

The Workers Rehabilitation & Compensation Tribunal

Annual Report

2014



Tasmania
Explore the possibilities

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I Overview

The Tribunal is constituted by the Chief Commissioner, a Commissioner or a Part-Time Commissioner. Presently the Tribunal has one Commissioner in addition to the Chief Commissioner.

Both the Chief Commissioner and Commissioner fulfil the requirements of the Act in that they are legal practitioners of not less than 5 years standing. Both are 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.

I.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 2012 Actual	30 June 2013 Budget
Full Time Equivalent Staff	7.5	7.5

2 Activities 2013-2014

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 \$139,038 (as compared to \$158,687 fin 2011/2012) for work carried out during 2013-2014 in respect of:

- **Magistrates Court, Coroners, Victims of Crime**

Duties performed in this regard by the Chief Commissioner and Commissioner together with support staff are reimbursed to the Tribunal in accordance with a Service Level Agreement completed in December 2010. This Agreement will be reviewed during the 2014-2015 year.

- **Motor Accidents Compensation Tribunal**

Arrangements continue with the Magistrates Court to the effect that the Workers Rehabilitation & Compensation Tribunal is in effect 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. This Agreement will be reviewed during the 2014-2015 year.

- **Health Practitioners Tribunal**

The Workers Rehabilitation & Compensation Tribunal 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 Tribunal is presided over by a Chairperson who is a Magistrate (S Carey). The Chairperson 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 completed in December 2011.

- **Asbestos Compensation Tribunal**

The Workers Rehabilitation & Compensation Tribunal 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.

3 Tribunal Accommodation

In November 2013 the Tribunal Registry re-located to Level 7, NAB House, 86 Collins Street, Hobart. It consists of two hearing rooms, two conciliation rooms and 2 meeting rooms

In Launceston the Tribunal occupies premises on the corner of Brisbane and St Johns Streets consisting of a hearing room, conference room, meeting rooms and an office for Tribunal staff use. 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 continues to use a conference room located at Workplace Standards Tasmania offices at Reece House in Burnie. In particular these premises, together with the video conference facility they provide are used in respect of section 81A referrals in order to relieve parties of the obligation to travel from Launceston or Hobart in order to attend such hearings. Investigations have commenced in respect to sourcing another location on the North West Coast for Video appearances as Workplace Standards will be unable to offer this service in the near future.

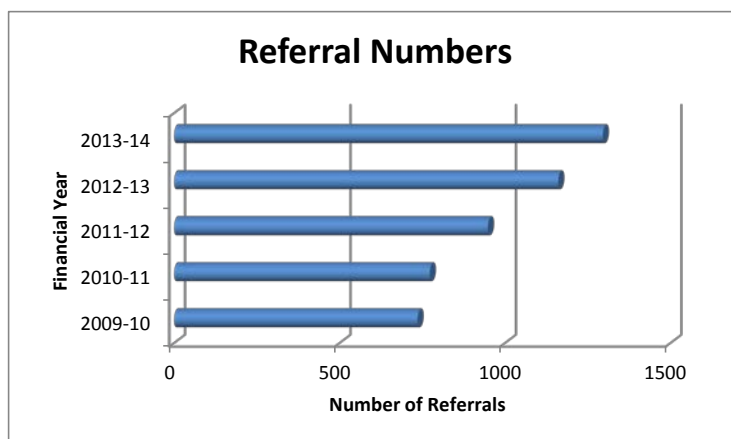
4 Referrals to the Tribunal 2013-2014

4.1 Summary of Referrals (by Nature of Referral) received in 2013-2014

NATURE OF REFERRAL	FINANCIAL YEAR	
	2012-13	2013-14
132A(4) - Referral for Settlement Approval	80	119
143P	2	
77AB - Employers Liability for Expenses less than \$5000/Liability not accepted	5	7
90C - Disagreements About Medical Reviews	4	3
S127 - Order or Judgement against Nominal Insurer		1
S138AB(3) - New Act (2010) Election to Claim Damages	1	1
S138AB-Election to Claim Damages	3	9
S143 - Injury Management Notifications	17	13
S3(6) Referral to Tribunal re Date of Injury	1	
S42-Reference of Claims for Compensation to the Tribunal	161	190
S60A-Application for Interim Orders	13	15
S67-Amount of compensation in case of death		1
S67F-Dispute of liability in respect of death of worker		2
S69-Amount of Compensation in case of incapacity	1	1
S71-Compensation for Permanent Impairment	79	71
S77AA-Dispute regarding non-payment of expenses	33	28
S77-Dispute regarding medical or rehabilitation services	17	19
S81A(5)-Dispute liability to continue to pay compensation	13	17
S81A-Dispute liability for weekly payments and other benefits	515	593
S85(5) - Dispute about medical Examination - Section Repealed 1/7/10	1	
S86(4)-Worker disputing termination or reduction of payment by an Employer	75	57
S87 - Application for Tribunal to consider weekly payments beyond age 65	5	7
S88 - Application to review weekly payments	130	136
S89 - Section repealed 1/7/10	1	
S97A - Disputes Between Insurers	3	5
Total	1160	1295

4.2 Total Referral Numbers by Year

FINANCIAL YEAR				
2009-10	2010-11	2011-12	2012-13	2013-14
736	772	948	1160	1295



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
2009/2010	9191	361	3.92%
2010/2011	9813	412	4.20%
2011/2012	9298	443	4.76%
2012/2013	8406	515	6.13%
2013/2014	7857	593	7.55%

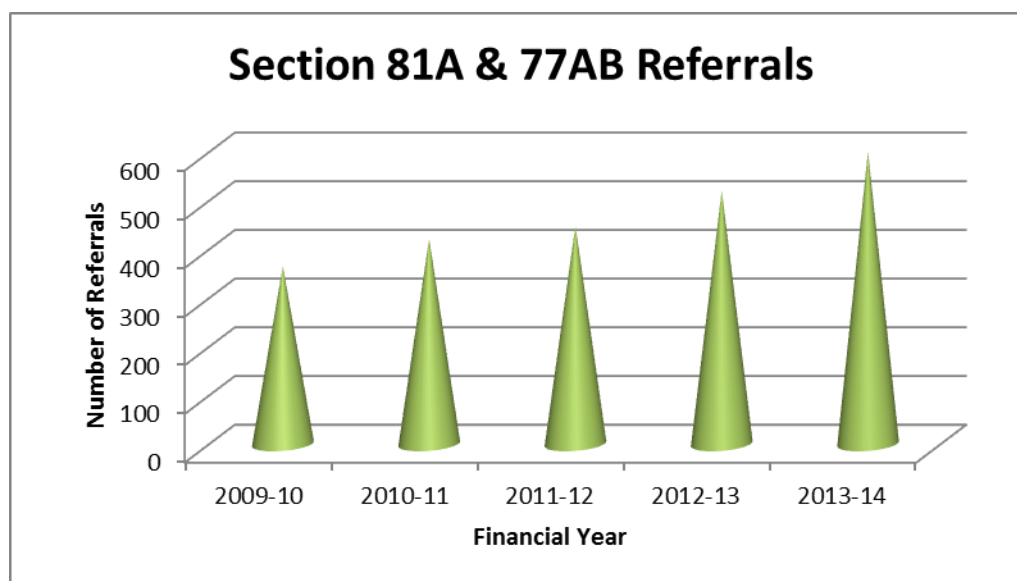
Note: The initial disputation rate continues to rise.

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

The Tribunal received 593 section 81A referrals in 2013/2014. Of those 593 referrals 103 (17%) went on to file s42 referrals and to commence the conciliation process in respect of their disputed claim. This is a slight increase from the 2013/2014 percentage of 13%.

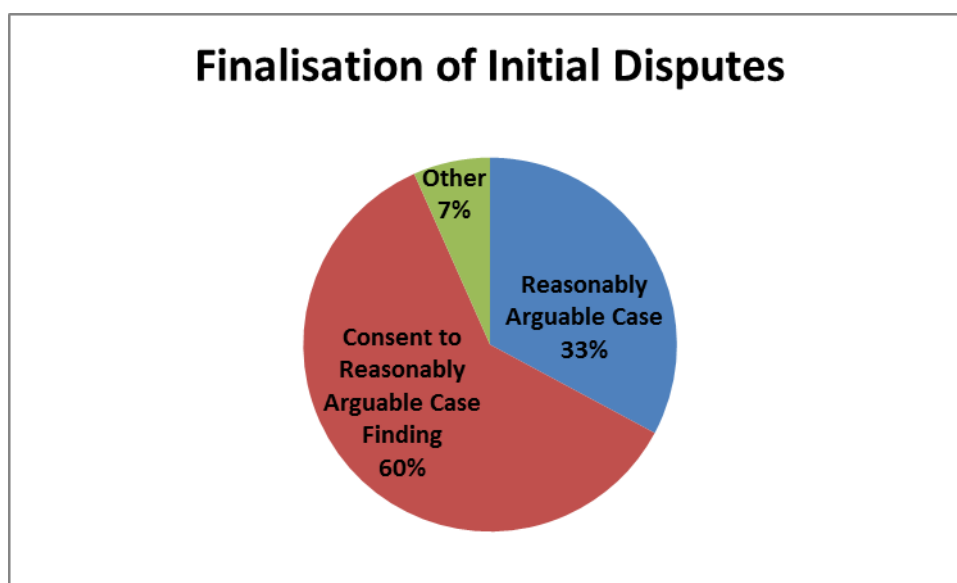
5 Initial Disputes – Section 81A Referrals/ Section 77AB Referrals

Referral Section	2009-10	2010-11	2011-12	2012-13	2013-14
77AB - Employers Liability for Expenses less than \$5000/Liability not accepted		5	5	5	7
S81A-Dispute liability for weekly payments and other benefits	365	416	443	515	593
Total	365	421	448	520	600



5.1 Finalisations of s81A and s77AB Referrals

How Section 81A and Section 77AB Referrals Were finalised	
In Progress as at 30 June 2014	22
No Reasonably Arguable Case	4
Adjourn Sine Die	3
Appeal - Discontinued	1
Claim Accepted	3
Consent Reasonably Arguable Case	363
Discontinued	10
Reasonably Arguable Case	197
Total	600

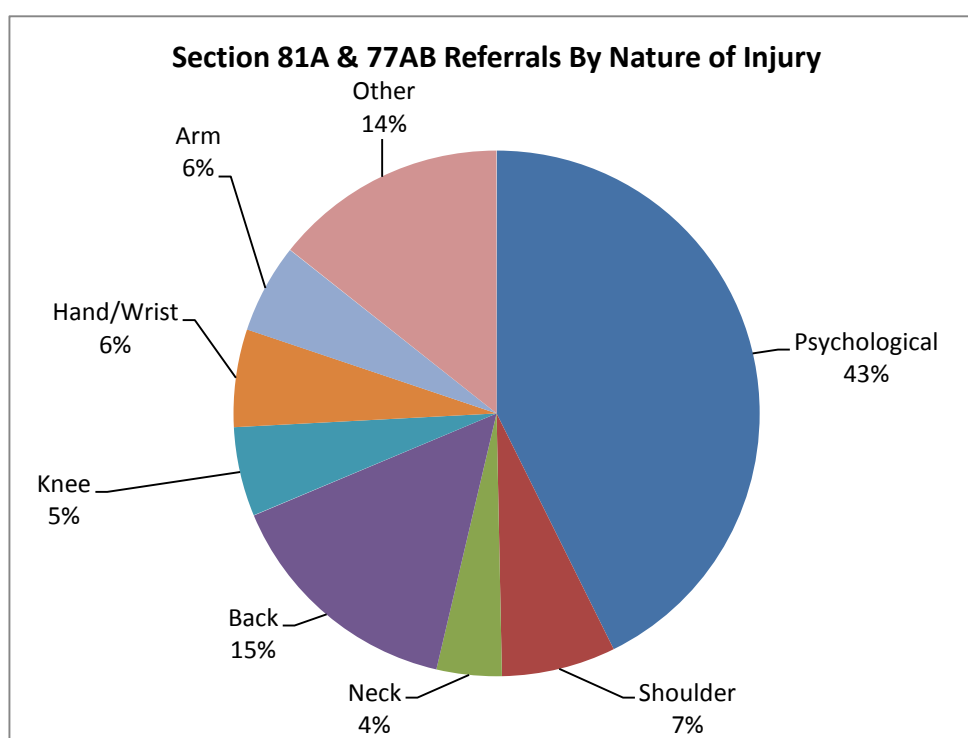


5.2 Average days for the Resolution of a s81A or s77AB Referral.

	Number	Average Days to Finalisation
No Reasonably Arguable Case	4	22
Adjourn Sine Die	3	41
Appeal - Discontinued	1	15
Claim Accepted	3	21
Consent Reasonably Arguable Case	363	14
Discontinued	10	25
Reasonably Arguable Case	197	19
Average Days Regardless of Resolution Type	578	16

5.3 Nature of Injury in respect of s81A and s77AB Referrals

Section 81A and Section 77AB Referrals By Nature of Injury	
Psychological	256
Shoulder	42
Neck	24
Back	90
Knee	33
Hand/Wrist	36
Arm	33
Other	86



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 is a tele-conference with the parties during which:

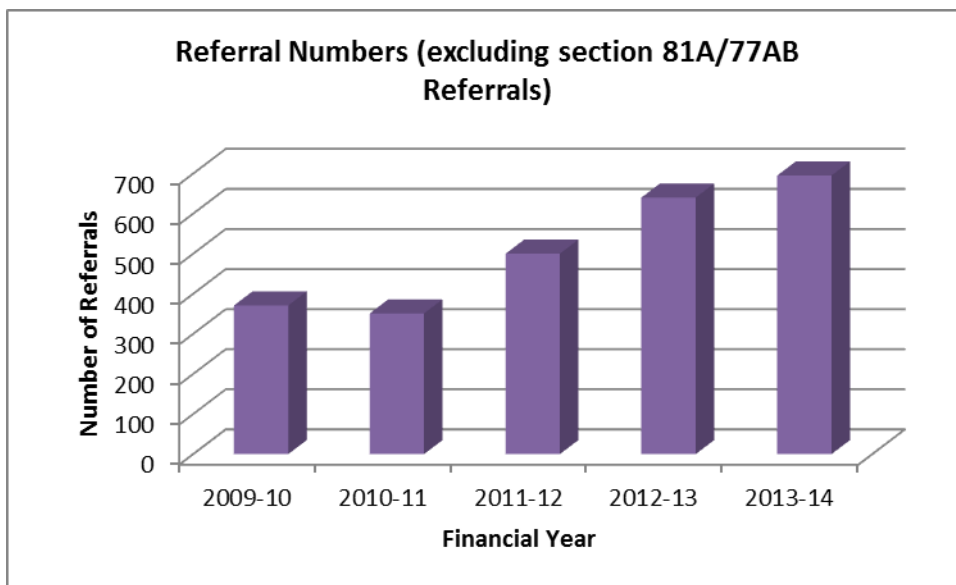
- The issues in dispute are identified
- Parties agree to time frames in which any necessary investigations such as medical or factual are to be undertaken.
- Discuss the claim in general in order to obtain concessions where appropriate in respect of any facts, law or procedure
- Ensure the matter is 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.

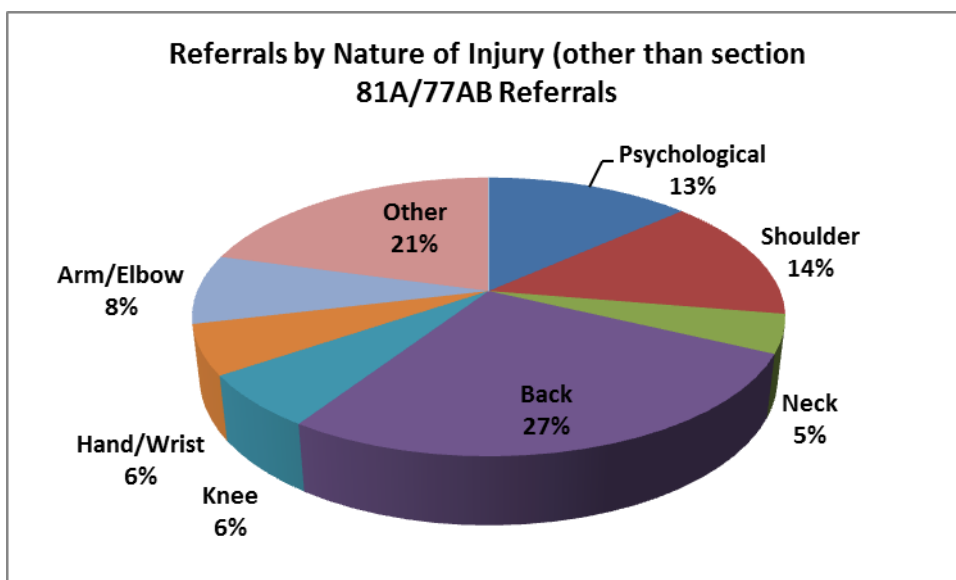
6.1 Non section 81A Referral numbers

Referrals other than Initial Dispute Referrals				
2009-10	2010-11	2011-12	2012-13	2013-14
371	351	500	640	695



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	93
Shoulder	99
Neck	31
Back	189
Knee	43
Hand/Wrist	40
Arm/Elbow	56
Other	144



6.3 Average Days to finalisation for matters resolved in Conciliation

Average Days to Resolution for Referrals Resolved in Conciliation (Referrals lodged and Finalised in 2013/2014)		
Referral Type	Number	Average Days to Resolve
132A(4) - Referral for Settlement Approval	103	12
90C - Disagreements About Medical Reviews	2	113
S138AB-Election to Claim Damages	5	65
S143 - Injury Management Notifications	9	26
S42-Reference of Claims for Compensation to the Tribunal	76	104
S60A-Application for Interim Orders	11	48
S67-Amount of compensation in case of death	1	53
S67F-Dispute of liability in respect of death of worker	2	41
S69-Amount of Compensation in case of incapacity	1	259
S71-Compensation for Permanent Impairment	39	76
S77AA-Dispute regarding non-payment of expenses	9	143
S77-Dispute regarding medical or rehabilitation services	11	117
S81A(5)-Dispute liability to continue to pay compensation	3	96
S86(4)-Worker disputing termination or reduction of payment by an Employer	29	149
S87 - Application for Tribunal to consider weekly payments beyond age 65	5	53
S88 - Application to review weekly payments	73	74
S97A - Disputes Between Insurers	3	210
Total	382	72

86% of matters were finalised within 9 months, 80% were finalised within 6 months and 70% were finalised within 3 months. These resolved time frames are consistent with 2012/2013.

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.

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	23
S127 - Order or Judgement against Nominal Insurer	14
S138AB(3) - New Act (2010) Election to Claim Damages	86
S138AB-Election to Claim Damages	13
S42-Reference of Claims for Compensation to the Tribunal	18
S60A-Application for Interim Orders	12
S67-Amount of compensation in case of death	0
S67F-Dispute of liability in respect of death of worker	11
S69-Amount of Compensation in case of incapacity	27
S71-Compensation for Permanent Impairment	18
S77AA-Dispute regarding non-payment of expenses	31
S77-Dispute regarding medical or rehabilitation services	24
S81A(5)-Dispute liability to continue to pay compensation	24
S81A-Dispute liability for weekly payments and other benefits	8
S86(4)-Worker disputing termination or reduction of payment by an Employer	39
S87 - Application for Tribunal to consider weekly payments beyond age 65	12
S88 - Application to review weekly payments	18
S97A - Disputes Between Insurers	16
Overall Average	13

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 as 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 2013/2014

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.

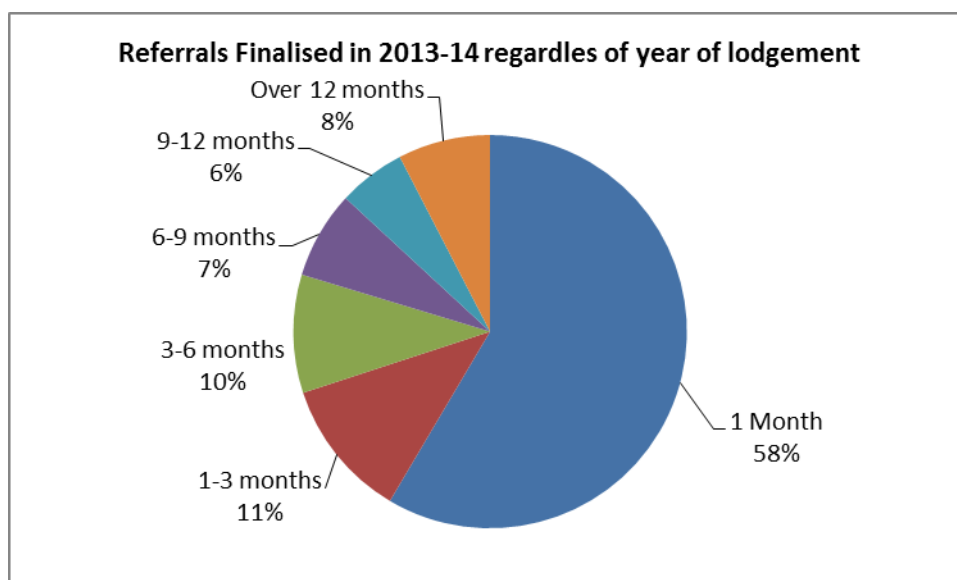
Matters Resolved at Arbitrated Hearings Regardless of Lodgement Date	Total
81A No Reasonably Arguable Case	4
Consent Reasonably Arguable Case	366
Reasonably Arguable Case	199
Resolved After Hearing - Applicant	
Unsucces	7
Resolved After Hearing Applicant Successful	7
Resolved after Notice of Hearing	4

Note: There were a further 13 arbitrated hearings on interlocutory matters relating to procedural or legal matters.

8 Total Referrals Finalised in 2013/2014 regardless of Lodgement Year

The Tribunal finalised 1265 referrals in the 2013/2014 financial year regardless of their year of lodgement. Of the 1265 referrals 950 were matters lodged within the 2013/2014 financial year with the remaining 304 being referrals lodged in prior years.

Finalisation Period	2013-2014
1 Month	740
1-3 months	145
3-6 months	123
6-9 months	91
9-12 months	70
Over 12 months	96
Total	1265



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

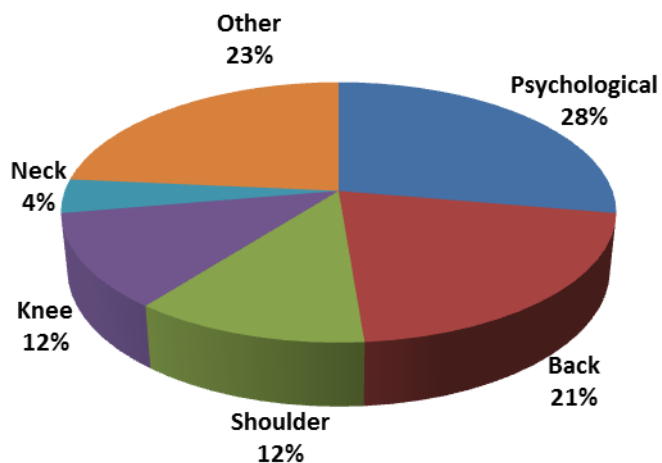
Amendments to the Workers Rehabilitation & Compensation Act 1988 which came into effect on 1 July 2010 place restrictions on claims being settled in exchange for lump sums by agreement within 2 years of injury. The Tribunal must approve such a settlement. The Tribunal is required to take into account 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 2013/14 year the Tribunal received 119 s132A(4) referrals. 101 have been approved, 2 were not approved and 16 are still in progress. The average number of days to resolve a reference of this nature is 12. 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 119 s132A(4) referrals 14% (17) had s81A referrals and findings of a Reasonably Arguable Case.

Section 132A Referrals lodged in 2013/2014 by Nature of Injury	
Psychological	33
Back	25
Shoulder	14
Knee	14
Neck	5
Other	28

Section 132A Referrals lodged in 2013/2014 by Nature of Injury



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 13 in 2012/2013 to 17 in 2013/2014. 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.

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 2013-2014, four (4) Appeals were filed in the Supreme Court of Tasmania.

The below table indicates their progress.

APPEAL OUTCOME	Matter Count
Unresolved	3
Discontinued	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

	Budget	Actual	Variance
Operating Expenditure			
Salary Related Expenditure			
51101 Salaries and Wages	940,466	725,582	214,884
51104 Salary Allowances	0	687	(687)
51111 Superannuation Contributions	117,566	115,681	1,885
51201 Fringe Benefits Tax	20,377	19,444	933
51204 Trainee Payments	0	29,393	(29,393)
51205 Training	5,000	567	4,433
Total Salary Related Expenditure	1,083,409	891,354	192,055
Non Salary Expenditure			
52201 IT Communications	0	3,256	(3,256)
52203 IT (Computer) Hardware < \$10000	5,000	9,502	(4,502)
52204 Software and Licences	1,000	0	1,000
52209 Mobile Devices	5,000	4,257	743
52216 TMD Unified Communications	1,000	78	922
52217 Email	1,000	869	131
52299 Other Computers / IT	34,000	22,744	11,256
52311 Plant and Equipment Maintenance	1,000	3,207	(2,207)
52313 Office Equipment < \$10000	7,648	1,542	6,106
52315 Other Equipment < \$10000	10,000	28,401	(18,401)
52317 Equipment Rental	4,000	1,184	2,816
52331 Office Requisites	7,200	5,928	1,273
52341 Subscriptions, Newspapers and Magazines	4,000	3,152	848
52342 Publications	500	0	500
52343 Recruitment Notices and Materials	0	30	(30)
52344 Other Printing/Binding	1,800	5,747	(3,947)
52347 Monographs	500	0	500
52401 Airfares	2,500	414	2,086
52402 Overnight Travel - Meal Allowance	11,000	11,511	(511)
52403 Accommodation Allowance - Intrastate	2,000	1,320	680
52405 Part Day Travel - Meal Allowance	350	0	350
52406 Actual Travel Costs (Hotels etc)	15,000	11,412	3,588
52407 Other Travel Expenses	0	(191)	191
52408 Car Hire and Taxis	2,000	1,033	967
52411 International Travel	0	2,246	(2,246)
52413 Motor Vehicle Leases	20,000	20,094	(94)
52414 Motor Vehicle Maintenance & Registration	3,800	4,104	(304)
52415 Motor Vehicle Petrol, Oils & Lubricants	10,000	8,386	1,614
52418 Incidental Expenses (Overnight Stay)	1,600	1,645	(45)

52504 Rent of Premises	182,000	189,549	(7,549)
52505 Hire of Storage Facilities	3,300	3,213	87
52507 Security	1,500	1,587	(87)
52508 Cleaning	12,000	14,517	(2,517)
52509 Building and Other Property Maintenance	500	21,875	(21,375)
52510 Electrical Maintenance	2,500	1,055	1,445
52512 Electricity	11,000	11,411	(411)
52514 Car Parking	5,200	4,888	312
52515 Building Work Progress Payments	0	2,175	(2,175)
52518 Rubbish Removal	3,000	1,675	1,325
52721 Tas Govt Card - Unallocated Expenses	500	(129)	629
52722 External Audit Fees	4,000	0	4,000
52740 Penalty Interest Payments	0	1,078	(1,078)
52831 Postage and Freight	8,000	7,075	925
52832 Telephone	15,000	16,919	(1,919)
52834 Other Communications	2,000	993	1,007
52851 General Office Food Supplies	1,500	840	660
52855 Translation and Interpretation Services	4,000	2,280	1,720
52856 Transcripts	3,000	37	2,963
52857 Occupational Health and Safety	2,000	51	1,949
52858 Seminars and Conferences	2,000	2,254	(254)
52859 Memberships and Affiliations	750	403	347
52861 Miscellaneous - Internal	33,000	25,616	7,384
52866 Meeting Room Hire	1,500	2,034	(534)
52879 Panel Sitting Fees	0	(2,700)	2,700
52881 Workers' Compensation Insurance Premiums	12,352	12,351	1
52888 Sponsorship Fees	250	0	250
52890 Non-Staff Expenses	0	174	(174)
52895 Loss on Vehicles Sold	0	9,090	(9,090)
52897 Contracted Services	0	900	(900)
52903 Building Consultants Fees	0	9,580	(9,580)
52905 Other Legal Consultants Fees	15,000	0	15,000
Total Non Salary Expenditure	477,750	492,663	(14,913)
Total Operating Expenditure	1,561,159	1,384,017	177,142

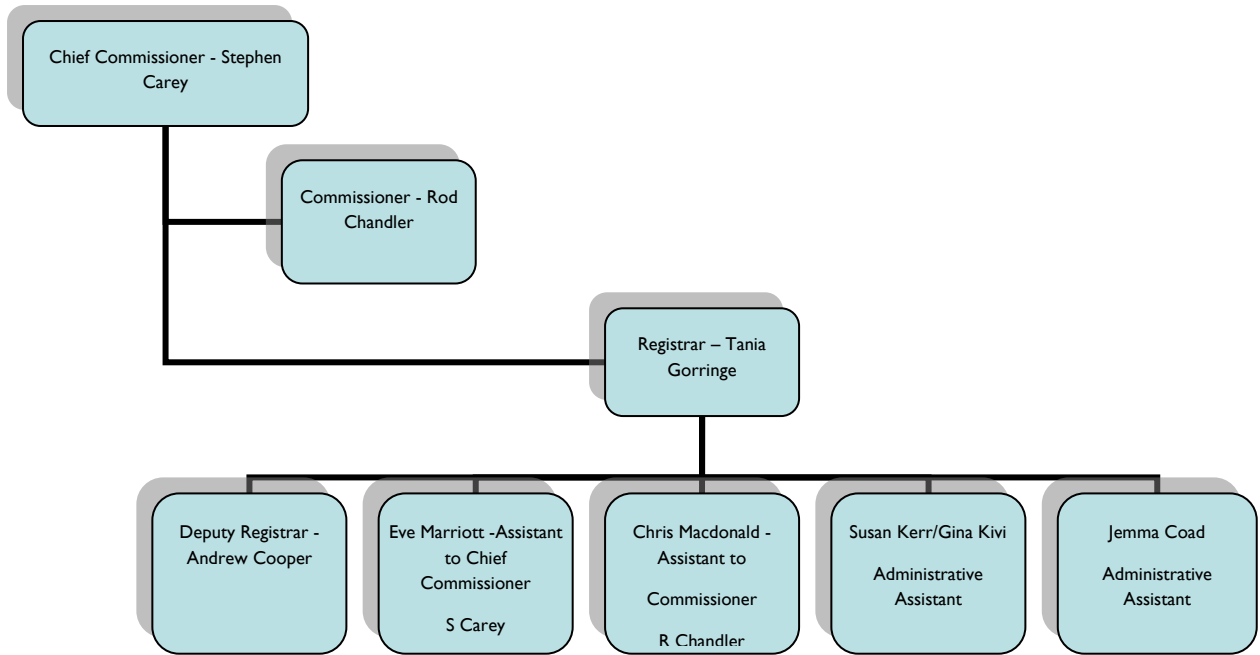
TOTAL EXPENDITURE	
2009/2010	\$1,149,621
2010/2011	\$1,239,475
2011/2012	\$1,279,719
2012/2013	\$1,222,156
2013/2014	\$1,384,017 ¹

¹ 2013/2014 expenditure reflects an increase of 13% from the previous year (an increase of only 20% over the last 5 years) however it should be noted that the Tribunal's relocation during this period incurred expenditure of approximately \$175,000. This excludes the cost of the fit out which was included in the lease agreement between the Tribunal and Building Owner.

14 Intent for 2014-2015

1	The Tribunal will maintain its endeavours to secure sufficient accredited medical assessors to allow the use of medical panels in the WRCT and provide a structured process whereby such panels can be created at regular intervals
2	Continue to progress the integration of the Tribunals hosted by WRCT into a common IT case management and reporting format, and to rationalise the procedural differences that presently exist
3	Conduct ongoing cost benefit analysis of major expenditure items of the Tribunal in order to identify possible budget savings that may be made without adversely affecting the interests of stakeholders. The Tribunal operates efficiently and effectively within its current budget however all attempts are made to ensure savings. The Tribunal continues to achieve budget savings each financial year.
4	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 Members of Tribunal & Staff



S Carey

Chief Commissioner