, and 54 Arbitrators.

Other than the Arbitrators who are appointed by the President, the Minister appoints the members of the Commission.

### PRESIDENT AND DEPUTY PRESIDENTS

His Honour Judge Greg Keating is a District Court Judge and was appointed President of the Commission in November 2007. Prior to his appointment Judge Keating worked as a practising lawyer in New South Wales specialising in workers compensation and personal injury law for 27 years. He also served on the Board of the WorkCover Authority for nine years.

Mr Gary Byron and Mr Bill Roche are the two full-time Deputy Presidents.

Mr Anthony Candy, Mr Robin Handley, Ms Deborah Moore, Mr Kevin O'Grady and Mr Michael Snell are the part-time Deputy Presidents, holding 12-month appointments to assist in the timely determination of arbitral appeals.

The President is the head of jurisdiction and works closely with the Registrar in the overall leadership and management of the Commission.

The President and the Deputy Presidents hear and determine appeals from decisions of Arbitrators. The President also determines 'novel or complex' questions of law referred by Arbitrators and applications by Defendants to strike out pre-filing statements.

The decisions of Presidential members may be appealed to the New South Wales Court of Appeal on points of law only.

The members of the Commission, other than the Arbitrators, are under the direction and control of the President. The Arbitrators are subject to the general control and direction of the Registrar.

### REGISTRAR

Ms Sian Leathem was appointed Registrar of the Commission in August 2007. She was previously Assistant Registrar at the Commonwealth Administrative Appeals Tribunal and has held several senior roles in the NSW Attorney General's Department.

The Registrar is responsible for the administrative management of the Commission and is the functional Head of the Commission's Services that include:

- ❑ Operations
- ❑ Information Services
- ❑ Legal Unit
- ❑ Appeals Unit
- ❑ Professional Standards Unit

The Registrar is directly responsible for providing high level executive leadership and strategic advice to the President on the resources of the Commission, including human resources, finance, asset management, facilities resources and case management strategies to ensure the achievement of the Commission's objectives and government requirements and legislation are met.

The Registrar is assisted by the Deputy Registrar (Legal) and Deputy Registrar (Operations) and the Executive Officer.

### ARBITRATORS

The President appoints the Arbitrators on a contractual basis.

Arbitrators are legally qualified and/or highly experienced in workplace injury management and workers compensation law and are trained and experienced alternative dispute resolution. There are currently 54 Arbitrators engaged by the Commission.

Arbitrators work with the parties to reach agreement where possible through a series of conference-style meetings (by telephone and in person). Where parties are unable to reach agreement, the Arbitrator determines the dispute either on the documentation provided by the parties or after the matter is set down for an arbitration hearing.

A full list of current Members appears in Appendix 1.

## SERVICE PROVIDERS

In addition to the members of the Commission the President appoints Approved Medical Specialists and Mediators.

## APPROVED MEDICAL SPECIALISTS

Approved Medical Specialists (AMSs) are medical practitioners from a variety of specialties, who have undergone training in the WorkCover guidelines to assess whole person impairment. There are approximately 120 Approved Medical Specialists, engaged by the Commission throughout New South Wales.

Disputes about the degree of permanent impairment are referred to Approved Medical Specialists for assessment. Following consideration of material provided to them and an examination of the worker, the Approved Medical Specialist issues a Medical Assessment Certificate (MAC). An assessment as to the degree of permanent impairment is binding on the parties.

## MEDIATORS

Mediators mediate claims for work injury damages, as and when directed to do so by the Registrar. There are currently 36 Mediators engaged by the Commission.

The Mediators use their best endeavours to bring the parties to a negotiated settlement. Except in limited circumstances, parties are required to refer matters to the Commission for mediation before commencing court proceedings.

A schedule of the Mediators and Approved Medical Specialists appears in Appendix 2.

## MEDICAL APPEALS

The Commission also manages appeals from medical assessments by Approved Medical Specialists to Medical Appeal Panels. Medical appeals are made by application to the Registrar and determined by an Appeal Panel constituted by an Arbitrator and two Approved Medical Specialists, who review the original decision and determine the appeal.

## STAFF

There are approximately 110 staff in a number of units in the Commission, who are employed to carry out its functions.

## OPERATIONS

The Operations Unit is managed by the Deputy Registrar - Operations (Ms Annette Farrell) and consists of three sub-units:

### Registry

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

Registry is responsible for registering matters and managing the information exchange period, including receipt of produced documents and access arrangements. The staff in registry receive initial telephone enquiries and manage the Commission's incoming and outgoing mail.

### Dispute Services

Dispute Services staff are responsible for the case management of applications after registration, through to the closure of the matter (excluding appeal periods).

Work undertaken by the unit includes allocation of work to Arbitrators, AMSs and Mediators; arrangement of all stages in proceedings, including teleconference, conciliation/arbitration hearing, medical examinations; preparation of briefs for Arbitrators and AMSs; and issuing of Medical Assessment Certificates and Certificates of Determination to parties.

Robert Sargent - Team Manager, Dispute Services





Rod Parsons - Deputy Registrar, Legal

## Expedited Assessment

Expedited Assessment Officers perform a range of functions under delegations from the Registrar, including:

- ❑ Issuing interim payment directions
- ❑ Dealing with some interlocutory applications
- ❑ Managing applications to cure defective pre-filing statements
- ❑ Issuing certificates under section 362 for recovery of monies owed.

They can also make recommendations in relation to work injury management disputes (WIM). There is a right of review to an Arbitrator in relation to WIM matters.

## APPEALS

The Appeals Unit is responsible for the administration of all appeals, both from decisions of arbitrators and against a Medical Assessment (medical appeals).

Legally qualified staff in the Appeals Unit, as delegates of the Registrar, perform an important statutory function by exercising the Registrar's gatekeeper role under section 327(4) of the *Workplace Injury Management and Workers Compensation Act 1998*. This section states that a medical appeal is not to proceed unless the Registrar is satisfied that at least one of the specified grounds for appeal has been made out.

In consultation with the Registrar, the Appeals Unit manages appeals lodged in the Court of Appeal against decisions of Presidential Members and judicial review proceedings in the Supreme Court in respect of the decisions of Medical Appeal Panels and the Registrar.

## PROFESSIONAL STANDARDS

The Professional Standards Unit is responsible for the coordination of professional development, support and management for Arbitrators, Approved Medical Specialists and Mediators. This includes the management of ongoing professional development activities, including orientation sessions, forums and conferences. The unit also provides secretariat support for the Arbitrator, AMS and Mediator Reference Groups.

The unit is also responsible for the provision of quality and timely stakeholder information, including the E-bulletin.

## LEGAL

The Legal Unit is managed by the Deputy Registrar - Legal (Mr Rod Parsons).

The Legal Unit has a number of functions, including:

- ❑ Management of applications to revoke interim payment directions
- ❑ Applications for assessment of legal costs
- ❑ The provision of legal advice to members of the Commission, staff and service providers
- ❑ Delivery of training and presentations, both internally and to external groups.

The Deputy Registrar also handles legal inquires from legal practitioners, employer and employee associations, WorkCover and other government departments and members of the public.

The Research and Information Officer manages the Commission's library resources and is available to assist with work-related research. As a member of a range of formal library networks and a subscriber to specialised information services, the library has access to a range of electronic and hard-copy resources.

## PRESIDENTIAL UNIT

Research Associates provide legal research and support to the Presidential Members.

The Administrative Associate works closely with the Presidential Members providing administrative support, including the editing and publication of Presidential decisions.

## INFORMATION SERVICES

The Information Services Unit provides a variety of support services to the Commission, including business support, IT support, administration and records and information management.

## COMMITTEES AND GROUPS

There are a number of committees made up of Commission members, staff and service providers that undertake projects and/or provide advice, recommendations and assistance in relation to the operations of the Commission. A brief description of the role and membership of each committee and group is set out below:

### Practice and Procedure Committee

Chair: President, His Honour Judge Greg Keating

Deputy President Gary Byron  
Deputy President Bill Roche  
Registrar Sian Leatham  
Deputy Registrar (Operations) Annette Farrell  
Deputy Registrar (Legal) Rod Parsons

The Practice and Procedure Committee held its inaugural meeting in November 2007. The Committee now meets on a bi-monthly basis and operates as a deliberative and decision-making forum for a range of issues affecting practice and procedure in the Commission. Recent meetings have dealt with matters including the 2008 Client Survey and Organisational Review, the revision of Commission forms and the future management of Medical Appeal Panel matters.

## REFERENCE GROUPS

The Commission has established Arbitrator, AMS and Mediator Reference Groups to operate as advisory and consultative forums through which the Commission can communicate with and obtain feedback from, Commission members and service providers in relation to a variety of issues.

### Arbitrator Reference Group

Chair: Registrar Sian Leatham

John McDermott, Arbitrator  
Bruce McManamey, Arbitrator

Carolyn Rimmer, Arbitrator  
Faye Robinson, Arbitrator  
Annette Simpson, Arbitrator  
Craig Tanner, Arbitrator  
Lyn Martin, Professional Standards  
Nardean Parsons, Professional Standards  
Lorraine Salloum, Professional Standards

### AMS Reference Group

Chair: Registrar Sian Leatham

Dr Mohammed Assem  
Dr Geoffrey Boyce  
Dr P J Burke  
Dr Mark Burns  
Dr Drew Dixon  
Professor Michael Fearnside  
Dr Hunter Fry  
Dr Michael Glicksman  
Dr Phillipa Harvey-Sutton  
Dr Ross Mellick  
Dr Ross Mills  
Dr Roger Pillemer  
Dr Thomas Silva  
Dr Brian Williams  
Lyn Martin, Professional Standards  
Nardean Parsons, Professional Standards  
Lorraine Salloum, Professional Standards

### Mediators Reference Group

Chair: Registrar Sian Leatham

Raymond Brazil, Mediator  
Garth Brown, Mediator  
Sue Duncombe, Mediator  
Geri Ettinger, Mediator  
Nina Harding, Mediator  
Katherine Johnson, Mediator  
Steve Lancken, Mediator  
John McGruther, Mediator  
Ross MacDonald, Mediator  
Derek Minus, Mediator  
Greg Rooney, Mediator  
Natasha Serventy, Mediator  
Mary Walker, Mediator  
Ross Whitelaw, Mediator  
Lyn Martin, Professional Standards  
Nardean Parsons, Professional Standards  
Lorraine Salloum, Professional Standards

# 2007 Workload Discussion

## Lodgements

During 2007 the Commission received a total of 10,577 lodgements comprising the following:

<b>LODGEMENT TYPE</b>	<b>NUMBER</b>
Application to Resolve a Dispute (Form 2)	8,175
Interim Payment Directions (Form 1)	650
Revocation of an IPD (Form 1A)	40
Workplace Injury Management dispute	114
Registration for Assessment of Costs	236
Commutation Agreement (Form 5A)	66
Redemption Agreement (Form 5B)	59
Mediation (Form 11)	413
Arbitral Appeals (Form 9)	188
Medical Appeals (Form 10)	636
<b>TOTAL</b>	<b>10,577</b>

## Applications to Resolve a Dispute

The number of Form 2 lodgements has declined when compared to 2005. While the Commission cannot make any firm conclusions about the reasons for the overall decline in lodgements, it would appear that the amendments to the *Workers Compensation Act 1987* and the *Workers Compensation and Workplace Injury Management Act 1998* by the *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005* effective 1 November 2006 (the 1 November 2006 amendments) have resulted in improved claims management by Scheme Agents, meaning that fewer disputes proceed through to the Commission. Lodgement trends in 2007 indicate that the decline has now stabilised and we anticipate that 2008 lodgements will remain at similar levels to those experienced in 2007.

As well as leading to an overall decline in Form 2 lodgments, the amendments significantly changed the way in which matters are case managed or "streamed" in the Commission.

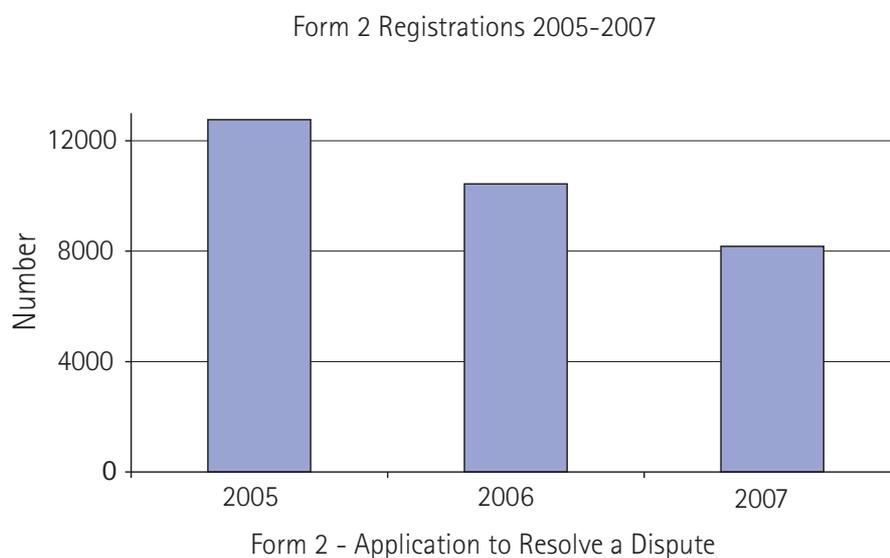
Prior to the November 2006 amendments, all disputes involving permanent impairment were first referred to an Arbitrator to use their best endeavours to settle the matter at teleconference. If settlement was not achieved the Arbitrator referred the dispute to an AMS for a binding assessment.

Since 1 November 2006, all disputes concerning the degree of permanent impairment must be assessed by an AMS.

This change has resulted in all referrals to an AMS now being made by the Registrar, rather than by an Arbitrator following settlement negotiations.

In matters where the only issue in dispute between the parties is the degree of permanent impairment, the Registrar refers the matter directly to an AMS, rather than to an Arbitrator. Further data about the streaming of matters can be found in Appendix 3.

This change has led to an inevitable decrease in the volume of work being referred to the Arbitrators and an increase in the volume and complexity of administrative work undertaken by Commission staff acting as delegates of the Registrar.



## Other applications

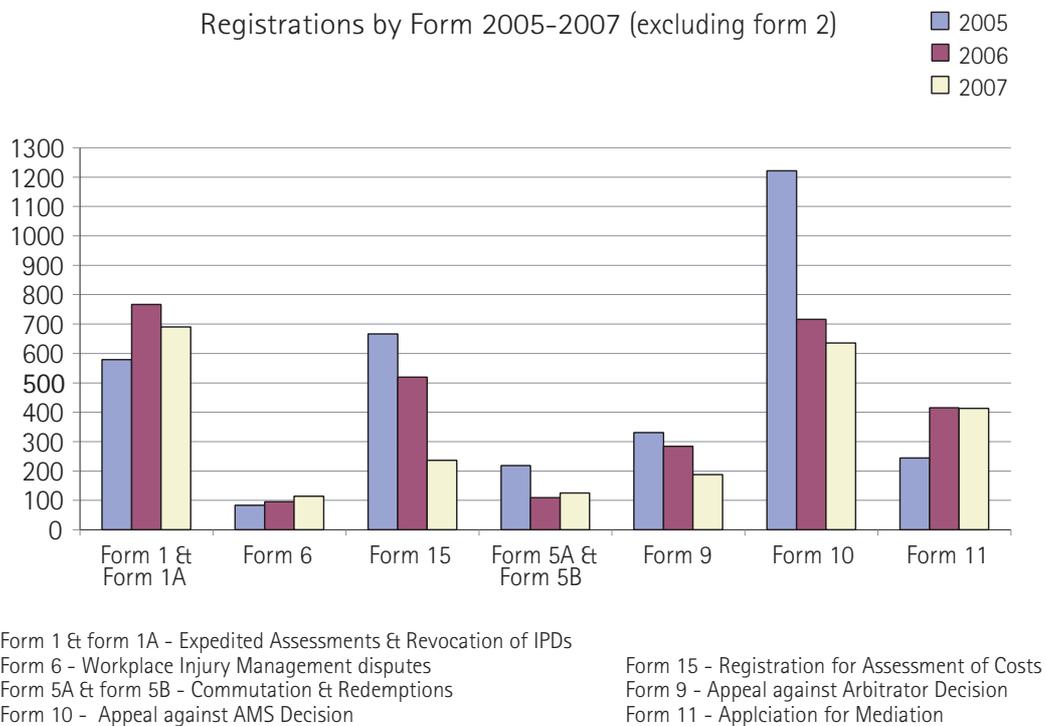
The number of Form 1, Form 1A, Form 5A, Form 5B, Form 6 and Form 11 lodgments has either increased slightly or remained steady over the last three years.

There has been a marked decrease in the number of applications for assessment of costs since 2005 (Form 15). This decline can be directly attributed to the changes made to the legal costs model resulting from the 1 November 2006 amendments.

In 2007, there was also a decline in the number of appeals against Arbitral decisions (Form 9) and appeals to Medical Appeal Panels (Form 10) compared with 2005 and 2006.

The large number of registrations of appeals to Medical Appeal Panels, in 2005 and 2006, reflects the unusually high volume of medical assessments during the managed reduction of an accumulation of files that were on hand. Now that overall lodgments and finalisations are largely in synchronisation, there were fewer appealable matters during the reporting year.

The reduction in the number of appeals against Arbitral decisions, lodged between 2006 and 2007, is largely due to the 1 November 2006 amendments. The amendment legislation prevents appeals against an assessment of costs and restricts appeals against decisions of an interlocutory nature.



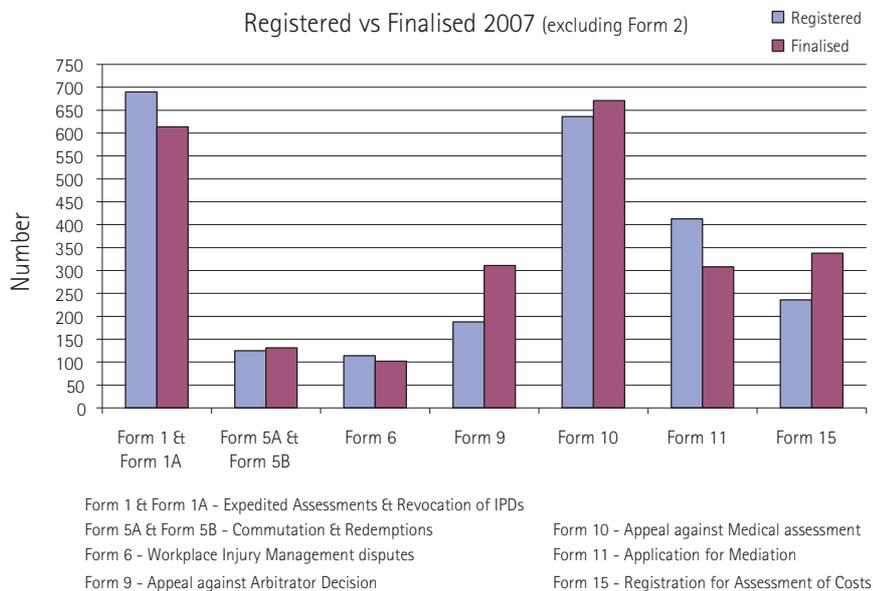
## Finalisations



From 2005 to 2007, the Commission continued to finalise more applications to resolve disputes (Form 2) than it received during 2007.

This reflects increased efficiencies in managing these applications leading to reductions in the time it takes for these matters to be finalised. Thus, the Commission was able to address some accumulated work that had developed.

The higher finalisation rates in 2005 and 2006 largely reflect the Commission's success in managing the accumulated back-logs on hand at that time.



During 2007, the Commission also finalised more of the following types of applications than it registered in the year:

- applications for costs assessment (Form 15)
- arbitral appeals (Form 9)
- medical appeals (Form 10)
- commutations and redemptions.

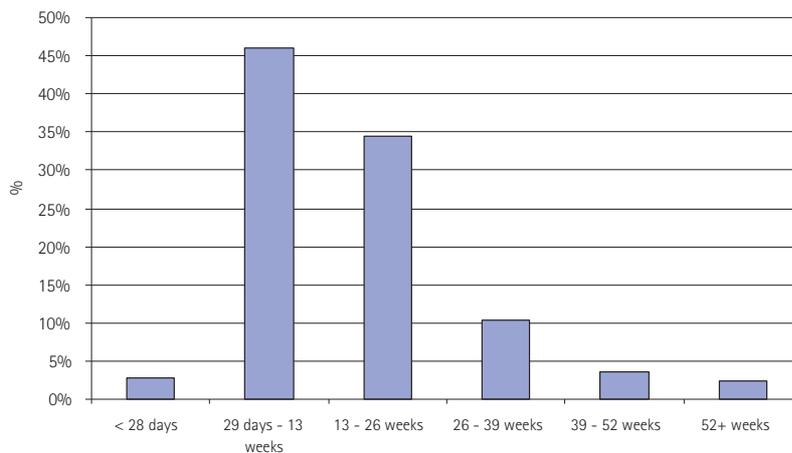
## Timeliness

One of the Commission's statutory objectives is to provide a timely service to users. The Commission continues to deliver on this objective, finalising approximately half of all Form 2 applications in 13 weeks or less, with a further 35 per cent of matters being finalised between 13 and 26 weeks.

Only two per cent of matters remain open for a period in excess of 12 months. In all cases, this is due to the matter being subject to a medical and/or arbitral appeal.

Data concerning the average time taken to finalise medical and arbitral appeals is available at Appendix 4.

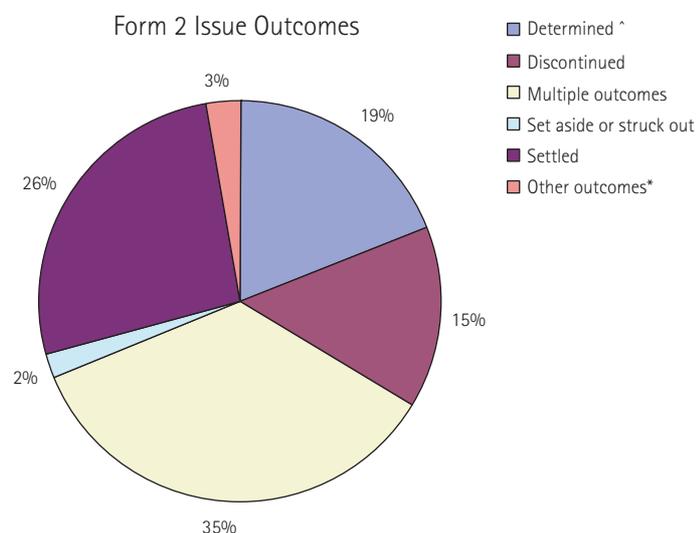
Disputes - Time Taken (including Appeals) 2007



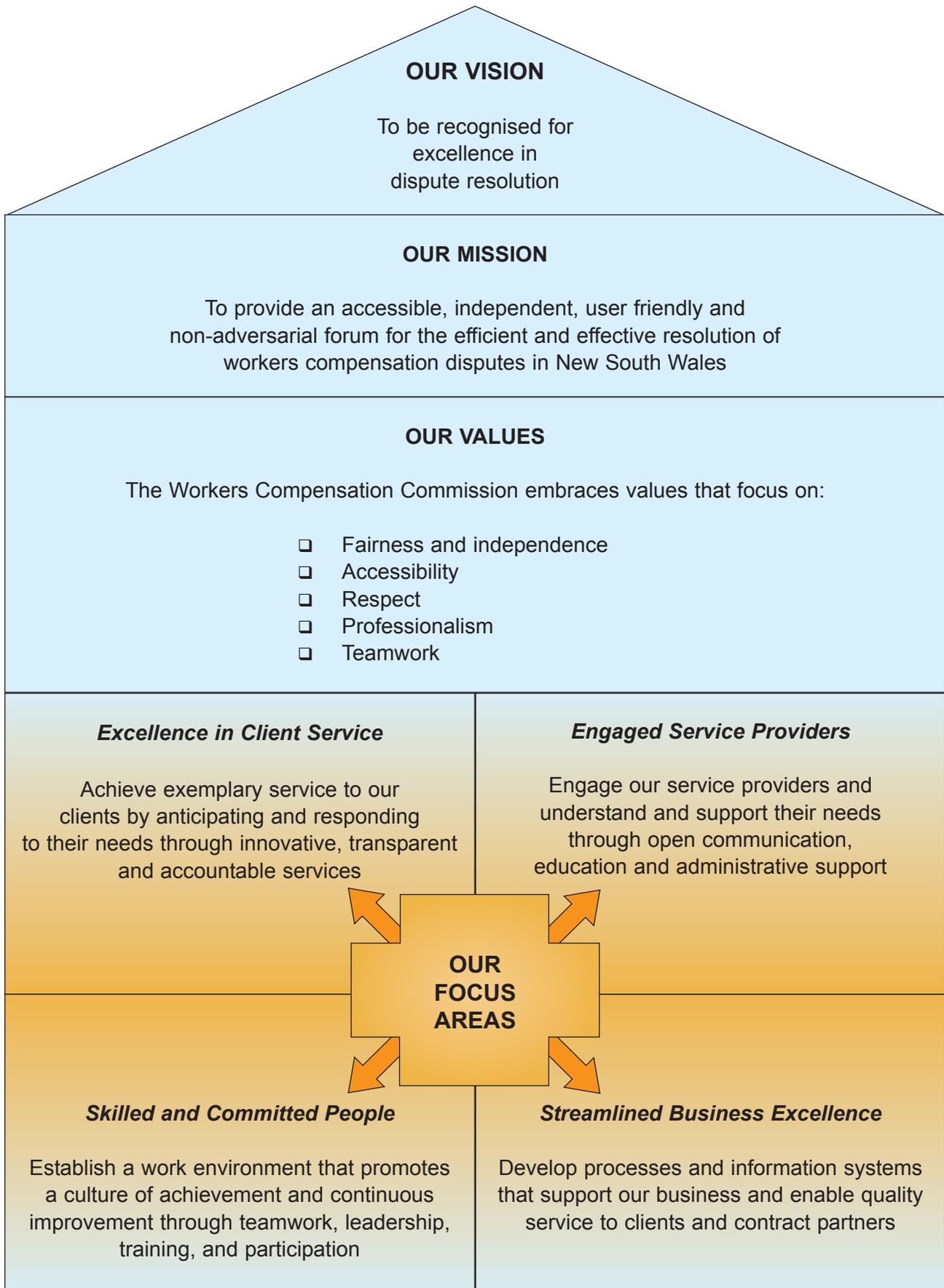
## Outcomes

19% of all Form 2 Applications progressed to a final determination. 35% involved multiple outcomes, which usually means that the claims were partly settled and partly determined and/or partly discontinued. 26% of matters were settled and 15% of matters were discontinued.

During 2007, the Commission was operating two separate and incompatible data systems: Genesis and Comcase. As they recorded matter outcomes in different ways during an overlapping period, it is difficult for the Commission to provide comprehensive outcome data for 2007. However, in 2008, all current data will be contained solely in the Comcase system, which will allow for more accurate and comprehensive reporting in the future.



# Corporate Plan 2005-2008



# Achievements under the Corporate Plan

When developing the Corporate Plan the Commission identified four major strategic focus areas that are key to our delivering on our statutory objectives. These focus areas are:

- ❑ Excellence in Client Service
- ❑ Engaged Service Providers
- ❑ Skilled and Committed People
- ❑ Streamlined business Excellence

## 1 Excellence in Client Service

The Commission aims to provide an exemplary service to our clients by anticipating and responding to their needs through innovative, transparent and accountable services. A number of client service initiatives are outlined below.

### ACCESS AND EQUITY SERVICE CHARTER

The Commission's Access and Equity Charter identifies a number of standards and strategies against which the Commission's objectives of access and fairness are measured. It is an important statement about the values of the Commission and its commitment to the delivery of a just workers compensation dispute resolution service to all members of the community.

It is a living document that is reviewed annually to ensure that it remains relevant and effective.

The Charter provides information to users of the Commission regarding the standards they can expect and the assistance that is available and includes policies, practices and procedures on the following:

- ❑ Fees - the Commission provides its services free to all parties including free interpreter services to persons to whom English is a second language and to people who have a hearing disability

- ❑ Self-represented parties
- ❑ Outreach services
- ❑ Flexible services for people with disabilities
- ❑ Communications policy including use of 'plain English' in all activities
- ❑ Recording and transcription policy
- ❑ Recognition of cultural differences
- ❑ Servicing rural and regional communities
- ❑ Code of Conduct for Members of the Commission
- ❑ Quality Decision making
- ❑ Timeliness and efficiency
- ❑ Complaints policies and procedures.

### REGIONAL SEMINARS

In late 2006, the Commission prepared and presented comprehensive seminars on the changes to the Commission's practices and procedures as a result of legislative amendments, which were effective from 1 November 2006. These seminars were held in a number of regional areas of NSW, including Orange, Port Macquarie, Tamworth, Wollongong, Wagga Wagga and Newcastle. Sessions were also held in the Sydney metropolitan area.

The 2006 seminars were well attended by legal practitioners and in some sessions, registrations exceeded available places.

Following on from the success of the 2006 seminars, the Commission held another series of seminars in 2007. In response to expressions of interest from regional law societies, seminars were held in Sydney (multiple sessions), Albury, Ballina, Newcastle, Penrith, Tamworth and Wollongong. The focus of the seminars was practice and procedure in the Commission, including introduction of electronic lodgement and legal costs in workers compensation matters. Once again, feedback from attendees was positive.

In late 2007, the Commission began a consultation process with the Law Society and its regional presidents in preparation for the development of a new series of Commission seminars for 2008. The sessions will address current practices in the Commission and will also target the expressed needs of our stakeholders.

## USER GROUP

The President chairs the Commission's User Group, which is composed of the Registrar, the two full time Deputy Presidents and representatives from the NSW Bar Association, the Law Society and WorkCover.

The constitution of the group was expanded in late 2007 to include representatives of WorkCover and a regional practitioner nominated from the Law Society of NSW.

The membership is as follows:

President, His Honour Judge Greg Keating  
Deputy President Gary Byron  
Deputy President Bill Roche  
Registrar Sian Leathem  
Mr Rob Thomson, General manager of the Workers Compensation Division  
Mr Tim Doubleday, Manager, Legal Provider Team, WorkCover Authority  
Mr Michael Jenkins, Barrister  
Mr Steve Harris, solicitor  
Ms Roshanna May, solicitor  
Mr Howard Harrison, solicitor  
Mr David Jones, solicitor  
Mr Brian Moroney, solicitor

The group meets quarterly and is an excellent forum for discussion and feedback on operational and procedural issues to ensure the Commission's practices and

procedures are working efficiently and meeting stakeholder expectations.

Recent issues discussed at the meetings include changes regarding access periods for documents produced to the Commission and piloting the e-Screens facility.

## e-BULLETIN

The Commission distributes a quarterly e-Bulletin containing information about practices, procedures and new developments in the Commission.

The e-Bulletin is available to any person or organisation who subscribes through its website.

## OTHER CLIENT SERVICE ACTIVITIES

The Commission also provides a variety of other client services, including:

- Regional sittings for arbitration hearings
- Publication of decisions: The Commission is committed to the publication of its decisions on its website ([www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au)) and on the Australasian Legal Information Institute (AustLII) website ([www.austlii.edu.au](http://www.austlii.edu.au)) to ensure transparency, accountability, education and guidance to parties on all matters within the jurisdiction of the Commission.
- Making a financial contribution to AustLII to publish Presidential decisions
- Publication of Presidential decisions in the NSWCCR
- Provision of brochures and a DVD on a variety of topics regarding proceedings in the Commission. The brochures are also available in a variety of community languages.

## 2 Engaged Arbitrators and Service Providers

### PROFESSIONAL DEVELOPMENT ACTIVITIES

Commission Arbitrators and AMSs play vital roles in resolving disputes in the Commission. In recognition of this, the Commission invests considerable resources in their professional development.

A comprehensive program of mandatory conference days

and voluntary short forums was conducted during 2007. The themes and content for these training sessions were determined in consultation with the members of the Arbitrator and AMS reference groups. These reference groups meet on a quarterly basis and a major focus is the identification of the training needs of the groups that they represent.

In April 2007, the Commission conducted an induction program for Arbitrators and AMSs participating in Medical Appeals Panels, including: *Preparing for Medical Appeal Conferences, Key Steps and Strategies for Managing Appeal Panels*, and *Dealing with the Difference between Medical Reasoning and Legal Reasoning on Appeals Panels*.

In July 2007 the Commission held its annual conference for all Arbitrators. The conference focused on a range of topics directly relevant to the Arbitrator's roles in the Commission, including *Discretionary Powers and Procedural Fairness, Consistency in the Exercise of Discretion and Principles of Reconsideration under section 350(3) of the 1998 Act*.

In August 2007, the Commission conducted its annual conference for AMSs. The sessions included *Procedural Fairness and Complex Medical Assessments*. The conference also provided workshop activities for the doctors to work through a range of hypothetical case studies relevant to their particular medical specialty.

In September 2007, the Commission conducted an induction program for a number of new AMSs appointed in the year. This program inducted the doctors to practices and procedures of the Commission, and to the role of AMSs in conducting general medical assessments and assessments of permanent impairment on referral from the Commission.

In addition to the efforts of the members of the reference groups, a number of Arbitrators, AMSs, staff and Presidential members prepared and presented papers and actively participated in the training activities. We are grateful for their ongoing enthusiasm and support.

Special mention is also made of the AMS bi-monthly meetings. These meetings are organised and run by the AMSs as a self-directing group. The Commission hosts the meetings and provides the use of its facilities, but it is the doctors who drive this valuable development program.

## COMCASE

During 2007, the Commission implemented a new web-based case flow management system called Comcase. The system supports a full range of functions, including allocation of matters to Arbitrators and service providers, lodging finalisation documents of proceedings and electronic lodgement of invoices. Comcase is allowing better, faster and more consistent management of workflow and documents between the Commission and its Arbitrators and service providers.

Access to Comcase is a major support tool for our arbitrators and service providers. For the first time, the Commission staff and its Arbitrators and service providers are able to access one system together, to achieve the shared goals of the Commission. This will lead to improved communication between the groups, elimination of unnecessary manual tasks and speedier processing of claims.

## 3 Skilled and Committed People

The Commission is committed to providing learning and development opportunities for its staff. There have been several initiatives during 2007 aimed at maintaining and enhancing the skills and knowledge of Commission staff.

## PILOT OF INDIVIDUAL DEVELOPMENT PLANS

In June 2007, the Commission commenced a pilot program to trial the introduction of Individual Development Plans (IDPs). The aim of an IDP program is to increase organisational capability by linking staff development goals with those of their work area, as well as offering staff an opportunity to pursue development activities aimed at enhancing their long-term career aspirations.

Following completion of the pilot, the Commission has committed to the development of a comprehensive learning, development and performance framework for staff, of which the IDP program will be one element. The Commission plans to engage a permanent Organisational Development Officer in 2008 to assist with the design and implementation of the framework.

## WORKCOVER TRAINING

WorkCover provides Commission staff with the opportunity to participate in a variety of training programs via its Learning Services Unit. Programs are designed to build on existing skills and knowledge and to improve the capability of teams and cover such areas as business skills, computer skills and people and management skills.

## CONFERENCES AND SEMINARS

Members and staff represented the Commission at various conferences during 2007, including:

- ❑ 4th Annual Conference of the Council of Australian Tribunals (COAT) NSW Chapter, Sydney May 2007
- ❑ 10th Annual AJA Tribunals Conference, Melbourne, June 2007
- ❑ Workers Compensation Dispute Resolution Services Interjurisdictional Meeting, Melbourne, June 2007
- ❑ 2007 Convention of Regional Law Society Presidents
- ❑ NSW Self Insurers Association Conference, March 2007
- ❑ Merrylands & District Rehabilitation Interest Group, May 2007
- ❑ 8th Annual National Workers Compensation Summit, Sydney, February 2007
- ❑ College of Law - Specialist Accreditation Personal Injury Law Conference, Wollongong, September 2007

Members and staff presented the following papers at these conferences:

- ❑ Changes to Dispute Resolution in the Workers Compensation Commission, Deputy Registrar Parsons, 8th Annual National Workers Compensation Summit, Sydney, February 2007
- ❑ Changes to Commission Practices and Procedures, Deputy Registrar Farrell, NSW Self Insurers Association Conference, March 2007
- ❑ The Commission, President Justice Sheahan, 2nd Annual Australian Self Insurance Summit, Sydney, 3 April 2007
- ❑ Making Decisions: We all do it, Deputy President Byron, Workers Compensation - Arbitrator Professional Development Conference, Sydney, 27 April 2007

- ❑ An Outsider's View of the Commission Five Years On, Deputy President Roche, Arbitrator Professional Development Conference, Sydney, 27 April 2007
- ❑ The Role of Presidential Members, Appeals, Education and Training of Arbitrators and the Future of the Commission, Deputy President Byron, Bartier Perry Workplace Relations Seminar, Sydney, 15 May 2007
- ❑ Overview of the Commission, Registrar Farrell, Merrylands & District Rehabilitation Interest Group, May 2007
- ❑ The Reconsideration Power of the Commission, Acting Deputy President Snell, Arbitrator Training, Sydney, July 2007
- ❑ Appeals against Decisions of Arbitrators, Deputy President Roche, NSW State Legal Conference, 30 August 2007
- ❑ Views from the Workers Compensation Commission: Procedural Issues, Deputy Registrar Parsons, College of Law - Specialist Accreditation Personal Injury Law Conference, Wollongong, September 2007
- ❑ Court of Appeal Decisions, Deputy President Roche, CLE, 26 October 2007;
- ❑ Some Reflections on A System: the New South Wales Workers Compensation Commission, Deputy President Byron, 3rd Australian Workers Compensation Summit 2007, Sydney, 27 November 2007

## PUBLISHED PAPERS

- ❑ Deputy President Byron, Making Decisions: We all do it (2007) 18 ADRJ 162

A number of Presidential Members, Arbitrators, AMSs and Commission staff participated in Professor James Raymond's Decision Writing Workshop in September 2007.

## JUSTICE MICHAEL CAMPBELL LIBRARY

On his retirement as Chief Judge of the Compensation Court, Justice Campbell generously donated his personal library to the Commission for use by its Presidential Members and staff.

On 8 May 2007, the former President, Justice Terry Sheahan, officially opened the Justice Michael Campbell Library in the Presidential Unit. Justice Campbell, the Minister, Mr Della Bosca, a number of former judges from the Compensation Court and members and staff of the Commission attended the opening.

Justice Campbell's valuable collection has considerably enhanced the library resources of the Commission.

## SUMMER CLERK PROGRAM

In partnership with the University of Western Sydney, the Commission has again provided two summer clerkships. This program has been in operation for three years.

The students are employed by the Commission over the University summer vacation period and rotate through the various decision-making and administrative areas of the Commission's Registry and Presidential Office.

## 4 Business Excellence

### COMCASE

Following a long process, the Comcase system was approaching design phase completion when the 1 November 2006 amendments were implemented. These amendments had a significant impact on the streaming of work in the Commission. As a result, the specifications for Comcase had to be amended to accommodate the new legislation.

As with the development or re-development of any major system, repeated rounds of user acceptance testing (UAT) of the new system had to be undertaken by the staff in early 2007.

In April 2007, the system was ready for implementation. Training modules for staff were developed in-house and delivered by staff who had worked on the design and implementation of the system. The first matters were registered in Comcase on 30 April 2007.

Considerable post-implementation work continued throughout 2007, bedding-down and fine-tuning the workflows and business rules in the system and training the Commission's Arbitrators and service providers. The

training of approximately 180 external service providers had to be conducted on an individual basis over a period of several months as Comcase matters were allocated to them.

In addition to supporting the flow of work between the Commission and its Arbitrators and service providers, Comcase is also an important tool for internal case management. It draws together into one contiguous system the functions that were previously being accomplished through the use of several disparate applications and work systems.

Comcase also records an increased depth of information compared to the Commission's previous case-flow system. Moving into 2008, the Commission's challenge is to take advantage of the extra business intelligence gathered by Comcase. To this end, reporting will be one of the major focus areas of the ongoing Comcase project.

2008 will also see the development of an on-line application module called e-Screens. This will allow electronic lodgement by the Commission's users. It is anticipated that this exciting development will lead to further efficiencies in the management of proceedings in the Commission.

### FORMS REVIEW

The Commission programmed a review of its forms as part of the post implementation review of the November 2006 legislative changes. The review is being conducted in two phases:

- ❑ Phase one - a review of the forms themselves
- ❑ Phase two - incorporation of any necessary changes.

Phase one of the review was commenced in August 2007. Feedback was sought from staff, external users of the Commission's forms, as well as Arbitrators and service providers. Some helpful suggestions have been received and several forms will be amended as a consequence. This phase will be finalised in early 2008.

Phase two will consist of the incorporation of approved changes into our forms and the formal release of the new versions.

# Developments in the Law

## Appeals to the Court of Appeal

Appeals from Presidential decisions on points of law are made to the Court of Appeal. In 2007, 16 appeals were filed in the Court of Appeal against decisions of Presidential members.

In 2007, the Court of Appeal delivered judgment in 16 appeals from decisions of Presidential Members. The Court of Appeal upheld the Presidential Member's decision in 13 of these matters, remitting three matters for rehearing.

## Judicial Review

Under the *Supreme Court Act 1970* parties who are aggrieved by decisions of the Registrar and Medical Appeal Panels, may seek review of these decisions in the Supreme Court.

In 2007, 20 applications for judicial review were filed in the Supreme Court seeking review of decisions by Appeal Panels and/or the Registrar. The 20 applications were comprised as follows:

Decision Maker	Number of Applications lodged
Medical Appeal Panel	9
Registrar (Medical Appeal Gateway)	9
Medical Appeal Panel and Registrar	0
Registrar (Other)	2
Total	20

## Outcomes

In 2007, there were 38 matters finalised in the Supreme Court and the Court of Appeal of New South Wales relating to decisions of the Appeal Panels and the Registrar.

Of these 38 matters, 26 applications were dismissed, discontinued, struck out or resolved by consent and 12 were upheld by the Court.

Decision Maker	Number of matters finalised	Dismissed	Discontinued/struck out/ consent orders filed	Upheld
Medical Appeal Panels	18	8	4	6
Registrar - Medical Assessment	13	6	5	2
Registrar and Medical Appeal Panel	2	0	0	2
Registrar - Other	5	3	0	2
Total	38	17	9	12

## Recent Decisions and Judgments

In addition to legislative changes that have impacted on the development of the law in the Commission, the Commission is now in its sixth year of operation. There have been a number of authoritative decisions from Presidential Members and binding authority from the Court of Appeal interpreting provisions of the Act and the new jurisdictional framework of the Commission. Below is a selection of some of the most significant cases;

## Appeals to Presidential Members

### POWERS ON APPEAL TO PRESIDENTIAL MEMBERS

#### (i) Power of review

Section 352(5) of the 1998 Act provides that an arbitral appeal is to be by way of review of the decision appealed against.

Before an Arbitrator's decision will be revoked on review it must be demonstrated that it contains, or has resulted from, an error of fact, law or discretion. The error must be such that, but for it, a different decision should have been made (see *Snow Confectionary Pty Ltd v Askin* [2004] NSWCCPD 56).

The nature of a review and the role and function of a Presidential Member on appeal has been considered recently in the Court of Appeal. In *Aluminium Louvres & Ceilings Pty Limited v Zheng* [2006] NSWCA 34 Bryson JA at [38] stated that

"A review is a different process to an appeal and the matters which may be considered and the manner in which they may be considered are somewhat wider. See *Boston Clothing Co Pty Ltd v Margaronis* (1992) 27 NSWLR 580 at 584 (Kirby P). An attack, on review or otherwise, on an Arbitrator's discretionary decision in controlling procedure may be based on the test stated in *House v. R*

(1936) 55 CLR 499 at 504 - 505; but that is not the only basis on which the Presidential member may act. The powers of a Presidential member on review are somewhat wider and extend to power to reopen consideration of a matter of which an Arbitrator has disposed; the manner in which the powers of the Presidential member are to be exercised is itself the subject of discretion of the Presidential member."

McColl JA recently quoted this passage with approval in *South Western Sydney Area Health Service v Edmonds* [2007] NSWCA 16 (at [133]). Her Honour added that to describe the relative weight and relevance of expert evidence as "a discretionary decision which could only be disturbed on *House v The King* principles" was "an over-generalisation".

The Court of Appeal in *State Transit Authority of New South Wales v Fritzi Chemler* [2007] NSWCA 249 further considered the nature of a review. Spigelman CJ held at [28]:

"The concept of a review on the merits is wider than the concept of an appeal in a judicial context. There is a well established line of authority on the use of the terminology of 'review' instead of 'appeal' with respect to the workers compensation system in this State which establishes the breadth of a review on the merits."

Spigelman CJ also considered the nature of review in relation to the power to remit as provided by section 352(7), which states that "on appeal, the decision may be confirmed or may be revoked and a new decision made in its place. Alternatively, the matter may be remitted back to the Arbitrator concerned, or to another Arbitrator, for determination in accordance with any decision or directions of the Commission." Spigelman CJ said at [22] and [30]:

"22 The scope of an internal merits review by a Presidential member is an important safeguard

for the proper operation of the legislative scheme. Arbitrators' decisions, particularly on issues of credit, are entitled to respect. That does not, however, mean that such a merits review process should operate on the basis of some kind of presumption that the first instance decision-maker should redetermine the matter

30 A Presidential member exercising a power to review a decision must decide whether the original decision is wrong or, as it is often put in the context of administrative appeals on merits, must decide what is the true and correct view. If s/he does so decide then s/he should substitute his or her own views, unless it is an appropriate case to remit. The power to remit is not constrained in the manner for which the Appellant contends."

## (ii) Reconsideration power

The Commission's reconsideration power is contained in section 350(3) of the 1998 Act, which reads:

"The Commission may reconsider any matter that has been dealt with by the Commission and rescind, alter or amend any decision previously made or given by the Commission."

The reconsideration power has been relied on more extensively in the Commission, than the similar power available in the former Compensation Court and former Commission. A number of decisions have considered the scope and application of the reconsideration power.

In *Samuel v Sebel Furniture Limited* [2006] NSWCCPD 141 ('*Samuel*'), Acting Deputy President Roche (as he then was) provided an extensive review of the authorities applicable to 'reconsideration' under the earlier statutory regimes. ADP Roche, having regard to the authorities and the provisions and objectives of the 1998 Act, held that the following principles applicable to reconsideration applications under section 350(3) of the 1998 Act:

1. the section gives the Commission a wide discretion to reconsider its previous decisions

2. whilst the word 'decision' is not defined in section 350, it is defined for the purposes of section 352 to include "an award, order, determination, ruling and direction". In my view 'decision' in section 350(3) includes, but is not necessarily limited to, any award, order or determination of the Commission

3. whilst the discretion is a wide one, it must be exercised fairly with due regard to relevant considerations including the reason for and extent of, any delay in bringing the application for reconsideration

4. one of the factors to be weighed in deciding whether to exercise the discretion in favour of the moving party is the public interest that litigation should not proceed indefinitely

5. reconsideration may be allowed if new evidence that could not with reasonable diligence have been obtained at the first Arbitration is later obtained and that new evidence, if it had been put before an Arbitrator in the first hearing, would have been likely to lead to a different result

6. given the broad power of 'review' in section 352 (which was not universally available in the Compensation Court of NSW) the reconsideration provision in section 350(3) will not usually be the preferred provision to be used to correct errors of fact, law or discretion made by Arbitrators

7. depending on the facts of the particular case the principles enunciated by the High Court in *Port of Melbourne Authority v Anshun Pty Ltd* [1981] HCA 45; (1981) 147 CLR 589 ('*Anshun*') may prevent a party from pursuing a claim or defence in later reconsideration proceedings if it unreasonably refrained from pursuing that claim or defence in the original proceedings ('*Anshun*')

8. a mistake or oversight by a legal adviser will not give rise to a ground for reconsideration

9. the Commission has a duty to due justice between the parties according to the substantial merits of the case

The approach taken in *Samuel* was followed by Acting Deputy President Snell in *Nan v Country Road Freight Services Pty Limited* [2006] NSWCCPD 160 and again restated by Deputy President Roche in *Markulin v Healthwoods Pty Ltd* [2007] NSWCCPD 76.

Further reconsideration power has been provided by way of an amendments to section 329 and the addition of section 378 of the *Workplace Injury Management and Workers Compensation Act* 1998. These changes were effective from 1 November 2006 and give the Registrar, Approved Medical Specialists and Appeal Panels powers of reconsideration.

On 22 October 2007 the Registrar issued a guideline *Requests for Reconsiderations under Sections 329(1A), 350(3) and 378 of the Workplace Injury Management and Workers Compensation Act* 1998 on the application of the reconsideration powers.

## PROCEDURAL FAIRNESS

### (i) Cross-examination

#### (a) *Aluminium Louvres and Ceilings Pty Limited v Zheng* [2006] NSWCA 34

In *Aluminium Louvres and Ceilings Pty Limited v Zheng* [2006] NSWCA 34 ('*Zheng*') the Court of Appeal considered the legislation governing procedure and practice in the Commission, in particular cross-examination. On appeal to the Court, the Appellant employer argued that it had been denied natural justice because cross-examination had been limited. At the arbitration hearing counsel was given 35 minutes to cross-examine the Applicant and was then stopped by the Arbitrator. The Arbitrator found for the worker and on appeal the Deputy President confirmed that decision.

Bryson JA said at [37]:

"An assessment of whether the Arbitrator's decision should be set aside for want of procedural fairness is no simple matter and could not be disposed of by applying any legal tests susceptible of clear statement relating

to entitlement to cross-examine an applicant, or a witness. There is no legal right to cross-examine an applicant or other witness in the Workers Compensation Commission, and decisions whether to allow cross-examination or to limit it are discretionary decisions which must be made in the context of the legislation and practices which the Commission follows, and at least as importantly, in the context of the facts and circumstances under consideration."

Bryson JA had earlier noted at [26]:

"In the present case, the Arbitrator was in possession of the material lodged in advance of the hearing by the parties, and was entitled to act on the material. This put her in a good position to make a judgment about whether treatment or further treatment of any issue or line of inquiry in cross-examination was appropriately to be allowed or to be restricted."

The Court of Appeal held that the Deputy President had acted within her discretionary powers in deciding the matter and that:

"38. ... No rule of law required the Arbitrator not to limit cross-examination, and the view that there was no want of procedural fairness was a view which the Deputy President could reasonable reach without any error of law."

#### (b) *Transfield Services (Australia) Pty Limited v Gower* [2007] NSWCCPD 91

Several Presidential decisions have applied the reasoning in *Zheng* when considering the issue of cross-examination in Commission proceedings. In *Transfield Services (Australia) Pty Limited v Gower* [2007] NSWCCPD 91 the Appellant argued that the conduct of the Arbitrator in limiting cross-examination constituted a denial of procedural fairness.

Acting Deputy President O'Grady in making his determination noted that although the Arbitrator had on a number of occasions curtailed the cross-examination, he also took into consideration the subject matter of the cross-examination on the occasions of interruption complained of by the Appellant and the factual matters ultimately determined by the Arbitrator. In doing so the Acting Deputy President ultimately found that Counsel was afforded an opportunity to pursue cross-examination in respect of a number of aspects of the evidence over a reasonably long period of time.

Acting Deputy President O'Grady in finding that there was no denial of procedural fairness by reason of curtailment of the cross-examination referred to Bryson JA's comments in *Zheng* [25] where he said:

"... The environment of contestation and the confrontational methods of the common-law trial would not usually be appropriate; there may be issues of kinds which it is appropriate to deal with in that style, and much is left to the discretion of the Arbitrator. The Arbitrator is in a good position to decide on and to impose appropriate controls on the adduction of evidence, by cross-examination or otherwise. The Arbitrator will usually be in a position to perceive whether a wish to pursue an issue has a basis, whether it is a sound basis, whether some issue or line of questions is merely exploratory, or for that matter whether questions are merely the product of inventiveness."

The Deputy President further noted that the Arbitrator had the advantage of not only the written Statements of the various witnesses but the opportunity to question both the Respondent and a number of the Appellant's witnesses, he also had the advantage of observing the witnesses in the course of their evidence as well as the advantage of considering the cross-examination. He concluded that the Arbitrator was in a good position, as stated by Bryson JA in *Zheng* at [26]:

"...to make a judgment about whether

treatment or further treatment of any issue or line of enquiry in cross-examination was appropriately to be allowed or to be restricted."

### (c) *Ecowize North Pty Ltd v Ballard* [2007] NSWCCPD 179

The Arbitrator's decision to refuse an application for leave to cross-examination in the course of a hearing was dealt with by Deputy President Roche in *Ecowize North Pty Ltd v Ballard* [2007] NSWCCPD 179.

Deputy President Roche did not accept the Appellant's submission that the Arbitrator was in error in refusing to allow counsel for the employer to cross-examine the Applicant. He noted that there is no automatic right of cross-examination in the Commission as opined by Bryson JA in *Zheng*, at [37].

In concluding, the Deputy President stated that the decision whether to allow cross-examination was a matter for the Arbitrator's discretion. He further stated at [29.f]):

"Whilst I accept an attack on an Arbitrator's discretionary decision in controlling procedure may be based on the test stated in *House v. R* [1936] HCA 40; (1936) 55 CLR 499 at 504 - 505; that is not the only basis on which the Presidential member may act (*Zheng* at [38]). In the present matter the Arbitrator gave her reasons for refusing leave to cross-examine at T3.31 to 43 where she stated that she was not convinced that "this is the kind of case where there is a need to adduce more evidence from the applicant" and that she was not persuaded "that there was a real need to cross-examine" noting that she did not think credibility was in issue. Before finally ruling on the application for leave to cross-examine she invited further submissions from counsel for the Appellant Employer who declined to add to his previous submissions (T4.1). The Arbitrator's ruling did not involve any error in the exercise of her discretion. Nor did it involve any denial of procedural fairness. Mr Clarke's evidence was before the Arbitrator and considered by her in reaching her conclusions."

## (ii) On the papers

Section 354(6) of the 1998 Act provides that if the Commission is satisfied that sufficient information has been supplied to it in connection with proceedings, the Commission may exercise functions under this Act without holding any conference or formal hearing.

Practice Direction No 6 states that it is expected that most appeals against a decision of an Arbitrator and, if necessary, applications for leave to tender fresh evidence or additional evidence will be determined on the papers, unless the Presidential member directs otherwise.

### ***Fletcher International Exports Pty Ltd v Barrow & Anor* [2007] NSWCA 244**

The Court of Appeal, referred to section 354(6) and Practice Note 6 and found that the Commission's power to decide matters 'on the papers' is enlivened if the Commission is satisfied that sufficient information has been supplied. Further, the Court held that the worker's failure to oppose an oral hearing did not have the consequence that an oral hearing was mandatory.

## (iii) Right to be heard

### **(a) *Inghams Enterprises Pty Limited v Michelle Zarb* [2003] NSWCCPD 15**

In referring to the 'Procedures before the Commission' as set out in section 354 of the 1998 Act, Deputy President Fleming (as she then was) in *Inghams Enterprises Pty Limited v Michelle Zarb* [2003] NSWCCPD 15 ('*Zarb*') noted that "while this provision modifies the common law rules of procedural fairness in some respects, for instance, in relation to the determination of matters on the papers, it does not alter the fundamental rule that a party is entitled to be heard in relation to the case against it, before the decision-maker exercises the power to make the decision (*Twist v Council of the Municipality of Randwick* [1976] HCA 58; (1976) 136 CLR 106, 110)."

In *Zarb*, the Arbitrator had expressly told the parties they would have the opportunity to make further submissions on the matter of an award of lump sum compensation, once she had made the relevant finding of fact upon

which the issue turned. Deputy President Fleming found that it was clearly a denial of procedural fairness for the Arbitrator to then proceed to determination without allowing the parties to make those submissions. The Deputy President further noted that "this was not a matter of informality and lack of technicality" and that although there was nothing in section 354 of the 1998 Act, which required the Arbitrator in this matter to give the parties the opportunity to make further submissions, "once she had stated that she was going to follow that course, there is, equally, nothing in the section that excuses her failure to do so." This denial of procedural fairness was deemed an error of law and the matter was remitted to an Arbitrator for re-determination.

### **(b) *Sydney South West Area Health Service v Avery* [2007] NSWCCPD 213**

More recently, in the matter of *Sydney South West Area Health Service v Avery* [2007] NSWCCPD 213, Deputy President Roche was required to consider whether the Arbitrator had failed to afford the parties natural justice by failing to invite either oral or written submissions from either party during the course of the arbitration. The Arbitrator had indicated at the commencement of the proceedings that the hearing would have to finish on time as he had a prior commitment.

The Transcript of the proceedings revealed that counsel for the Appellant made no response when the Arbitrator said "Nothing else?" before concluding the arbitration (counsel for the Respondent having answered "no"). Deputy President Roche found that the Arbitrator had clearly invited the parties to make further submissions on any issue they thought relevant. The parties had chosen not to do so and only then did the Arbitrator stop the proceedings.

Deputy President Roche stated:

"38. Proceedings in the Commission are less formal than in a court. The Commission is required to conduct its matters with "as little formality and technicality as the proper consideration of the matter permits" (section 354(1) of the 1998 Act). Arbitrators are, however,

required to comply with the rules of natural justice and procedural fairness (*South Western Sydney Area Health Service v Edmonds* [2007] NSWCA 16 at [91]).

39. In the present matter, fairness in all circumstances required that each matter be given a reasonable opportunity to be heard (per Kirby J in *Allesch v Maunz* [2000] HCA 40; (2000) 203 CLR 172 at 185)."

The Deputy President determined that the Arbitrator had clearly given the parties the opportunity to make further submissions on any issue when he said "Nothing else?" and that neither party took up that invitation. He also noted that if there was a concern that the time allocated for the hearing was running short, it would have been a simple matter for either side to seek to provide written submissions if considered necessary.

Deputy President Roche concluded: "Having regard to the informal nature of proceedings in the Commission and the overall circumstances of the case, I am firmly of the view that the Arbitrator did not preclude the Appellant Employer from making further submissions and did not deny it procedural fairness."

#### (iv) Drawing inferences

##### ***Gardiner v Oxford Art Supplies and Books Pty Ltd* [2007] NSWCCPD 210**

In *Gardiner v Oxford Art Supplies and Books Pty Ltd* [2007] NSWCCPD 210 Deputy President Roche dealt with the issue of whether the Arbitrator had drawn inferences that were not supported by the evidence. In this instance it was the Arbitrator's determination that the Applicant had signed her own statement and a witness's statement, that led him to conclude that, without any explanation being proffered by way of oral evidence or submission, the clear inference was that the Applicant had composed both documents and was "deliberately misleading the Commission" and that the absence of an explanation had affected the Applicant's credit.

In considering this issue Deputy President Roche noted:

"39. The Commission is bound to comply with the rules of procedural fairness (*Inghams Enterprises Pty Ltd v Zarb* [2003] NSWCCPD 15). In determining the nature and extent of the requirements of the rules of procedural fairness it is necessary to have regard to the legal context in which the decision-maker operates and to the law regulating the conduct of the proceedings (*Aluminium Louvres & Ceilings Pty Limited v Xue Qin Zheng* [2006] NSWCA 34 at [20]).

40. Proceedings in the Commission are less formal than in a court. The Commission is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate and as the proper consideration of the matter permits (section 354(2) of the 1998 Act). When informing itself on any matter, the Commission is to bear in mind the principles of procedure set out at Part 15 Rule 15.2 of the *Workers Compensation Commission Rules* 2006 which state, among other things, that evidence based on speculation and unsubstantiated assumptions is unacceptable. The Commission must also act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities or legal forms (section 354(3) of the 1998 Act).

44. Further, an Arbitrator is not bound by the way the parties present their case, but if he or she is contemplating determining the case on a different basis the rules of procedural fairness require that the parties be informed of that prospect so they can either call evidence or make submissions on any new issue (*Seltsam Pty Limited v Ghaleb* [2005] NSWCA 208 per Ipp JA (with Mason P agreeing) at [78])."

Deputy President Roche stated that "if an Arbitrator is minded to draw adverse inferences against a party on issues of crucial importance and the parties have not had an opportunity to deal with those issues, it is essential that the Arbitrator bring those matters to the parties' attention so they can deal with them by either making further submissions or calling evidence." He further stated that a

failure to do so will often, depending on the circumstances of the case and the importance of the issue to the final outcome, result in the Arbitrator's decision being revoked because of a denial of procedural fairness.

The Deputy President found that the Arbitrator in this matter did not indicate that he intended to draw damaging inferences about the Applicant's credit because of the manner of the preparation and execution of the document and that given the importance of the Applicant's credit to the assessment of her claim, the Arbitrator should have done so. Deputy President Roche determined that the Arbitrator's failure amounted to a breach of his obligation to afford the Applicant procedural fairness resulting in the Arbitrator's decision being revoked and the matter remitted to a different Arbitrator for re-determination.

## WORKER

Two Presidential decisions of interest on the definition of 'worker' were delivered in 2007.

### (i) Directors

#### ***Riverwood Legion & Community Club Ltd v Morse [2007] NSWCCPD 88***

Mrs Morse who was a director at the Club received an honorarium of \$1,500 a year. On Anzac Day 2005, upon invitation from the Club, she attended an Anzac Day event at the Club at which she tripped and fell at the front of the Club fracturing her right ankle. Mrs Morse lodged a claim for compensation but the Club declined liability on the ground that she was not a worker under section 4 of the 1998 Act. The dispute went before an Arbitrator who found for Mrs Morse.

The Club appealed the Arbitrator's decision. The main issues on appeal were: (a) whether a contract existed between the Club and Mrs Morse, and (b) whether such a contract was a contract of service.

#### **(a) the existence of a contract**

Deputy President Roche found no contract between Mrs Morse and the Club on the following grounds:

- ❑ There was no evidence of an offer and acceptance of

employment; the directors were elected, not appointed;

- ❑ There was no consideration offered in return for Mrs Morse to be a director. The honorarium in nature was a statement of honourable intentions rather than consideration. There was also a period of time when Mrs Morse acted as a director without any honorarium;
- ❑ Mutuality of obligation is an essential requirement for a contract of service. Although the question of intention to create legal relations is an important factor in determining the mutuality of obligation (*Dietrich v Dare* (1980) 30 ALR 407), the primary question is whether there has been an offer and acceptance for valuable consideration. In the current case there was no contractual obligation for Mrs Morse to perform any work for the Club. While Mrs Morse was required to attend board meetings, it was an obligation under corporate law, not a condition on receiving the honorarium.

Mrs Morse relied on *Stephan v Pacesetters Cleaning Services Pty Ltd* (1995) 12 NSWCCR 19 ('*Stephan*').

Deputy President Roche distinguished the current case from *Stephan*. In *Stephan*, there was a coincidence of directorship and employment whereas in the current case Mrs Morse was only a director and the position was purely honorary and voluntary.

#### **(b) A contract of service**

In determining whether there was a contract of service Deputy President Roche noted the general principle that a director is not an employee. He compared the current case to *Attwood v Barley Marketing Board (NSW)* [1982] WCR 94. Mr Attwood was as an elected board member and received a payment of remuneration. It was held that he performed his duties in the capacity of a volunteer as a barely grower and there was no express contract of service between Mr Attwood and the Board.

Deputy President Roche held that in the current case, the contract of service could not be established from the totality of the arrangement between the Club and Mrs Morse. In particular, the Club had no right of control as Mrs Morse was not required to do anything to receive the honorarium, Mrs Morse's obligation to attend the board meetings did not arise under a contract of service.

## (ii) Volunteers

### *Dickinson v The Tropical Fruits Incorporated* [2006] NSWCCPD 331

The Respondent was an incorporated social club that held dance parties in the Northern Rivers area of NSW. A voluntary committee managed the Club. For the purpose of running the dance parties various members and non-members volunteered to provide their time to the Respondent free of charge. Volunteers were contacted by the Respondent's events co-ordinator and asked if they wished to be involved in an event, shifts were worked out and the volunteer's duties would be explained.

On New Years Eve 2003, the Respondent held a dance party. Ms Dickinson volunteered to be a car park attendant for the Respondent at this event. Like all the other members she could attend the party for free at the end of her shift. Unfortunately, the Appellant was struck by a car at the event's parking venue and she sustained injury to her back.

Mrs Dickinson brought a claim for compensation in the Commission. An Arbitrator determined that the Appellant was not a 'worker' or a 'deemed worker' under the 1998 Act.

On appeal, Deputy President Roche followed the principles set out in *Teen Ranch Pty Ltd v Brown* (1995) 11 NSWCCR 197 (*'Teen Ranch'*). In that case, Mr Brown was a volunteer with an organisation that conducted camps for teenagers. He received accommodation, meals and use of the camp facilities but no wages. Mr Brown was injured while horse riding with the teenagers. The Court of Appeal found that there was no intention to enter legal relations, therefore, there was no contract and Mr Brown's claim for compensation failed. Handley JA quoted the High Court's observation in *Cameron v Hogan* [1934] HCA 24; (1934) 51 CLR 358 that voluntary associations are "established upon a consensual basis, but, unless there were some clear positive indication that the members contemplated the creation of legal relations inter se, the rules adopted for their governance would not be treated as amounting to an enforceable contract."

Deputy President Roche found that in the present matter:

"There was no 'clear positive indication' that legal relations were contemplated (per Handley JA in *Teen Ranch* at 202B). There is no evidence that Ms Dickinson performed car parking duties in consideration of or in return for free admission to the party. There was no obligation on her to perform those duties. Therefore, the Arbitrator was correct to find that there was no contract of employment between Ms Dickinson and the Respondent. The arrangement between Ms Dickinson and the Respondent did not involve any contractually binding promise by her to perform any work for the Respondent, either as an employee or as an independent contractor (see *Dare v Dietrich* [1979] FCA 47; (1979) 37 FLR 175 at 185). Therefore, Ms Dickinson could not be either a 'worker' or a 'deemed worker' under the terms of the 1998 Act."

Ms Dickinson's submission that the Arbitrator failed to give sufficient weight to the indicia of employment (such as "control") was also rejected by Deputy President Roche, relying on *Teen Ranch* in which it was held that "the existence of control and its acceptance of the volunteer cannot assist in determining whether or not there was any contract at all".

## PROCEDURAL CHANGES & LEGISLATIVE DEVELOPMENT

### (i) Interlocutory decisions

Section 352 of the 1998 Act, was amended by the *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act* 2005). The amendments effected were the inclusion of subsections (1A), (7A), and the amendment of subsection (8) to exclude orders of an interlocutory nature from the definition of 'decision'. Under Clause 200B of the *Workers Compensation Regulation* 2003, as amended, "for the purposes of section 352(8) of the 1998 Act, all preliminary or interim orders, determinations, rulings and directions of an interlocutory nature are prescribed". Under Schedule 6 Part 18J Clause 5 of the *Workers Compensation Act* 1987 the amendments to section 352 "apply in respect of a claim for workers compensation made before the commencement of the amendments."

Subject to the regulations and transitional provisions,

these amendments commenced on 1 November 2006. Several Presidential decisions throughout 2007 have considered that application of these amendments.

#### **(a) *P & O Ports Limited v Hawkins* [2007] NSWWCCPD 87**

Deputy President Roche, in considering the distinction between final and interlocutory decisions observed that difficulties arise in determining what is 'interlocutory' in Commission proceedings because, unlike common law courts assessing claims for damages the Commission does not assess compensation on a 'once and for all basis'.

Deputy President Roche stated that in order to achieve the Commission's statutory objectives as provided in section 367 of the 1998 Act, it is "necessary and appropriate to restrict the meaning of the phrase 'preliminary or interim orders ... of an interlocutory nature' to matters that are genuinely preliminary, provisional or interim in nature".

He also added that "given the Commission's objectives, it is not appropriate to deprive an unsuccessful party of the right to appeal to a Presidential Member in respect of a final decision on a matter that finally determines the parties rights on issues such as worker, injury, substantial contributing factor (or other issues that finally determine the parties' rights) until all medical disputes have been assessed and determined".

The issue of whether the amendment to section 352(8) is retrospective was also considered by Deputy President Roche who found that the wording of Schedule 6 Part 18J Clause 5 of the 1987 Act is in "clear and ambiguous language" and therefore operates retrospectively.

Deputy President Roche formed the view in *Hawkins* that the Arbitrator's decision on appeal, being whether the Appellant Employer could rely on certain medical reports, was clearly of an interlocutory nature and did not determine any right, accordingly, leave to appeal was refused. Deputy President Roche concluded that the fact that leave was refused did not mean that the Appellant Employer was prevented from appealing any Certificate of Determination that may be issued after the Medical Assessment Certificate ('MAC') is issued.

#### **(b) *McGuire v State Transit Authority of NSW* (No. 2) [2007] NSWWCCPD 109**

Deputy President Byron held that a decision to refer a worker to an Approved Medical Specialist is not a decision that "clearly disposes of the parties' rights" and was therefore interlocutory in nature. He endorsed the view taken by Deputy President Roche in *Hawkins* that the fact that leave to appeal is refused in a matter, does not mean that an Appellant is prevented from appealing a decision where a further Certificate of Determination is issued by the Commission, after the MAC is issued.

#### **(c) *Bluescope Steel Ltd v Eason* [2007] NSWWCCPD 172**

Deputy President Roche determined that the order under appeal, concerning the application of section 65 of the 1998 Act, a "limitation provision", was an essential requirement the Respondent Worker had to satisfy before he had an entitlement to compensation and that the order had finally determined the parties' rights because it had crystallised the Worker's entitlement to compensation, subject to an assessment of his permanent losses by an Approved Medical Specialist and he therefore granted leave to appeal.

#### **(d) *Hunter New England Area Health Service v Franklin* [2007] NSWWCCPD 209**

The Arbitrator ordered that the Respondent pay the Applicant lump sum compensation for permanent loss of efficient use of the right arm at or above the elbow, in respect of a date of injury of 4 January 1997, such loss to be assessed by an Approved Medical Specialist nominated by the Commission.

Acting Deputy President Moore held such on order was not interlocutory in nature because the Arbitrator's finding on the issue of 'injury' determined the Appellant Employer's primary liability to compensate the Worker for an 'injury' to her right arm and thus was a matter that essentially finally determined the parties' rights on that issue. Accordingly leave to appeal was granted.

## (ii) Section 60 – declaratory power

### *Widdup v Hamilton* [2006] NSWCCPD 258

A Question of Law was referred by a Commission Arbitrator to the President seeking a determination on whether the Commission had jurisdiction to make declaratory orders in relation to future medical treatment pursuant to section 60 of the *Workers Compensation Act* 1987 ('the 1987 Act').

Leave was granted on the basis that the Question of Law was 'novel' and 'complex' under section 351(3) of the *Workplace Injury Management and Workers Compensation Act* 1998 ('the 1998 Act').

This Question arose in proceedings commenced by the Applicant, Mr Widdup, who claimed medical expenses for a three level discogram, as a result of an injury sustained while shearing sheep during the course of his employment with Mr Hamilton on 23 February 2004.

The President noted in determining the question referred that:

- ❑ the Commission is a statutory body and derives its jurisdiction from the 1987 and 1998 Acts and from the rules and regulations made under those Acts;
- ❑ section 105 of the 1998 Act provides the Commission with exclusive jurisdiction to "examine, hear and determine all matters arising under" the two Acts;
- ❑ the Commission's jurisdiction in respect of a claim for hospital and medical expenses under section 60 is invoked when the person on whom a claim for those expenses is made disputes liability or fails to determine the claim (section 289(2) of the 1998 Act), and
- ❑ furthermore, section 60(3) provides: "Payments under this section are to be made as the costs are incurred, but only if properly verified."

The President relied on the Court of Appeal decision in *NSW Sugar Milling Co-op Ltd v Manning* (1998) 44 NSWLR 442 ('*Manning*') as binding authority that section 60 is:

"an indemnity provision under which orders can be made for the payment of the cost of

hospital and medical treatment. A 'cost' is a 'financial liability to pay for services provided'. If no 'cost' has been incurred then there is no financial liability involved."

The President found that *Manning* creates an "insurmountable barrier to the making of a declaratory order" for the payment of specific future hospital and medical expenses pursuant to section 60, because those anticipated expenses are not 'costs' within the meaning of that term in section 60.

In answer to the Question of Law the President held that the Commission has no express or incidental power to make 'declaratory orders' in relation to future medical treatment pursuant to section 60 of the 1987 Act.

The President however noted that:

"It is understandable that a worker who is having his/her medical expenses met by the insurer, either on a voluntary basis or pursuant to a general order made under section 60 of the 1987 Act, would at times seek confirmation from the insurer that it will meet the cost of certain specific treatment before the worker undertakes that treatment. Often this treatment is in the form of major surgery or costly invasive investigative procedures. It is clearly recognised that confirmation in advance that the insurer will meet that cost creates a degree of financial certainty for the worker. The failure to obtain that confirmation may lead to considerable hardship in some cases, as it may unreasonably delay necessary treatment. It is, therefore, regrettable that the Commission is not empowered to make declarations of future liability pursuant to section 60, and consideration should be given to legislative reform in this regard to avoid such hardship."

The government recognized this limitation in the Act and has responded with an amendment to section 60, which is currently being drafted.

# Appendices

## Appendix 1

### MEMBERS OF THE COMMISSION

#### President

His Honour Judge Greg Keating

#### Deputy Presidents

Mr Gary Byron

Mr Bill Roche

#### Acting Deputy Presidents

Mr Anthony Candy

Mr Robin Handley

Ms Deborah Moore

Mr Kevin O'Grady

Mr Michael Snell

#### Registrar

Ms Sian Leathem

#### Arbitrators

Mr Geoffrey Adelstein

Mr Ross Bell

Ms Anne Britton

Mr Garth Brown

Mr Geoff Charlton

Ms Ruth Charlton

Ms Jennifer Conley

Ms Janice Connelly

Ms Jackie Curran

Ms Margaret Dalley

Ms Jennifer David

Mr Marshal Douglas

Ms Christine D'Souza

Ms Sue Duncombe

Ms Rosemary Dupont

Ms Geri Ettinger

Mr Michael Fishburn

Mr Robert Foggo

Mr Stavros Georgiadis

Ms Eraine Grotte

Ms Robin Gurr

Mr Philip Harvey

Mr John Hertzberg

Mr John Ireland

Dr John Keogh

Mr Stephen Lancken

Mr Ross McDonald

Ms Carol McCaskie

Mr John McDermott

Mr John McGruther

Mr Garry McIlwaine

Mr Bruce McManamey

Mr Christopher Messenger

Mr Derek Minus

Mr Peter Molony

Ms Annemarie Nicholl

Mr Dennis Nolan

Mr Michael Oldfield

Mr Rory O'Moore

Ms Jane Peacock

Ms Carolyn Rimmer

Ms Faye Robinson

Mr Greg Rooney

Ms Jennifer Scott

Ms Natasha Serventy

Mrs Annette Simpson

Mr Craig Tanner

Mr Philip Theobald

Ms Marian Trenerry

Ms Elizabeth Tydd

Mr Leigh Virtue

Mr Nick Vrabac

Mr Ross Whitelaw

Mr John Wynyard

## Appendix 2

### SERVICE PROVIDERS

#### Mediators

Mr Ross Bell  
Mr Garth Brown  
Mr Raymond Brazil  
Mr Tim Chadwick  
Mr Geoff Charlton  
Ms Ruth Charlton  
Ms Jennifer David  
Ms Sue Duncombe  
Mr Marshal Douglas  
Ms Geri Ettinger  
Mr Michael Fishburn  
Mr David Francis  
Ms Penny Goode  
Ms Robin Gurr  
Ms Nina Harding  
Mr Hans Heilpern  
Mr Stephen Herrick  
Mr John Hertzberg  
Mr John Ireland  
Ms Katherine Johnson  
Mr John Keogh  
Mr Stephen Lancken  
Mr John McDermott  
Mr Ross MacDonald  
Mr John McGruther  
Mr Derek Minus  
Mr George Newhouse  
Mr Daniel O'Keefe  
Mr Rory O'Moore  
Mr Greg Rooney  
Ms Jennifer Scott  
Ms Natasha Serventy  
Ms Anne Sutherland-Kelly  
Mr Philip Theobald  
Mr John Weingarh  
Mr Ross Whitelaw

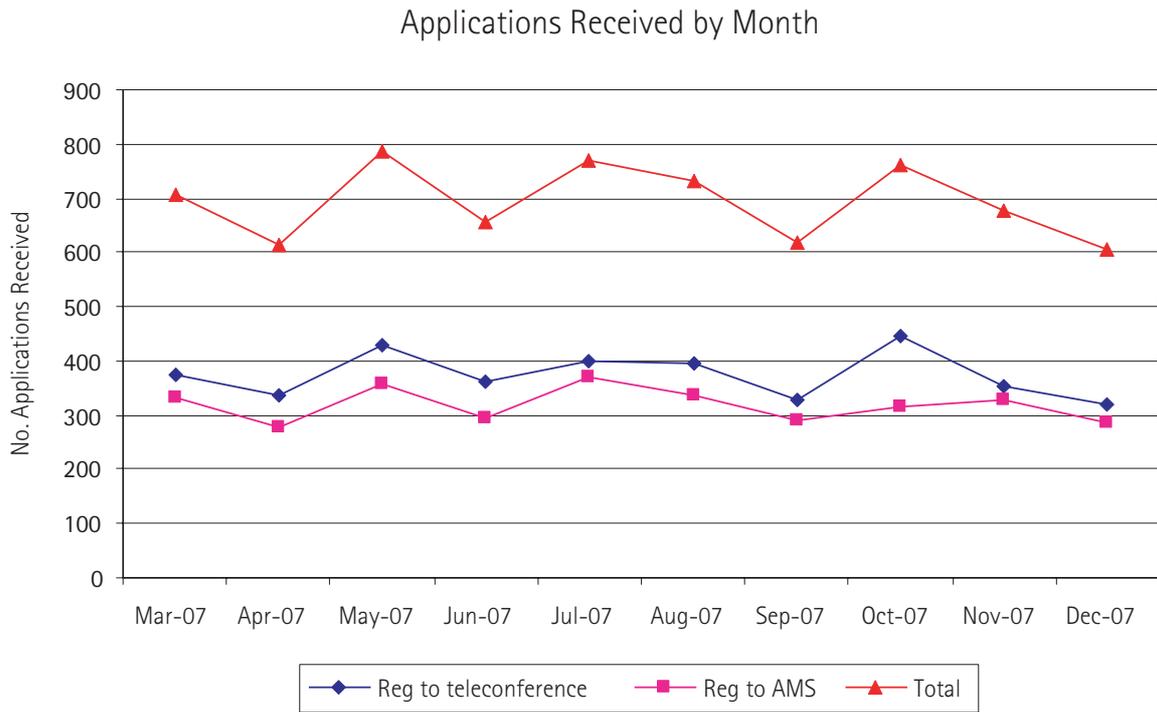
#### Approved Medical Specialists

Dr Robert Adler  
Dr Klaas Akkerman  
Dr Peter Anderson  
Dr John Ashwell  
Dr Mohammed Assem

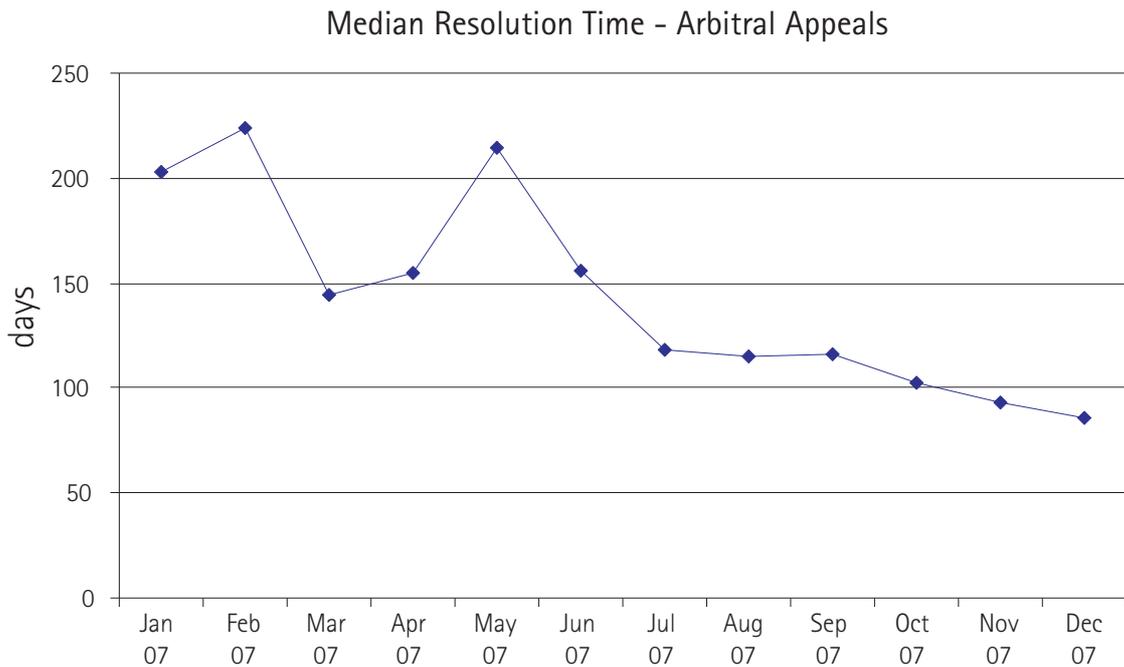
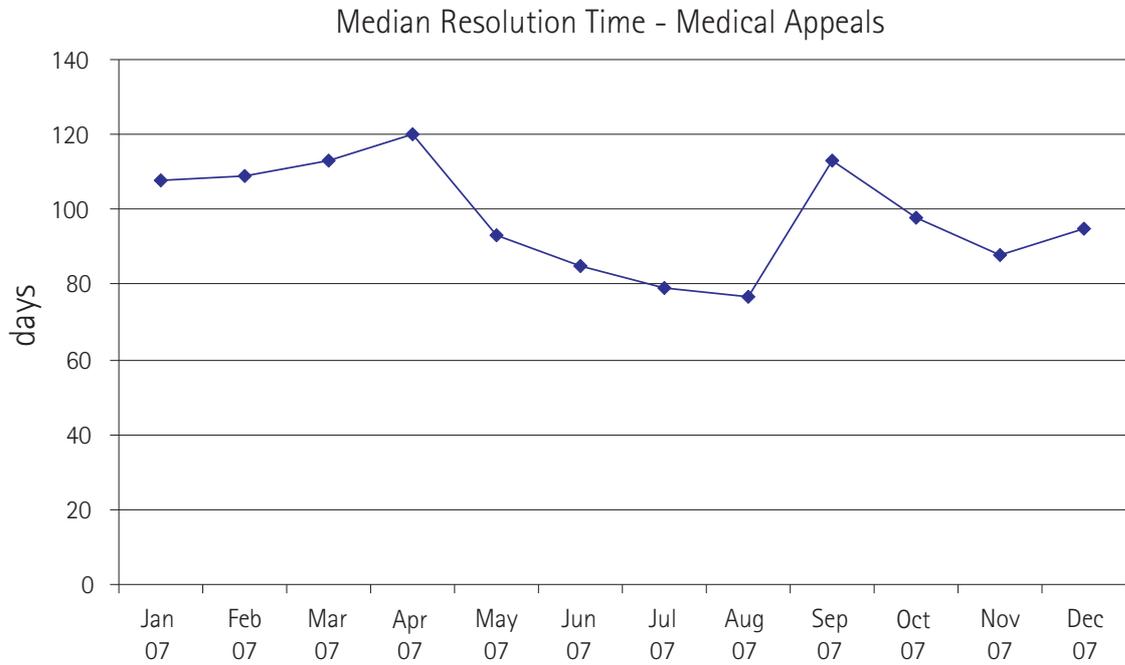
Dr John Beer  
Dr Albert Bencsik  
Dr Trevor Best  
Dr Atindra Bhattacharyya  
Dr Tony Blue  
Dr James Bodel  
Dr Clifford Boland  
Dr Anthony Bookallil  
Dr John Stanley Bosanquet  
Dr Geoffrey Michael Boyce  
Dr Kenneth Brearley  
Dr Robert Breit  
Dr Frank Breslin  
Dr Peter Bryan  
Dr David Bryant  
Dr Peter Burke  
Dr Mark Burns  
Dr Michael W Burns  
Dr William Bye  
Dr Raymond L Carroll  
Dr Geoffrey Coffey  
Dr Richard Crane  
Dr David Crocker  
Assoc Professor William James Cumming  
Dr Michael Davies  
Dr Michael Delaney  
Dr Drew Dixon  
Dr John Dixon-Hughes  
Professor John Duggan  
Dr Peter Endrey-Walder  
Dr Donald Kingsley Faithfull  
Assoc Professor Michael Fearnside  
Dr Antonio E.L. Fernandes  
Dr Sylvester Fernandes  
Dr Robin B. Fitzsimons  
Dr Susanne Freeman  
Dr Hunter Fry  
Dr John F. W. Garvey  
Dr Robert Gertler  
Dr Peter Giblin  
Dr Michael Gliksman  
Dr Brian Hagan  
Dr John Harrison  
Dr Henley Harrison

Dr Philippa Harvey-Sutton  
Professor John B. Hickie  
Professor Robin Higgs  
Dr Yiu-Key Ho  
Dr Nigel Hope  
Dr Kenneth Howison  
Dr Kenneth Hume  
Dr Murray Hyde-Page  
Dr Peter L Isbister  
Dr Anthony Johnson  
Dr Lorraine Jones  
Dr Sornalingam Kamalaharan  
Dr Robert Kaplan  
Dr Gregory Kaufman  
Dr Sikander Khan  
Assoc Professor Leon Kleinman  
Dr Edward Korbel  
Dr Lana Kossoff  
Dr Damodaran Prem Kumar  
Dr Sophia Lahz  
Dr William Lennon  
Dr Keith Lethlean  
Dr Edmund Lobel  
Dr Michael Long  
Dr Ivan Lorentz  
Dr William Lyons  
Dr David Macauley  
Dr Nigel Marsh  
Dr Tommasino Mastroianni  
Dr David Maxwell  
Dr Andrew McClure  
Dr Gregory McGroder  
Dr John D. McKee  
Professor James McLeod  
Dr David Meachin  
Dr Ross Mellick  
Dr Roland Middleton  
Dr Ross Mills  
Dr Paul Niall  
Dr Alan Nicholls  
Dr Brian Noll  
Assoc Professor Robert Oakeshott  
Dr Chris Oates  
Dr John O'Neill  
Dr Kim Ostinga  
Dr Roger Parkington  
Dr Julian Parmegiani  
Dr Brian Parsonage  
Dr Roger Pillemer  
Dr Graham Pittar  
Dr Stuart Porges  
Dr T.B. Raj  
Dr Tom Rosenthal  
Dr Roger Rowe  
Assoc Professor Michael Ryan  
Dr Avtar Sachdev  
Dr Edward Schutz  
Dr Joseph Scoppa  
Dr James Scougall  
Dr Alan Searle  
Dr Thomas Silva  
Dr John H Silver  
Dr Gregory Steele  
Dr John P. H. Stephen  
Dr J Brian Stephenson  
Dr Harry Stern  
Dr John Robert Strum  
Dr Geoffrey Stubbs  
Dr Stanley Styliis  
Dr Nicholas A Talley  
Dr Stuart Taylor  
Dr Ben Teoh  
Dr Graham Vickery  
Dr John Voss  
Dr Maxine Walden  
Dr William Walker  
Dr Tai-Tak Wan  
Dr George Weisz  
Dr Kalev Wilding  
Dr Brian Williams

FORM 2 APPLICATION STREAMING



APPEAL MEDIAN RESOLUTION TIMES



# Notes

