

The Workers Rehabilitation & Compensation Tribunal

Annual Report

2019/2020

Presented to both Houses of
Parliament pursuant to s24 of the
*Workers Rehabilitation and
Compensation Act 1988*





WORKERS REHABILITATION AND COMPENSATION TRIBUNAL

TASMANIA

13 October 2020

The Hon. Elise Archer
Minister for Building & Construction
Level 10, Executive Building
15 Murray Street
HOBART TAS 7000

Dear Minister

WORKERS REHABILITATION AND COMPENSATION TRIBUNAL - ANNUAL REPORT 2019/2020

I am pleased to submit the 2019/2020 Annual Report for the Workers Rehabilitation and Compensation Tribunal. The report summarises the operations of the Tribunal during the financial year commencing 1 July 2019.

Following the tabling of the report in Parliament, it will be available for public access on the Tribunal's website at www.workerscomp.tas.gov.au.

If you have any queries, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. M. Clues'.

A. M. Clues
CHIEF COMMISSIONER

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In accordance with s24 of the *Workers Rehabilitation and Compensation Act 1988* (the Act) I submit to the Minister my report on the operation of the Workers Rehabilitation and Compensation Tribunal (WRCT) during the 2019/2020 financial year.

1 Overview

The WRCT is an independent statutory body established by the Act¹. The WRCT is constituted by the Chief Commissioner, a Commissioner or a Part-Time Commissioner². Both appointees to the positions of Chief Commissioner and Commissioner fulfil the eligibility requirements of the Act in that they are Australian lawyers of at least 5 years' standing as Australian legal practitioners³. The Chief Commissioner was appointed on a fulltime basis for 5 years in February 2020, whereas the Commissioner was appointed for 1 year at 0.6FTE in February 2017. She has been appointed on yearly contracts since that date and the process is underway for the reappointment of the Commissioner on a fulltime basis for another year.

The functions of the WRCT are as follows⁴:

- to determine all claims for compensation referred to it under the Act.
- to determine such other matters as are referred to it under the Act.
- to exercise the powers conferred and the duties imposed on it in the Act.
- to hear and determine any appeal referred to it under the *Workers (Occupational Diseases) Relief Fund Act 1954*.

1.1 Summary of Human Resources

The following table provides a summary of the number of Full Time Equivalent staff employed by the WRCT as at 30 June each year.

| | 30 June 2020 Actual | 2020 Budget |
|-------------------------------|------------------------|----------------|
| Full Time Equivalent Staff | 6.9 | 8 |

2 Activities 2019/2020

The WRCT Case Management System (CRMS) implemented in July 2012 and updated in June 2017 has provided a more efficient method of case management and has resulted in the ability to provide accurate statistical information in a less

1 s16
2 s17
3 s17A and s17B
4 s20

labour intensive manner. This system covers WRCT matters along with matters in the Anti-Discrimination Tribunal and Motor Accidents Compensation Tribunal for which the WRCT is also responsible.

In addition to the work summarised in section 4 of this report, the WRCT continued to carry out work for other Department of Justice Outputs. In total, the WRCT received \$39,312.50 for hearings relating to the Health Practitioners Tribunal and Motor Accidents Compensation Tribunal, as compared to \$24,557.50 for 2018/2019.

2.1 Motor Accidents Compensation Tribunal

The WRCT administers the operation of the Motor Accidents Compensation Tribunal (MACT). Services provided by the Tribunal Members of the MACT ie the Chief Commissioner and Commissioner of the WRCT are reimbursed in accordance with a Service Level Agreement entered into in December 2010 with the Department of Justice. This arrangement was altered in October 2015 when the Chief Commissioner was appointed as the Chairperson of the MACT and the formal administration of that Tribunal transferred to the WRCT. The fee for service funding remains the same and it requires updating. The administrative and running costs of the MACT are not covered by the Service Level Agreement so a budgetary allowance of \$10,496.00 has been made for the administrative and running costs of this Tribunal which sum is shared with the Health Practitioners Tribunal. The fee for service arrangement set out in the Service Level Agreement, as was indicated in the annual reports for the last two years, does not properly represent the value to consolidated revenue provided by the WRCT in performing the functions of the MACT noting that the WRCT is separately funded by the Workers Compensation Fund (non-consolidated revenue)⁵.

2.2 Health Practitioners Tribunal

The WRCT also administers the operation of the Health Practitioners Tribunal (HPT). The HPT has been established to hear and determine disciplinary matters and reviews of decisions under the *Health Practitioner Regulation National Law (Tasmania) 2010*. The Chairperson (Ms Alison Clues, Chief Commissioner of the WRCT), has the power to appoint professional and community members to the HPT.

Work performed by the Chairperson and Deputy Chairperson together with support staff is reimbursed by the Australian Health Practitioners Regulation Authority in accordance with a Service Level Agreement with the Department of Justice which was entered into in December 2011. Once again this is a fee for service arrangement and does not provide for the general administrative expenses associated with operating this tribunal. The Service Level Agreement provides that the Department of Justice agrees to provide:

“1.2.1 Management of and administrative support for the operation of the Tribunal.

1.2.2 Administrative support of the Tribunal includes general administrative duties, hearing room hire, all registry work, recording services (including provision of recording of hearings in audio format on compact disc) and video conferencing.”

⁵ See the further discussion about this on page 14

As mentioned in paragraph 2.1 a budgetary allocation of \$10,496.00 has been made for the administrative and running costs which is shared between this tribunal and the MACT.

2.3 Asbestos Compensation Tribunal

The WRCT administers the operation of the Asbestos Compensation Tribunal (ACT). The ACT has been established under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*. The primary responsibility of the ACT is to determine all disputes relating to referrals made pursuant to that legislation.

Work performed by the Chief Commissioner and Commissioner together with support staff is reimbursed by the Department of Justice in accordance with a Service Level Agreement entered into in December 2011. The WRCT provides an account for services at the conclusion of each matter. The funding for the ACT is from the Workers Compensation Fund. In previous annual reports it has been recommended that the budget for the WRCT simply include a sum to cover the costs of running the ACT. However the 2019/20 saw an increase in the number of referrals made compared to previous years. The ACT received four referrals in the 2019/20. It received two referrals in the 2018/2019 year, no referrals in the 2017/2018 year, one referral in the 2016/2017 year, one referral in the 2015/2016 year, no referrals in the 2014/2015 year and one referral in the 2013/2014 year. Based on this increase and the uncertainty as to whether this upward trend will continue it would be difficult to calculate the amount that should be included in the budget. The budget for the ACT and the other Tribunals under the umbrella of WRCT will be further assessed which will occur as part of the amalgamation of all the tribunals to a single Civil and Administrative Tribunal.

2.4 Anti- Discrimination Tribunal

On 1 July 2015 the WRCT officially assumed the administration and conduct of the Anti-Discrimination Tribunal (ADT) from the Magistrates Court. The Chief Commissioner of the WRCT was appointed the Chairperson of the ADT. The ADT had until that time been a Division of the Magistrates Court and no specific budgetary allocation had ever been made but rather the running costs were absorbed within the general allocation made to the Court. A payment of \$90,000 was made to the WRCT budget for the 2015/2016 year to meet the operational costs of the ADT. This figure increased marginally to \$92,169.00 for 2016/2017 and to \$94,637.00 in 2017/2018. After successful discussions with the Attorney-General in the 2017/2018 year funding was increased to \$204,144.00 in the 2018/2019 year and \$205,353.00 in the 2019/20 year.

3 WRCT Accommodation

In July 2020 the WRCT, the MACT, the HPT, the ACT and the ADT re-located from Level 7, NAB House, 86 Collins Street, Hobart to a purpose built Tribunal Centre at 38 Barrack Street, Hobart. A number of other Tribunals have relocated to the same premises. There will be a formal amalgamation of all the Tribunals. This is anticipated to occur in 2021. At the Barrack Street premises there are a number of different rooms designed for hearings, mediations and meetings. The Registrars on Heads of the Tribunals all have offices, the rest of the staff work in an open plan environment.

In August 2015 the WRCT's northern base relocated to new and improved premises at 1/111 St John Street, Launceston. These leased premises provide a hearing room, two conference rooms, two meeting (break-out) rooms and an open plan staff office area. WRCT staff are based in Hobart and travel as required to the North and North-West of the State. These premises are made available for hire to other users including the Tasmanian Industrial Commission, the Guardianship and Administration Board, the Mental Health Tribunal and Fair Work Australia.

There are video conference facilities at the premises in Hobart and Launceston.

All hearings for the North and North West Coast take place at the Launceston premises.

If a conciliation is required in a matter where the worker resides on the North West Coast then rooms at the Devonport Community & Health Services Centre which is located at 23 Steele Street, Devonport, are utilised on a monthly basis. A modest fee is incurred for the use of these rooms.

The WRCT discontinued its use of premises in Burnie in 2015. These premises were predominantly used for s81A hearings. As a result of the successful trial of conducting all s81A hearings throughout the State by telephone⁶, the need for the Chief Commissioner, the Commissioner and their clerks to travel has been reduced which has in turn resulted in the more efficient use of WRCT staff time.

4 Summary of Referrals to the WRCT 2018/2019

4.1 Summary of Referrals (by Nature of Referral) received in 2018/2019

| NATURE OF REFERRAL | Financial year | | |
|--|----------------|---------------|---------------|
| | 2017/ 2018 | 2018/ 2019 | 2019/ 2020 |
| 2019132A(4) - Referral for Settlement Approval | 164 | 141 | 165 |
| 132A(9) – Referral for review of Settlement made within 3 months of Agreement | | 1 | |
| 143P | 3 | | 1 |
| 77AB - Employers Liability for Expenses less than \$5000/Liability not accepted | 10 | 10 | 10 |
| 90C - Disagreements About Medical Reviews | 3 | 2 | 1 |
| 127 – Order or Judgment Against Nominal Insurer/Referral of order to Nominal Insurer | 3 | | |
| S138AB(3) - New Act (2010) Election to Claim Damages | 2 | | |
| S138AB-Election to Claim Damages | 2 | 6 | 2 |
| S143 - Injury Management Notifications | 7 | 10 | 12 |
| S37 – Effect of Failure to Give Notice of Injury | 1 | 1 | 1 |

⁶ This is permitted by s81A(6)

| NATURE OF REFERRAL | Financial year | | |
|--|----------------|---------------|---------------|
| | 2017/ 2018 | 2018/ 2019 | 2019/ 2020 |
| S38(3) - Effect of Failure to Make Claim | 1 | | |
| S42-Reference of Claims for Compensation to the Tribunal | 132 | 134 | 147 |
| S60A-Application for Interim Orders | 8 | 9 | 6 |
| S67-Amount of compensation in case of death | | | 1 |
| S67F-Dispute of liability in respect of death of worker | 2 | | 1 |
| S68 - Dependency Questions & Apportionment | | | |
| S69-Amount of Compensation in case of incapacity | 5 | 10 | 7 |
| S71-Compensation for Permanent Impairment | 53 | 67 | 49 |
| S75(3) - Constant Attendant Services or Household Services | | | 1 |
| S77AA-Dispute regarding non-payment of expenses | 31 | 31 | 26 |
| S77-Dispute regarding medical or rehabilitation services | 24 | 12 | 14 |
| S78(3) – Injuries contracted by gradual process – contribution of employers | | | |
| S81A(5)-Dispute liability to continue to pay compensation | 9 | 11 | 20 |
| S81A-Dispute liability for weekly payments and other benefits | 624 | 682 | 786 |
| S86(4)-Worker disputing termination or reduction of payment by an Employer | 62 | 78 | 88 |
| S87 - Application for Tribunal to consider weekly payments beyond age 65 | 9 | 4 | 4 |
| S88 - Application to review weekly payments | 108 | 154 | 177 |
| S91 – Payment of compensation money to person entitled and to Public Trustee | 1 | | |
| Grand Total | 1264 | 1363 | 1519 |

4.2 Total Referral Numbers by Year

| Financial Year | | | |
|----------------|-----------|-----------|-----------|
| 2016/2017 | 2017/2018 | 2018/2019 | 2019/2020 |
| 1179 | 1264 | 1323* | 1519 |

* This total differs to the total reported in paragraph 4.1 because occasionally a new referral will refer a worker's claim to the Tribunal under more than one section; e.g. s42 and s71 or s42 and s60A

4.3 Initial Dispute rate (section 81A) in respect of the Tasmanian Workers Compensation Scheme

| Year | Total Number of Workers Compensation Claims | Number of s81A referrals | Percentage |
|-----------|---|--------------------------|------------|
| 2016/2017 | 7124 | 575 | 8.07% |
| 2017/2018 | 7187 | 624 | 8.68% |
| 2018/2019 | 7769 | 682 | 8.78% |
| 2019/2020 | 7516 | 786 | 10.46% |

4.4 Number of s81A referrals followed by the lodgement of a s42 referral

The WRCT received 786 section 81A referrals in 2019/2020. Of those 786 referrals 64 workers (approximately 8.1%) went on to file s42 referrals and to commence the conciliation process in respect of their disputed claim. This represents an increase from the figure in 2018/2019 of 6.6%.

5 Initial Disputes – Section 81A Referrals/Section 77AB Referrals

| Referral Section | 2016/ 2017 | 2017/ 2018 | 2018/ 2019 | 2019/ 2020 |
|---|---------------|---------------|---------------|---------------|
| 77AB - Employers Liability for Expenses less than \$5000/Liability not accepted | 7 | 10 | 10 | 10 |
| S81A-Dispute liability for weekly payments and other benefits | 575 | 624 | 682 | 786 |
| Total | 582 | 634 | 692 | 796 |

5.1 Finalisations of s81A and s77AB Referrals

| How Section 81A and Section 77AB Referrals Were finalised | |
|---|------------|
| In Progress as at 30 June 2020 | 24 |
| No Reasonably Arguable Case | 6 |
| Consent Reasonably Arguable Case | 360 |
| Discontinued | 4 |
| Reasonably Arguable Case | 393 |
| Dismissed for want of jurisdiction | 7 |
| Dismissed | 2 |
| Total | 796 |

5.2 Average days for the Resolution of s81A Referrals lodged and finalised in 2019/2020

| Outcome | Number | Average Days to Finalisation |
|---|--------|------------------------------|
| No Reasonably Arguable Case | 6 | 40 |
| Consent Reasonably Arguable Case | 372 | 18 |
| Discontinued | 6 | 104 |
| Reasonably Arguable Case | 397 | 23 |
| Dismissed for want of jurisdiction | 5 | 29 |
| Average Days Regardless of Resolution Type | | 21 |

5.3 Average days for the Resolution of s77AB Referrals lodged and finalised in 2019/2020

| Outcome | Number | Average Days to Finalisation |
|--|--------|------------------------------|
| Consent Reasonably Arguable Case | 2 | 13 |
| Reasonably Arguable Case | 2 | 7 |
| Dismissed for want of jurisdiction | 3 | 9 |
| Average Days Regardless of Resolution Type | | 13 |

5.4 Nature of Injury in respect of s81A and s77AB Referrals

| Section 81A and Section 77AB Referrals By Nature of Injury | |
|--|-----|
| Arm | 19 |
| Back | 132 |
| Hand/Wrist | 44 |
| Neck | 22 |
| Psychological | 377 |
| Shoulder | 53 |
| Other | 149 |
| Total: | 796 |

Approximately 48% of disputed claims were for psychological injuries.

6 Conciliation Process

All matters referred to the WRCT with the exception of referrals pursuant to section 81A, 67F, 132A and 60A must follow the conciliation process⁷.

The conciliation process consists of two stages. The preliminary stage consists of a number of teleconferences conducted by the Registrar or Deputy Registrar with the parties during which:

- the issues in dispute are identified;
- parties agree to time frames in which any necessary investigations such as medical or factual assessments are to be undertaken;
- there is discussion about the claim generally in order to obtain concessions where appropriate in respect of any facts, law or procedure;
- the WRCT ensures matters progress in an expeditious manner to conciliation if an agreement is unable to be reached in this preliminary phase.

Once it is determined and agreed by all parties they have completed any necessary investigations the matter will proceed to the formal stage which is the conciliation

⁷ The conciliation process is provided for in Division 2 of Part V of the Act (ss42A-42N). These provisions are supplemented by Practice Directions issued by the Chief Commissioner.

conference. This is a face to face meeting of all parties to the reference. Discussions are on a “without prejudice” basis and parties are required to attend and participate in a conciliatory manner.

If a claim remains unresolved at the conclusion of a conciliation conference the Registrar or Deputy Registrar will certify the matter ready to progress to an arbitrated hearing. If the parties are genuinely ready for an arbitrated hearing at the end on the conciliation process, there is currently little delay in setting the matter down for hearing.

6.1 Non section 81A/77AB Referral numbers

| Referrals other than Initial Dispute Referrals | | | |
|--|-----------|-----------|-----------|
| 2016/2017 | 2017/2018 | 2018/2019 | 2019/2020 |
| 597 | 630 | 631 | 723 |

6.2 Referrals by Nature of Injury for Referrals other than s81A or s77AB

| Referrals by nature of injury (other than section 81A/77AB) | |
|---|-----|
| Arm | 26 |
| Back | 155 |
| Hand/Wrist | 42 |
| Neck | 26 |
| Psychological | 137 |
| Shoulder | 43 |
| Other | 294 |
| Total: | 723 |

Approximately 19% of these referrals related to claims for a psychological injury.

6.3 Average Days to finalisation for matters resolved in Conciliation

| Referral Type | Number | Average Days to Resolve |
|---|--------|-------------------------|
| 132A(4) – Referral for Settlement Approval | 162 | 9 |
| 143P | 1 | 202 |
| 90C – Disagreements About Medical Reviews | 1 | 25 |
| S138AB – Election to Claim Damages | 1 | 3 |
| S143 – Injury Management Notifications | 4 | 91 |
| S37 – Effect of Failure to Give Notice of Injury | 1 | 99 |
| S42 – Reference of Claims for Compensation to the Tribunal | 62 | 149 |
| S60A – Application for Interim Orders | 6 | 86 |
| S67 – Amount of compensation in case of death | 1 | 18 |
| S67F – Dispute of liability in respect of death of worker | 1 | 16 |
| S71 – Compensation for Permanent Impairment | 23 | 134 |
| S75(3) – Constant Attendance Services or Household Services | 1 | 112 |
| S77AA – Dispute regarding non-payment of expenses | 7 | 96 |
| S77 – Dispute regarding medical or rehabilitation services | 8 | 82 |

| Referral Type | Number | Average Days to Resolve |
|--|--------|-------------------------|
| S81A(5) – Dispute liability to continue to pay compensation | 13 | 129 |
| S86(4) – Worker disputing termination or reduction of payment by an Employer | 35 | 135 |
| S87 – Application for Tribunal to consider weekly payments beyond age 65 | 2 | 80 |
| S88 – Application to review weekly payments | 81 | 114 |
| Total | 409 | 78 |

It should be noted when considering the above tables that in many respects the time frame in which a matter can be resolved during either the preliminary or face to face stage is outside of the WRCT's control as there can be many delays by one party or both in providing medical evidence. This is by no means a criticism of the parties because on many occasions this is outside of their control due to the delay in obtaining appointments with and reports from treating or independent doctors/specialists. There is also a practice of expanding negotiations with respect to a dispute before the WRCT in order to consider a settlement of the claim for compensation in its entirety and this of itself takes the parties longer to prepare for.

6.4 Average Days to First Listing (Hearing or Tele-conference) – All Types of Referrals

| Referral Type | Average Days to First listing |
|--|-------------------------------|
| S77AB - Employers Liability for Expenses less than \$5000/Liability not accepted | 14 |
| S90C - Disagreements About Medical Reviews | 19 |
| S37 – Effect of Failure to Give Notice of Injury | 17 |
| S42-Reference of Claims for Compensation to the Tribunal | 18 |
| S60A-Application for Interim Orders | 10 |
| S67 – Amount of compensation in case of death | 17 |
| S67F – Dispute of liability in respect of death of worker | 16 |
| S71-Compensation for Permanent Impairment | 21 |
| S75(3) – Constant Attendant Services or Household Services | 15 |
| S77AA-Dispute regarding non-payment of expenses | 33 |
| S77-Dispute regarding medical or rehabilitation services | 17 |
| S81A(5)-Dispute liability to continue to pay compensation | 19 |
| S81A-Dispute liability for weekly payments and other benefits | 18 |
| S86(4)-Worker disputing termination or reduction of payment by an Employer | 21 |
| S87 - Application for Tribunal to consider weekly payments beyond age 65 | 14 |
| S88 - Application to review weekly payments | 18 |
| Overall Average | 15 |

When considering the information in the above table it should be noted where there are instances of a higher average number of days to first listing there could be a number of reasons for this including:

1. The WRCT has an existing referral which is listed at a future date and the parties request that they be dealt with together;
2. Parties request an adjournment of the initial listing to a date in the future. This can be due to a number of factors including the unavailability of a party or his or her counsel on the initial listing date or alternatively the need to obtain expert evidence before the matter can be usefully advanced through the conciliation process.

7 Arbitrated Hearings

An arbitrated hearing is held before the Chief Commissioner or Commissioner sitting alone⁸. A party to a proceeding may, with the approval of the WRCT, be represented by a person of that party's choice⁹. A proceeding is to be heard in private unless all parties agree the proceeding may be open to the public¹⁰.

The WRCT is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit¹¹ and the proceedings shall be conducted with as little formality and technicality and with as much expedition as the requirements of the Act and a proper consideration of matters to be resolved permit¹².

However these provisions do not displace the WRCT's obligation to afford procedural fairness to the parties and to ensure that the principles of natural justice are followed.

Although the initial intent of the architects of the Act may have been to have an informal and non-adversarial system, the harsh reality is that many workers compensation matters involve complicated determinations of law, findings of fact (sometimes in circumstances where disputed facts are aggressively contested) and the weighing of expert medical opinion. Given the significant value of the entitlements which are the subject of workers compensation disputes, the parties not surprisingly require determinations which are transparent and in accordance with the law. The WRCT hearings therefore remain more akin to an adversarial model rather than an inquisitorial one, but the WRCT can be expected to be less formal and more flexible in relation to proceedings and the adducing of evidence than a court of law. However action taken by the Tribunal which strays away from the generally accepted rules of evidence or procedure is likely to be closely scrutinised where there is a prospect that the other party will be prejudiced or where justice would be unlikely to be served.

All determinations of the WRCT (except for those in respect of uncomplicated section 81A references where in most cases determinations are made at the time of the hearing) are in writing and are published on <http://www.austlii.edu.au/au/cases/tas/TASWRCT>.

7.1 Matters Resolved at Arbitrated Hearings in 2019/2020

The timeframe in which a matter can be resolved by way of hearing is outside of the WRCT's control because from the time a referral is filed it must follow the conciliation

⁸ s17
⁹ s47(1)
¹⁰ s48(1) and (2)
¹¹ s49(1)(a)
¹² S49(1)(b)

process prescribed in Division 2 of Part V of the Act. During conciliation many delays can occur but the most common is the delay encountered by one or both parties in obtaining the necessary expert medical opinion which supports the case being advanced. As already stated in this report, this is by no means a criticism of the parties because on many occasions this is outside their control due to the delay in obtaining appointments with, and reports from, treating or independent doctors/specialists. Delays can also occur in respect of the availability of parties and witnesses. The simple reality is parties and their witnesses fall ill, take holidays or have conflicting commitments which result in their unavailability for a hearing. Although it is not ideal, the WRCT will part hear a matter and take evidence from the unavailable witness at a later date in an effort to progress a matter. However, if the matter does not settle prior to the commencement of the hearing or during the hearing, the matter cannot be finalised until evidence is taken from the unavailable witness at a later date.

| Matters Resolved at Arbitrated Hearings Regardless of Lodgement Date | Total |
|--|-------|
| 81A No Reasonably Arguable Case | 7 |
| Reasonably Arguable Case | 420 |
| Resolved After Hearing - Applicant Unsuccessful | 5 |
| Resolved After Hearing Applicant Successful | 2 |
| Resolved After Hearing Commences | 3 |
| Resolved After Notice of Hearing Issued | 21 |

8 Total Referrals Finalised in 2018/2019 regardless of Lodgement Year

The WRCT finalised 1507 referrals in the 2019/2020 financial year regardless of their year of lodgement¹³. Of the 1507 referrals, 1180 were matters lodged within the 2019/2020 financial year with the remaining 327 being referrals lodged in prior years. Just on 78% of matters filed in this financial year were therefore finalised in this financial year.

| Finalisation Period | 2019/2020 |
|---------------------|-----------|
| 1 Month | 987 |
| 1-3 months | 130 |
| 3-6 months | 169 |
| 6-9 months | 137 |
| 9-12 months | 84 |
| Over 12 months | |
| Total | 1507 |

¹³ This is an increase of 9 matters from the previous year.

9 Approval of Settlements – Section 132A(4) Referrals

Amendments to the Act which came into effect on 1 July 2010 place restrictions on claims being settled in exchange for lump sums by agreement within 2 years of injury. The WRCT must approve such a settlement. The WRCT is required to take into account whether all reasonable steps have been taken to enable the worker to be rehabilitated, retrained or return to work¹⁴, or the worker has returned to work¹⁵, that the worker has received independent financial and/or legal advice paid for by the employer¹⁶, that any section 71 entitlement has been considered¹⁷ or that special circumstances apply¹⁸ and the proposed settlement is in the worker's best interests¹⁹.

In the 2019/2020 year the WRCT received 165 s132A(4) referrals. A total of 161 have been approved. The average number of days to resolve a reference of this nature is 9. In the majority of cases the time to resolve is considerably less however a number of the referrals received required further information prior to approval which took the parties time to provide and which led to an increase in the average time to resolve.

| Section 132A Referrals lodged in 2019/2020 by Nature of Injury | |
|---|-----|
| Arm | 4 |
| Back | 28 |
| Knee | 4 |
| Psychological | 32 |
| Shoulder | 4 |
| Other | 93 |
| Total: | 165 |

10 Injury Management, Rehabilitation and Return to Work

The WRCT is now able to assist parties where disputes in relation to injury management, rehabilitation or return to work under Part X of the Act occur. Workers, employers, insurers or injury management co-ordinators may refer disputes to the WRCT for informal conciliation²⁰. This service is provided in a prompt manner. If the conciliator is unable to resolve the issue it will be referred to a Commissioner for consideration at an early stage which will assist in ensuring that rehabilitation efforts remain in place.

14 s132A(6)(a)(i)
15 s132A(5)(a)(ii)
16 s132A(7)(a)
17 s132A(7)(b)
18 s132A(6)(c)(i)
19 s132A(6)(c)(ii)
20 s143Q

The number of notifications in 2019/2020 was 13 whereas in 2018/2019 the figure was 12. Those referrals have resulted in clarification of the issues and ultimately resolution of the referral or in the minority progression to a section 42 referral for determination by the WRCT.

11 Appeals to Supreme Court of Tasmania

Any party aggrieved by any determination, order, ruling or direction of the WRCT on a point of law may appeal to the Supreme Court of Tasmania.

In 2019/2020, five appeals were filed in the Supreme Court of Tasmania.

The following table indicates their progress.

| APPEAL OUTCOME | Matter Count |
|------------------|--------------|
| Dismissed | 2 |
| Upheld | 0 |
| Decision Pending | 3 |

12 Review of Legislation

The Chief Commissioner is a member of the Legislative Review Advisory Committee established to provide advice to the WorkCover Tasmania Board. This Committee has not met since 2014, however plans are underway for it to be re-established in the near future.

13 Legislative Amendments

During 2019/2020 the Act was amended by the *Workers Rehabilitation and Compensation Act No 23 of 2019*, which commenced on the date it received Royal Assent, which was on 2 September 2019. Prior to this amendment all workers who are incapacitated by a work injury have their wages reduced by 90% after 26 weeks of incapacity, and they are further reduced to 80% after 78 weeks of incapacity. As a result of the amendment police officers who are incapacitated by an operational based injury will continue to receive 100% of their wages. This amendment only relates to injuries suffered after 2 September 2019.

ACIL Allen Consulting has been engaged by the WorkCover Tasmania Board to undertake a review to consider whether the removal of the step-down provisions should be applied to any other category of worker. A number of stakeholders were consulted, including myself. I understand the report is due to be finalised towards the end of October 2020.

14 Report on Financial Statement

| Operating Expenditure | | | |
|--------------------------------------|-----------------------|-----------------------|---------------------|
| | Budget | Actual | Variance |
| Total Salary Related Expenditure | \$928,856.00 | \$779,456.55 | \$149,399.45 |
| Total Non-Salary Related Expenditure | \$603,124.00 | \$545,645.11 | \$57,478.89 |
| Total Operating Expenditure | \$1,531,980.00 | \$1,325,101.66 | \$206,878.34 |

| TOTAL EXPENDITURE | |
|-------------------|-------------|
| 2013/2014 | \$1,384,017 |
| 2014/2015 | \$1,266,360 |
| 2015/2016 | \$1,371,798 |
| 2016/2017 | \$1,335,958 |
| 2017/2018 | \$1,328,915 |
| 2018/2019 | \$1,336,598 |
| 2019/2020 | \$1,325,101 |

The Department of Justice engaged KPMG to conduct an audit of the funding and accounting for the various tribunals²¹ overseen by the Chief Commissioner of the WRCT. That firm was engaged by the Department as a result of my comments made by the Chief Commissioner (at the time) in his 2015/2016 annual report that the WRCT was subsidising the costs of the other tribunals it administers and in so doing funds provided to it were not being utilised for the purposes of the Act. The objective of the audit was to consider the application of, and accounting for, the funds provided to support the various activities of the tribunals which are the responsibility of the Chief Commissioner and to ensure that those funds were being applied in compliance with current policies and legislative requirements of the various tribunals. Work on the audit commenced in August 2017 and a draft report was prepared by December 2017. It was finalised by February 2018. The audit considered the current procedures for the recovery by the WRCT of the cost of the work done in other tribunals and found overall the procedures used to account for tribunals' funds are effective. It recommended any service level agreement be reviewed to ensure the fee being charged for the service being provided adequately reflects the cost of providing those services. That review has not yet commenced.

In the 2017/2018 and 2018/2019 annual reports my predecessor recommended that where possible the service level agreement should be scrapped in favour of a direct budget allocation. The ADT is funded this way, see 2.4 above. My predecessor formed the view that this method would ensure the proper cost of services provided to other tribunals is recovered, because overheads, for example, would be included, but it would reduce red tape and save the time of staff who have to administratively seek reimbursement. The time saved can be directed towards our core business of

²¹ See sections 2.1-2.4 of this report

efficiently managing the work of the WRCT. It is likely that these issues will need to be addressed prior to the amalgamation in 2021 of all of the tribunals that are currently co-locating at 38 Barrack Street.

15 Intent for 2020/2021

To continue work in the following areas:

- Engaging with stakeholders and all of the tribunals that are currently co-locating at 38 Barrack Street towards a smooth and successful amalgamation in 2021 to establish a consolidated Civil and Administrative Tribunal, including providing input on the legislation that will be required for that Tribunal.
- The implementation of the Council of Australasian Tribunals (COAT) Australia and New Zealand Tribunal Excellence Framework relating to the core values that tribunals should uphold and apply in carrying out their function of dispute resolution. *The values are:*

1. *Equality before the law;*
2. *Fairness;*
3. *Impartiality;*
4. *Independence;*
5. *Respect for the law;*
6. *Accessibility;*
7. *Competence;*
8. *Integrity;*
9. *Accountability;*
10. *Efficiency.*

At the heart of these values is the consideration of the parties before the tribunal, or the tribunal's users²².

- Securing sufficient local medical practitioners to allow the use of medical panels in the WRCT or seek other means to provide a structured process whereby such panels can be created at regular intervals.
- Progressing the integration of the tribunals into a common IT case management and reporting format.
- Achieving a less adversarial environment in all tribunals operating under the umbrella of the WRCT.

²²

COAT Australia and New Zealand Tribunal Excellence Framework June 2017

- Accepting speaking engagements at which the work of the WRCT can be discussed and explained to stakeholders and to the public.
- Assisting in the teaching of the workers compensation unit of the legal practice course to those who have completed their law degree and who are seeking admission to practice.
- Chairing meetings of the Tribunals' Users Group (see Section 16 below) in order to improve practice and procedure and ultimately the service delivery of tribunals. Reporting to the WorkCover Board in relation to issues raised at the Regular Users' Group meeting.
- Engaging with the WorkCover Board to implement the successful reconstitution of the Legal Advisory Committee (LRAC) and being a member of LRAC.

16 Regular Users' Group

In late 2017 my predecessor formed a Regular User's Group. The purpose of that group is to provide a consultation mechanism which involves frequent tribunal users. The role of the group is to provide feedback and suggestions on operational and policy issues relating to the services predominantly provided by the WRCT, which is the busiest tribunal under the WRCT umbrella. The group comprises legal practitioners from the North West, North and South of the State to join that group. It meets approximately four times per year.

The issues that were discussed at the last meeting on 31 July 2020 include:

1. The progress of the National Certificate of Capacity and new Claim form.
2. Whether WorkCover would be reforming the Legislative Review Advisory Committee (LRAC) which has not met to discuss legislative reforms since approximately 2014.
3. The progress of the report on s69B stepdown provisions.
4. Whether s87 relating to workers injured after 'pension age' would be reviewed
5. Whether the electronic filing of documents implemented during the Covid-19 shutdown should be continued.
6. Whether attending conciliation conferences by telephone, Skype or Microsoft Teams that was introduced during the Covid-19 lockdown should be continued.
7. The impact of Covid-19 on the Tribunal process.

At a recent meeting with the WorkCover Board all of these issues were raised and it has been agreed that I will report to the Board with respect to all matters discussed at the Regular Users' Group in order to keep the Board up to date with the issues impacting the Tribunal and the people who use it.

17 COVID-19

COVID-19 forced the Tribunal to review its operations. All filing of documents was done electronically. Due to the positive feedback received from staff and Users of the Tribunal electronic filing of documents has and will be continued. Conciliation Conferences were conducted by Skype and or teleconferences. No substantive hearings were conducted but the Tribunal could have conducted a hearing by Skype if the need had arisen. No Tribunal process was delayed or cancelled as a result of COVID-19. A skeleton staff of three worked at the Tribunal over the lockdown period with the remaining staff were able to effectively work from home. Following advice from the Department of Justice and Public Health as from 15 July 2020 remote working arrangements that were in place have ceased. All staff are now located at the new Tribunal premises at 38 Barrack Street.

18 Members of WRCT & Staff

The staff of the WRCT are noted in the diagram on the next page.

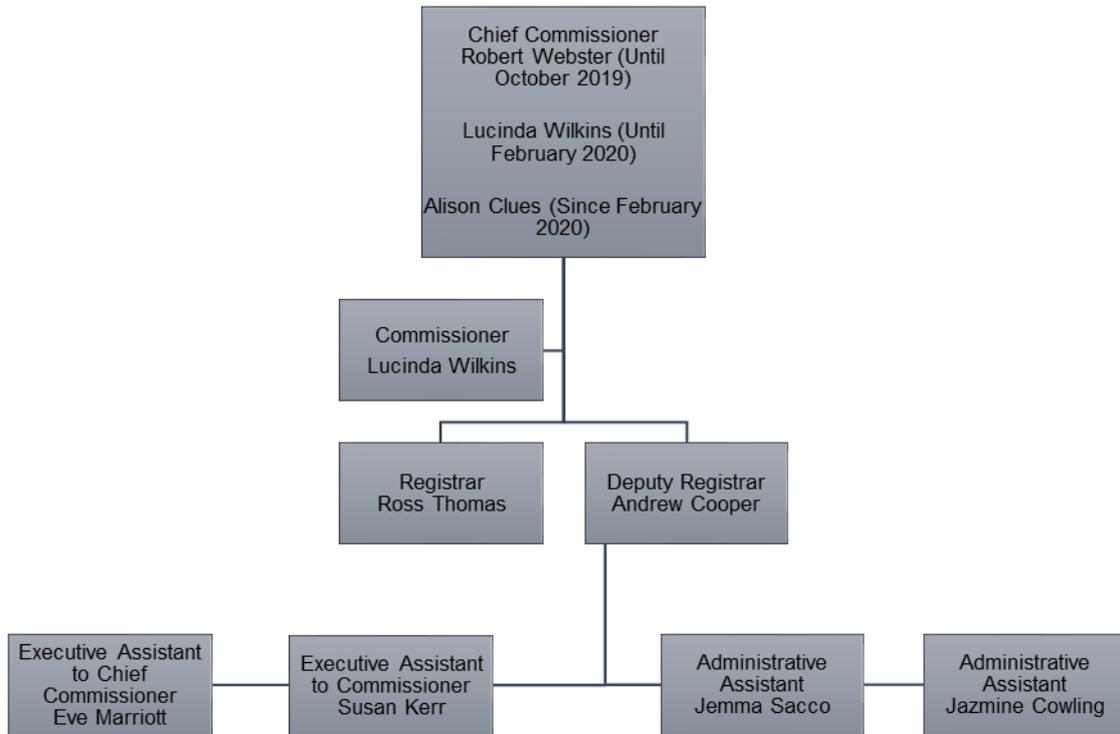
On 13 May 2019 Susan Kerr was appointed to the position of Executive Assistant to Commissioner Wilkins. Mrs Kerr's previous position as Administrative Assistant was advertised, interviews took place in the week commencing 26 August 2019. Jazmine Cowling was the successful applicant and was appointed to that position on 14 October 2019

Jemma Sacco went maternity leave on 1 March 2019. She returned in February 2020. Jade Barnett who was the person filling that role left upon her return.

I wish to record my appreciation for the good work of the WRCT staff and the support that has been provided to both Commissioner Wilkins and myself since I commenced in the role in February this year. Despite the fact that both of us had appeared in this jurisdiction for many years prior to our respective appointments, that role is far different from the roles we now occupy. Coming to grips with the systems and processes implemented by the former Chief Commissioner and Commissioner over many years, in not only this jurisdiction but in four others under our stewardship, has been, from our point of view, seamless because of the professionalism and assistance of WRCT staff.

In addition because of staff changes and the change in working arrangements of some staff there has been a greater volume of work this year for the remaining staff of the Tribunal. I wish to personally thank those staff for putting in the extra time to perform that work thereby ensuring that the Tribunal has continued to operate efficiently.

I particularly want to thank all staff for the resilience displayed during COVID-19 particularly during the lockdown period. The impact of COVID-19 on the tribunal's processes and procedures has been minimal and it has resulted in the implementation in some more efficient procedures that will remain in place for users of the Tribunals, in particular, electronic filing and the ability to attend directions hearings by phone.




 A M Clues
Chief Commissioner