

The Workers Rehabilitation & Compensation Tribunal

Annual Report
2015-2016

Table of Contents

1	Overview	3
2	Activities 2015-2016.....	3
3	Tribunal Accommodation.....	5
4	Referrals to the Tribunal 2015-2016.....	6
5	Initial Disputes – Section 81A Referrals/ Section 77AB Referrals.....	7
6	Conciliation Process.....	8
7	Arbitrated Hearings	10
8	Total Referrals Finalised in 2015/2016 regardless of Lodgement Year	12
9	Approval of Settlements – Section 132A(4) Referrals	12
10	Injury Management, Rehabilitation and Return to Work	13
11	Appeals to the Supreme Court of Tasmania.....	13
12	Review of Legislation	13
13	Report on Financial Statement.....	14
14	Intent for 2016-2017.....	14
15	Members of Tribunal & Staff.....	17

1 Overview

The Tribunal is constituted by the Chief Commissioner, a Commissioner or a Part-Time Commissioner. From March 2016 only the Chief Commissioner position was filled and no action was initiated by Department of Justice to fill the vacant Commissioner position until after July 2016

Both the Chief Commissioner and Commissioner fulfilled the requirements of the Act in that they are legal practitioners of not less than 5 years standing. Both were appointed, full-time, on contracts.

The functions of the Tribunal are as follows:

- 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 Tribunal as at 30 June each year.

	30 June 2016 Actual	2016 Budget
Full Time Equivalent Staff	6	8

2 Activities 2015-2016

The Tribunal Case Management System (CRMS) implemented in July 2012 has provided a more efficient method of case management and has resulted in the ability to provide accurate statistical information in a less labour intensive manner.

The Tribunal continued to carry out work for other Department of Justice Outputs. In total the Tribunal received \$97,863.50 (as compared to \$145,476 for 2014-2015) for work carried out during 2015/2016 in respect of:

2.1 Magistrates Court - Coroners

Duties performed in this regard by the Chief Commissioner and Commissioner together with support staff is reimbursed to the Tribunal in accordance with a Service Level Agreement completed in December 2010 with the Department of Justice. This arrangement ceased in March 2016 with a decision to confine Coronial work to specified Magistrates in the Magistrates Court.

2.2 Motor Accidents Compensation Tribunal

Arrangements continued with the Magistrates Court to the effect that the Workers Rehabilitation & Compensation Tribunal (WRCT) performed the role of the Motor Accidents Compensation Tribunal. Services provided by the Tribunal Members ie the Chief Commissioner and Commissioner are reimbursed in accordance with the Service Level Agreement completed 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 Motor Accidents Compensation Tribunal and the formal administration of that Tribunal transferred to the WRCT. The fee for service funding remains the same which is unsatisfactory. Apparently no budgetary allowance has been made by Parliament for the administrative and running costs of this Tribunal. The fee for service arrangement does not properly represent the value to consolidated revenue provided by the WRCT performing this role noting that WRCT is separately funded by the Workers Compensation Fund (non-consolidated revenue)

2.3 Health Practitioners Tribunal

The WRCT incorporates the Health Practitioners Tribunal. This Tribunal has been established to hear and determine disciplinary matters and reviews of decisions under the *Health Practitioner Regulation National Law (Tasmania) 2010*. The Chairperson (Mr S Carey, Chief Commissioner of the WRCT), has the power to appoint professional and community Members.

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 completed in December 2011. Once again this is a fee for service arrangement and does not provide for the general administrative expense of 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.”

No budgetary allocation has been made for these operating and overhead costs and once again these were borne by the WRCT.

2.4 Asbestos Compensation Tribunal

The WRCT incorporates the Asbestos Compensation Tribunal. This Tribunal has been established under the [Asbestos-Related Diseases \(Occupational Exposure\) Compensation Act 2011](#), with its primary responsibility 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 the Service Level Agreement completed in December 2011. Given that funding for this

Tribunal is also from the Workers Compensation Fund it is recommended that the Budget for the WRCT simply incorporate that for the Asbestos Compensation Tribunal given that very few applications have ever been made to that Tribunal.

2.5 Anti- Discrimination Tribunal

On 1 July 2016 the WRCT officially assumed the administration and conduct of the Anti-Discrimination Tribunal from the Magistrates Court. The Chief Commissioner was appointed the Chairperson of the Tribunal. The Tribunal 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 for 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 Anti-Discrimination Tribunal. The WRCT does not accept that appropriate funding has been provided to properly reflect not only the actual out of pocket expenses incurred by the Anti- Discrimination Tribunal but also the overall administration expenses. This funding issue remains unresolved as no separate Budget allocation has been made to meet the general administration, facility and running costs of this Tribunal with reliance once again placed on the Workers Compensation Fund in that regard.

3 Tribunal Accommodation

In November 2013 the Tribunal Registry re-located to Level 7, NAB House, 86 Collins Street, Hobart. In addition to staff areas there are two hearing rooms, two conciliation rooms and two meeting (break out) rooms. Minor work was carried out in May/June 2016 to extend the size of one conciliation room in order to better accommodate the number of persons at times attending conciliation. The funding for this was achieved within the WRCT budget for 2015/2016.

In August 2015 the Tribunal relocated to new and improved premises at 1/111 St John Street, Launceston. These premises provide a hearing room, two conference rooms, two meeting (break-out) rooms and staff office area. Tribunal staff are based in Hobart and travel as required to the North and North-West of the State.

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

The Tribunal utilises the Devonport Community Health Centre in the North-West and incurs a room hire fee in this regard on an approximately monthly basis.

The Tribunal has discontinued its use of premises in Burnie. This was predominately used for s81A hearings of which the vast majority resolved by consent orders making it inefficient and uneconomic for the Tribunal to maintain travel for that purpose to both Launceston and Burnie. For this reason the Tribunal conducted a trial of a procedure to have all s81A matters heard by telephone throughout the State. This process has been confirmed and has decreased the travel requirements of the Tribunal and allowed more effective and efficient use of Tribunal hearing time.

4 Referrals to the Tribunal 2015-2016

4.1 Summary of Referrals (by Nature of Referral) received in 2015-2016

NATURE OF REFERRAL	FINANCIAL YEAR	
	2014-2015	2015-2016
132A(4) - Referral for Settlement Approval	121	158
143P	3	3
77AB - Employers Liability for Expenses less than \$5000/Liability not accepted	6	4
90C - Disagreements About Medical Reviews	2	1
97B - Worker entitled during dispute between Insurers	1	
S138AB(3) - New Act (2010) Election to Claim Damages	3	2
S138AB-Election to Claim Damages	5	1
S143 - Injury Management Notifications	8	11
S38(3) - Effect of Failure to Make Claim	1	
S42-Reference of Claims for Compensation to the Tribunal	144	184
S60A-Application for Interim Orders	20	19
S67-Amount of compensation in case of death		1
S67F-Dispute of liability in respect of death of worker	3	
S68 - Dependency Questions & Apportionment	1	
S69-Amount of Compensation in case of incapacity	3	3
S71-Compensation for Permanent Impairment	67	77
S75(3) - Constant Attendant Services or Household Services	1	
S77AA-Dispute regarding non-payment of expenses	56	31
S77-Dispute regarding medical or rehabilitation services	21	19
S81A(5)-Dispute liability to continue to pay compensation	17	15
S81A-Dispute liability for weekly payments and other benefits	572	627
S86(4)-Worker disputing termination or reduction of payment by an Employer	73	71
S87 - Application for Tribunal to consider weekly payments beyond age 65	10	2
S88 - Application to review weekly payments	132	157
S97A - Disputes Between Insurers	1	1
Grand Total	1284	1388

4.2 Total Referral Numbers by Year

FINANCIAL YEAR				
2011-12	2012-13	2013-14	2014-15	2015-16
948	1160	1295	1284	1388

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
2011/2012	9298	443	4.76%
2012/2013	8406	515	6.13%
2013/2014	7857	593	7.55%
2014/2015	7756	573	7.39*%
2015/2016	7481	627	8.38%

*Note: The calculation in 2014/2015 Annual Report was incorrect

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

The Tribunal received 627 section 81A referrals in 2015/2016. Of those 627 referrals 75 (approximately 12%) went on to file s42 referrals and to commence the conciliation process in respect of their disputed claim. This is an increase from the 2014/2015 percentage of 10%.

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

Referral Section	2011-12	2012-13	2013-14	2014-15	2015-16
77AB - Employers Liability for Expenses less than \$5000/Liability not accepted	5	5	7	6	4
S81A-Dispute liability for weekly payments and other benefits	443	515	593	572	627
Total	448	520	600	578	631

5.1 Finalisations of s81A and s77AB Referrals

How Section 81A and Section 77AB Referrals Were finalised	
In Progress as at 30 June 2016	33
No Reasonably Arguable Case	8
Consent Reasonably Arguable Case	345
Discontinued	8
Reasonably Arguable Case	237
Total	631

5.2 Average days for the Resolution of a s81A or s77AB Referral.

Outcome	Number	Average Days to Finalisation
No Reasonably Arguable Case	8	31
Consent Reasonably Arguable Case	345	14
Discontinued	8	10
Reasonably Arguable Case	237	18
Average Days Regardless of Resolution Type		16

5.3 Nature of Injury in respect of s81A and s77AB Referrals

Section 81A and Section 77AB Referrals By Nature of Injury	
Psychological	215
Shoulder	67
Neck	20
Back	95
Knee	53
Hand/Wrist	42
Arm	27
Other	112

6 Conciliation Process

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

The conciliation process consists of two phases. The preliminary stage consists of a number of teleconferences 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 are to be undertaken.
- Discuss the claim in general in order to obtain concessions where appropriate in respect of any facts, law or procedure.
- Ensure the matter is progressing 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 that they have completed any necessary investigations the matter will proceed to the conciliation 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 Conciliator will certify the matter ready to progress to an arbitrated hearing.

6.1 Non section 81A/77AB Referral numbers

Referrals other than Initial Dispute Referrals				
2011-12	2012-13	2013-14	2014-15	2015-16
500	640	795	707	757

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

Referrals by nature of injury (other than section 81A/77AB)	
Psychological	126
Shoulder	88
Neck	35
Back	185
Knee	65
Hand/Wrist	38
Arm/Elbow	47
Other	173

6.3 Average Days to finalisation for matters resolved in Conciliation

Referral Type	Number	Average Days to Resolve
90C - Disagreements About Medical Reviews	1	50
S138AB-Election to Claim Damages	0	
S143 - Injury Management Notifications	5	148
S42-Reference of Claims for Compensation to the Tribunal	92	111
S69-Amount of Compensation in case of incapacity	0	
S71-Compensation for Permanent Impairment	50	94
S77AA-Dispute regarding non-payment of expenses	9	111
S77-Dispute regarding medical or rehabilitation services	13	119
S81A(5)-Dispute liability to continue to pay compensation	8	105
S86(4)-Worker disputing termination or reduction of payment by an Employer	35	116
S87 - Application for Tribunal to consider weekly payments beyond age 65	1	18
S88 - Application to review weekly payments	80	97
S97A - Disputes Between Insurers	1	190
Total	296	105

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 process is outside of the Tribunal's control in that many delays can be by one party or both in providing medical evidence. This is by no means a criticism of the parties but on many occasions can be outside of their control due to the delay in obtaining appointments and reports with treating or independent doctors/specialists. There is

also a developing practice of expanding negotiation upon a dispute before the Tribunal in order to consider a settlement of the claim for compensation in its entirety.

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

Referral Type	Average Days to First listing
77AB - Employers Liability for Expenses less than \$5000/Liability not accepted	7
90C - Disagreements About Medical Reviews	0
S138AB(3) - New Act (2010) Election to Claim Damages	6
S138AB-Election to Claim Damages	21
S42-Reference of Claims for Compensation to the Tribunal	20
S60A-Application for Interim Orders	22
S67F-Dispute of liability in respect of death of worker	0
S69-Amount of Compensation in case of incapacity	18
S71-Compensation for Permanent Impairment	20
S77AA-Dispute regarding non-payment of expenses	31
S77-Dispute regarding medical or rehabilitation services	22
S81A(5)-Dispute liability to continue to pay compensation	16
S81A-Dispute liability for weekly payments and other benefits	8
S86(4)-Worker disputing termination or reduction of payment by an Employer	27
S87 - Application for Tribunal to consider weekly payments beyond age 65	44
S88 - Application to review weekly payments	20
S97A - Disputes Between Insurers	23
Overall Average	14

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 Tribunal 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.

7 Arbitrated Hearings

An arbitrated hearing is held before the Chief Commissioner or Commissioner sitting alone.

The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit 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 permit.

However this does not displace the obligation to afford procedural fairness to the parties and ensure that the principles of natural justice are upheld.

Although the initial intent of the framers of the Act may have been to have an informal and non-adversarial system, the harsh realities are that many workers compensation matters involve complicated determinations of law, findings of fact (sometimes in circumstances where disputed facts are aggressively contested) and the weighting 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 Tribunal hearings therefore remain more akin to an adversarial model rather than inquisitorial, but the Tribunal 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 applications or endeavours to stray from the generally accepted rules of evidence or procedure are 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 by such request.

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

7.1 Matters Resolved at Arbitrated Hearings in 2015/2016

The time frame in which a matter can be resolved by way of hearing is outside of the Tribunal's control in that from time of lodgement a matter must follow the conciliation process during which many delays can occur for example the delay by one party or both in providing medical evidence. This is by no means a criticism of the parties but on many occasions can be outside of their control due to the delay in obtaining appointments and reports with treating or independent doctors/specialists. Delays can also occur in respect to the availability of parties and witnesses.

Matters Resolved at Arbitrated Hearings Regardless of Lodgement Date	Total
81A No Reasonably Arguable Case	8
Reasonably Arguable Case	253
Resolved After Hearing - Applicant Unsuccessful	16
Resolved After Hearing Applicant Successful	6
Resolved After Hearing Commences	1
Resolved After Notice of Hearing	14

8 Total Referrals Finalised in 2015/2016 regardless of Lodgement Year

The Tribunal finalised 1357 referrals in the 2015/2016 financial year regardless of their year of lodgement. Of the 1370 referrals 1065 were matters lodged within the 2015/2016 financial year with the remaining 292 being referrals lodged in prior years.

Finalisation Period	2015-2016
1 Month	827
1-3 months	135
3-6 months	135
6-9 months	101
9-12 months	56
Over 12 months	103
Total	1357

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

Amendments to the *Workers Rehabilitation & Compensation Act 1988* 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 Tribunal must approve such a settlement. The Tribunal is required to take into account whether all reasonable steps have been taken to enable the worker to be rehabilitated, that the worker has received independent financial and/or legal advice paid for by the employer, that the settlement is in the best interests of the worker, that any section 71 entitlement has been considered or that special circumstances apply.

In the 2015/16 year the Tribunal received 158 s132A(4) referrals. 151 have been approved and 7 are still in progress. The average number of days to resolve a reference of this nature is 10. 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 resulted in delays by the parties and an increase therefore in the average time to resolve.

Of the 158 s132A(4) referrals 46% (73) had s81A referrals and findings of a Reasonably Arguable Case and therefore liability remained in dispute between the parties.

Section 132A Referrals lodged in 2015/2016 by Nature of Injury	
Psychological	45
Back	30
Shoulder	19
Knee	14
Neck	8

Section 132A Referrals lodged in 2015/2016 by Nature of Injury	
Other	42

10 Injury Management, Rehabilitation and Return to Work

The Tribunal is now able to assist parties where disputes in relation to rehabilitation occur. Workers, employers, insurers or injury management co-ordinators may refer disputes to the Tribunal for informal conciliation. This service will be 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.

There has been an increase in the number of notifications in this respect from 8 in 2014/2015 to 11 in 2015/2016. Those notifications have resulted in clarification of the issues and ultimately resolution of the notification or in the minority progression to a section 42 referral for determination by the Tribunal.

11 Appeals to the Supreme Court of Tasmania

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

In 2015/16, 1 Appeal was filed in the Supreme Court of Tasmania.

The below table indicates their progress.

APPEAL OUTCOME	Matter Count
Upheld	1

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.

13 Report on Financial Statement

Operating Expenditure

	Budget	Actual	Variance
Total Salary Related Expenditure	\$1,097,091	\$911,988	\$185,103
Total Non-Salary Expenditure	\$569,719	\$459,810	\$109,908
Total Operating Expenditure	\$1,666,810	\$1,371,798	\$295,011

TOTAL EXPENDITURE	
2010/2011	\$1,239,475
2011/2012	\$1,279,719
2012/2013	\$1,222,156
2013/2014	\$1,384,017
2014/2015	\$1,266,360

14 Intent for 2016-2017

- Now that the additional Tribunals have as a result of government policy been formally placed with WRCT with the expectation that WRCT will provide all the services required to manage, administer and perform the role of those tribunals a separate transparent budget allocation must be made for that purpose to the WRCT. The existing fee for service and ad hoc arrangements are unwieldy, not guaranteed and do not capture the general administration costs of the tribunals including accommodation, IT facilities and ongoing case management. Without such separate allocation WRCT will need to divest itself of those Tribunals because to continue support with no proper funding from government would be improper and an unauthorised use of WRCT resources and its budget authority from the Workers Compensation Fund.
- The Tribunal will maintain its endeavours to secure 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
- The Tribunal will continue to progress the integration of the Tribunals hosted by WRCT into a common IT case management and reporting format.
- The Tribunal will engage with stakeholders in respect of the project to establish a consolidated Civil and Administrative Appeals Tribunal providing the lessons learnt from our hosting of other tribunals to date and the risks associated with a loss of independence.
- The Tribunal will continue to provide input into what the Tribunal believes to be legislative amendment necessary to improve dispute resolution procedures within all tribunals overseen by Workers Compensation and

Rehabilitation Tribunal. The tribunal will seek clear legislative authority to mandate rules of practice to achieve a less adversarial environment in all tribunals operating under the umbrella of the Workers Rehabilitation and Compensation Tribunal.

15 Should the Tribunal stay separate from a consolidated Civil and Administrative Appeals Tribunal?

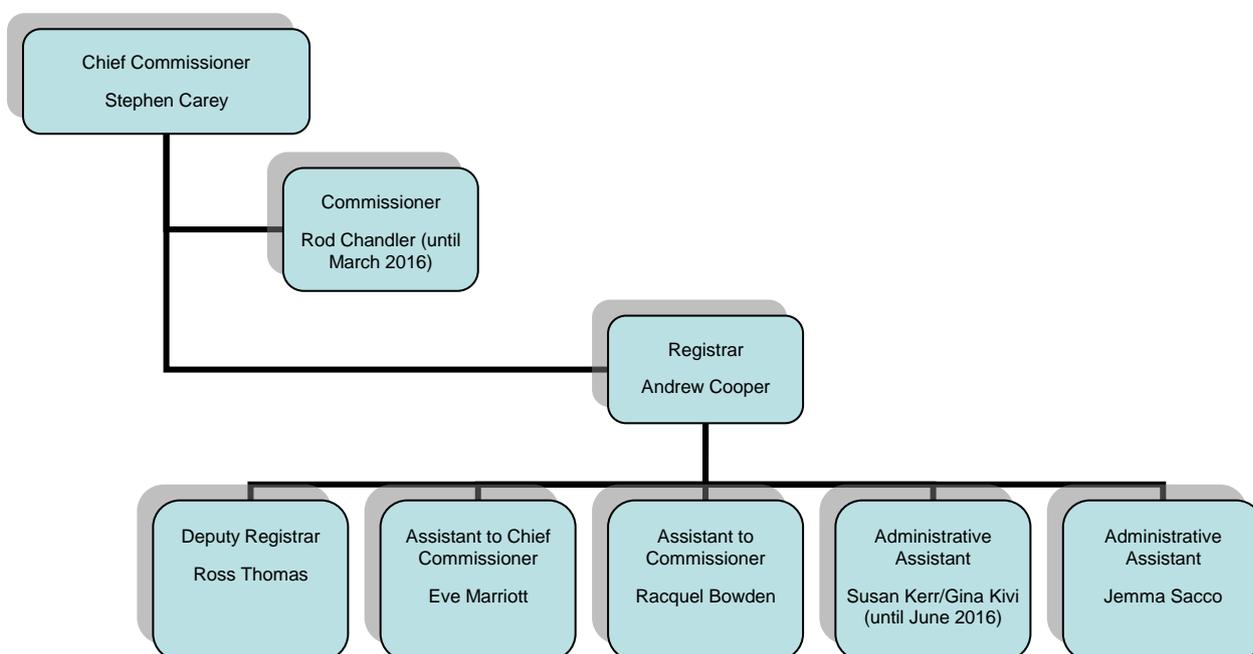
All Australian jurisdictions have addressed the question of whether or not it would be in the interests of stakeholders within the workers compensation system and the workers compensation system generally to join a consolidated or super tribunal structure. . In all cases the decision has been made to retain the existing separate organisation and process in each jurisdiction. The workers compensation dispute resolution organisation in every Australian jurisdiction has remained separate from their general consolidated 'super "tribunal.

The adverse impact upon the Tribunal by the delay in filling the Commissioner position, the downgrading of the Chief Commissioner and Commissioner positions without input from stakeholders and the continuing budget issues relating to the tribunals hosted by the Workers Rehabilitation and Compensation Tribunal have caused me to alter my position on this issue to now recommend strongly that the Workers Rehabilitation and Compensation Tribunal remain independent and not become part of any consolidated Civil and Administrative Tribunal. In support of this opposition I make the following observations:

- Analysis carried out in other jurisdictions showed that it was more cost effective for the workers compensation system to retain a separate in house dispute resolution process.
- Workers compensation is a complex and difficult area of law requiring specialised practitioners with experience in that area. Forming part of a super tribunal creates the risk of not maintaining appropriate specialist staff because membership and work roles over time will be at the discretion of the super tribunal head.
- Workers compensation resolution bodies in each State strive to achieve timely resolution together with durable and quality decisions. Considerable emphasis has been given to this in every jurisdiction. Any shift to a generalist or super tribunal has the potential to undermine the status and respect of the specialist dispute resolution body has built up over time. It should be noted that claims for compensation in this jurisdiction can involve disputes as to statutory benefits amounting to hundreds of thousands of dollars.
- Workers compensation dispute resolution bodies are particularly mindful of the need for timeliness and continually strive to meet expectations. Stand-alone bodies have the ability to adapt and react on their own motion in order to ensure that they maintain the timeliness expected of stakeholders. That inherent ability is linked to the independence of the body and could be lost as part of a large structure.
- Super tribunal models in other jurisdictions have focussed on civil and administrative jurisdictions only.

- Workers compensation dispute resolution bodies in all States are funded by the workers compensation scheme, not by consolidated revenue. Consolidation of a workers compensation dispute resolution body into a super tribunal would require significant change to the funding model and also a need for detailed accounting as to the operational costs of the worker's compensation dispute resolution body within the super tribunal.
- The workers compensation dispute resolution process in each State forms an integral part of the overall workers compensation statutory scheme. The bodies are designed to support that statutory scheme in numerous and varied ways, ranging from simple phone call assistance, workplace visits to address rehabilitation or return to work issues right through to formal conciliation and arbitrated hearings. The expectation of stakeholders is that there is an ongoing ability for the dispute resolution body to react both formally and informally as and when required. The wide ranging roles and functions of workers compensation dispute resolution bodies could not be provided as readily within a formalised super tribunal structure.

16 Members of Tribunal & Staff



I wish to record yet again my appreciation for the work of the Tribunal staff and their support to myself. Yet again they have accepted an increased role of administering a new jurisdiction, the Anti -Discrimination Tribunal. This is a specialised jurisdiction and at times very challenging. All staff took steps to acquaint themselves with the new area of law and procedures and then assisted in implementing changes to the procedure adopted by us to administer these matters. The manner in which all members engaged in this process is a credit to them individually and ensured a positive benefit to the administration of justice in this State.

I was personally disappointed and somewhat offended that a decision was taken by the Department of Justice without any reference to me nor, I gather, the professional legal bodies whose members are engaged in this jurisdiction nor other stakeholders, to significantly downgrade the conditions of service of the Chief Commissioner position when expressions of interest were first invited to fill the vacancy upon my departure. This created a possible perception that not only was there no recognition of the extent, nature and complexity of the workers compensation jurisdiction but also little value given to the numerous other jurisdictions that were voluntarily assumed over the years. The expectation remains that the new appointees will also assume those additional jurisdictions. The decision to down grade the status of the position was clearly taken in ignorance of or in disregard to the fact that since their inception, all of the relevant tribunals have been headed by at a minimum a Magistrate.

The budget situation of the Tribunals hosted by the WRCT requires immediate attention. I do not consider that the Workers Compensation Fund and the budget of the WRCT which is drawn from that Fund is being properly recompensed for the full range of services and facilities being provided by the WRCT in hosting those other Tribunals. In February 2016 I provided advice to the Department of Justice as to the estimated significant saving to the WRCT budget if it reverted solely to that jurisdiction and the Asbestos Compensation Tribunal role. For this reason a specific budget allocation was sought from the Department to support the other Tribunals with the alternative action being that WRCT would divest itself of those other Tribunals as it was felt improper to maintain subsidisation of those jurisdictions. A request was made by the Department of Justice to Treasury for such a budget allocation with an undertaking given by the Department of Justice that if this did not occur the identified funding would be found within the overall Department of Justice budget. Neither of these outcomes occurred. The ad hoc arrangement made for 2016/17 is, in my view, unsatisfactory and there is a continued reliance on support from the Workers Compensation Fund being a purpose not authorised by the Act.

It is disappointing that due to the lack of timely action upon our requests from March 2016 that the Commissioner position be filled albeit on a part time basis, delays have occurred throughout the year in listing and determining arbitrated hearings. At the time of submitting this report that position has yet to be filled and there will in addition be a delay of a number of weeks in filling the Chief Commissioner position notwithstanding the long lead time provided upon my notice I would not be seeking a further period of appointment. Unfortunately a significant backlog of matters now exists.

This will be the last Annual Report that I provide and I thank all those who have supported me over the years both within the Tribunal but also within Government, the WorkCover Board and Department of Justice. The work has been challenging and at times complex, but with the support that I have had I hope we have made a positive impact upon the dispute resolution process for workers compensation and also assisted the administration of justice generally by the other roles we have volunteered for and performed over the years.

I convey my best wishes to the new Chief Commissioner and Commissioner upon their appointment.



S Carey
Chief Commissioner