

The Workers Rehabilitation & Compensation Tribunal

Annual Report

2017/2018

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





WORKERS REHABILITATION AND COMPENSATION TRIBUNAL

TASMANIA

10 October 2018

The Hon. Guy Barnett
Minister for Building & Construction
Level 5, Salamanca Building
4 Salamanca Place
HOBART TAS 7000

Dear Minister

WORKERS REHABILITATION AND COMPENSATION TRIBUNAL - ANNUAL REPORT 2017/2018

I am pleased to submit the 2017/2018 Annual Report for the Workers Rehabilitation and Compensation Tribunal. The report summarises the operations of the Tribunal during the financial year commencing 1 July 2017.

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

R. B. Webster
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 2017/2018 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 November 2016 whereas the Commissioner was appointed for 2 years at 0.6FTE in February 2017.

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 2018 Actual	2018 Budget
Full Time Equivalent Staff	6.6	8

2 Activities 2017/2018

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 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.

¹ s16
² s17
³ s17A and s17B
⁴ s20

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 \$19,625.00 for hearings relating to the Health Practitioners Tribunal and Motor Accidents Compensation Tribunal, as compared to \$15,750.00 for 2016/2017.

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 \$10,000.00 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 I indicated in last year's annual report, 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 (Mr R Webster, 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.”

As mentioned in paragraph 2.1 a budgetary allocation of \$10,000.00 has been made for the administrative and running costs which is shared between this tribunal and the MACT.

⁵ See the further discussion about this on page 15

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. Given that funding for the ACT is also from the Workers Compensation Fund it is again recommended the budget for the WRCT simply includes a sum to cover the costs of running the ACT. A modest sum only will be required as this Tribunal received 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.

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 has increased marginally to \$92,169.00 for 2016/2017 and to \$94,637.00 in 2017/2018. Whether this sum covers all operational costs including hearing and decision writing time, general administration and facility and running costs is discussed further in section 14 below.

3 WRCT Accommodation

In November 2013 the WRCT Registry and its main premises re-located from Level 4, 169 Liverpool Street, Hobart to Level 7, NAB House, 86 Collins Street, Hobart after the expiry of its lease at the Liverpool Street premises. At its current premises, in addition to registry space there is staff accommodation (offices and work spaces), two hearing rooms, two conciliation rooms and two meeting (break out) rooms.

In August 2015 the WRCT's northern base 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 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.

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

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. The vast majority of these hearings were resolved by consent either when the Commissioner and his clerk were travelling to Burnie or shortly after they arrived in Burnie. This travel to Burnie and Launceston in these circumstances amounted to an uneconomic and inefficient use of the WRCT's resources. Instead, the WRCT trialled the hearing of s81A hearings by telephone throughout the State⁶. After the success of the trial, this procedure has continued and this has resulted in vastly reduced travel time for the Chief Commissioner and Commissioner which has in turn resulted in the more efficient use of WRCT time.

4 Summary of Referrals to the WRCT 2017/2018

4.1 Summary of Referrals (by Nature of Referral) received in 2017/2018

NATURE OF REFERRAL	FINANCIAL YEAR		
	2015/ 2016	2016/ 2017	2017/ 2018
132A(4) - Referral for Settlement Approval	158	145	164
143P	3		3
77AB - Employers Liability for Expenses less than \$5000/Liability not accepted	4	7	10
90C - Disagreements About Medical Reviews	1	2	3
127 – Order or Judgment Against Nominal Insurer/Referral of order to Nominal Insurer			3
S138AB(3) - New Act (2010) Election to Claim Damages	2		2
S138AB-Election to Claim Damages	1	1	2
S143 - Injury Management Notifications	11	10	7
S37 – Effect of Failure to Give Notice of Injury			1
S38(3) - Effect of Failure to Make Claim			1
S42-Reference of Claims for Compensation to the Tribunal	184	143	132
S60A-Application for Interim Orders	19	4	8
S67-Amount of compensation in case of death	1		
S67F-Dispute of liability in respect of death of worker		1	2
S68 - Dependency Questions & Apportionment		1	
S69-Amount of Compensation in case of incapacity	3	3	5
S71-Compensation for Permanent Impairment	77	46	53
S75(3) - Constant Attendant Services or Household Services		2	
S77AA-Dispute regarding non-payment of expenses	31	30	31
S77-Dispute regarding medical or rehabilitation services	19	19	24
S78(3) – Injuries contracted by gradual process – contribution of employers		1	

⁶ This is permitted by s81A(6)

NATURE OF REFERRAL	FINANCIAL YEAR		
	2015/ 2016	2016/ 2017	2017/ 2018
S81A(5)-Dispute liability to continue to pay compensation	15	11	9
S81A-Dispute liability for weekly payments and other benefits	627	575	624
S86(4)-Worker disputing termination or reduction of payment by an Employer	71	64	62
S87 - Application for Tribunal to consider weekly payments beyond age 65	2	4	9
S88 - Application to review weekly payments	157	108	108
S91 – Payment of compensation money to person entitled and to Public Trustee			1
S97A - Disputes Between Insurers	1	2	
Grand Total	1387*	1179	1264

*This total was incorrectly reported in the 2015/2016 Annual Report due to a typographical error

4.2 Total Referral Numbers by Year

FINANCIAL YEAR				
2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
1295	1271*	1387**	1179	1264

* This total was incorrectly reported in the 2014/2015 Annual Report

** This total was incorrectly reported in the 2015/2016 Annual Report due to a typographical error

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
2013/2014	7857	593	7.55%
2014/2015	7756	573	7.39*%
2015/2016	7481	627	8.38%
2016/2017	7124	575	8.07%
2017/2018	7187	624	8.68%

* The calculation in the 2014/2015 Annual Report was incorrect

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

The WRCT received 624 section 81A referrals in 2017/2018. Of those 624 referrals 59 workers (approximately 9.5%) went on to file s42 referrals and to commence the conciliation process in respect of their disputed claim. This is a decrease from the 2016/2017 percentage of 10%.

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

Referral Section	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
77AB - Employers Liability for Expenses less than \$5000/Liability not accepted	7	6	4	7	10
S81A-Dispute liability for weekly payments and other benefits	593	573	627	575	624
Total	600	579	631	582	634

5.1 Finalisations of s81A and s77AB Referrals

How Section 81A and Section 77AB Referrals Were finalised	
In Progress as at 30 June 2018	4
No Reasonably Arguable Case	2
Consent Reasonably Arguable Case	364
Discontinued	3
Reasonably Arguable Case	258
Dismissed for want of jurisdiction	3
Total	634

5.2 Average days for the Resolution of s81A or s77AB Referrals lodged and finalised in 2017/2018

Outcome	Number	Average Days to Finalisation
No Reasonably Arguable Case	2	45
Consent Reasonably Arguable Case	364	18
Discontinued	3	38
Reasonably Arguable Case	258	22
Dismissed for want of jurisdiction	3	130
Average Days Regardless of Resolution Type		20

5.3 Nature of Injury in respect of s81A and s77AB Referrals

Section 81A and Section 77AB Referrals By Nature of Injury	
Psychological	279
Shoulder	51
Neck	30
Back	90
Knee	38
Hand/Wrist	38
Arm	31

Section 81A and Section 77AB Referrals By Nature of Injury	
Other	77
Total:	634

Just on 44% 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 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. Since my appointment I have modified the Practice Directions so parties to a reference that has not resolved at conciliation are given dates for hearing at the conclusion of the conciliation conference. The parties are required to confirm those dates within 7 days of the conference after which a matter will be set down for directions which are made to ensure the referral proceeds to hearing on the allocated dates. This new procedure is designed to reduce the time between an unsuccessful conciliation conference and an arbitrated hearing.

6.1 Non section 81A/77AB Referral numbers

Referrals other than Initial Dispute Referrals				
2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
695	693	756	597	630

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.

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	132
Shoulder	77
Neck	13
Back	169
Knee	50
Hand/Wrist	28
Arm/Elbow	47
Other	114
Total:	630

Approximately 21% 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
S143 – Injury Management Notifications	4	92
S143P	1	136
90C - Disagreements About Medical Reviews	1	115
S138AB-Election to Claim Damages	1	161
S37 – Effect of Failure to Give Notice of Injury	1	26
S38(3) – Effect of Failure to Make Claim	1	77
S42-Reference of Claims for Compensation to the Tribunal	56	103
S60A – Application for Interim Orders	3	83
S69-Amount of Compensation in case of incapacity	3	134
S71-Compensation for Permanent Impairment	24	103
S77AA-Dispute regarding non-payment of expenses	15	103
S77-Dispute regarding medical or rehabilitation services	9	112
S81A(5)-Dispute liability to continue to pay compensation	4	70
S86(4)-Worker disputing termination or reduction of payment by an Employer	34	116
S87 - Application for Tribunal to consider weekly payments beyond age 65	4	81
S88 - Application to review weekly payments	51	100
Total	212	104*

*This is an improvement on the 2016/2017 figure which was 133.

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
S132A – Referral for Settlement Approval	1
S77AB - Employers Liability for Expenses less than \$5000/Liability not accepted	15
S90C - Disagreements About Medical Reviews	57
S138AB(3) - New Act (2010) Election to Claim Damages	20
S138AB-Election to Claim Damages	35
S37 – Effect of Failure to Give Notice of Injury	18
S38(3) – Effect of Failure to Make Claim	18
S42-Reference of Claims for Compensation to the Tribunal	21
S60A-Application for Interim Orders	7
S67F-Dispute of liability in respect of death of worker	28
S69-Amount of Compensation in case of incapacity	25
S71-Compensation for Permanent Impairment	29
S77AA-Dispute regarding non-payment of expenses	31
S77-Dispute regarding medical or rehabilitation services	26
S81A(5)-Dispute liability to continue to pay compensation	22
S81A-Dispute liability for weekly payments and other benefits	17
S86(4)-Worker disputing termination or reduction of payment by an Employer	38
S87 - Application for Tribunal to consider weekly payments beyond age 65	22
S88 - Application to review weekly payments	28
S91 – Payment of Compensation Money to Person Entitled and to Public Trustee	22
Overall Average	19

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 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 2017/2018

The time frame 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 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. The

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

WRCT has, since my appointment, indicated it 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	2
Reasonably Arguable Case	264
Resolved After Hearing - Applicant Unsuccessful	7
Resolved After Hearing Applicant Successful	6
Resolved After Hearing Commences	6
Resolved After Notice of Hearing Issued	31

8 Total Referrals Finalised in 2017/2018 regardless of Lodgement Year

The WRCT finalised 1298 referrals in the 2017/2018 financial year regardless of their year of lodgement¹³. Of the 1298 referrals, 1001 were matters lodged within the 2017/2018 financial year with the remaining 297 being referrals lodged in prior years. Just on 80% of matters filed in this financial year were therefore finalised in this financial year.

Finalisation Period	2017/2018
1 Month	819
1-3 months	139
3-6 months	186
6-9 months	100
9-12 months	54
Over 12 months	
Total	1298

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

¹³ This is an increase of 41 matters from the previous year.

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 2017/2018 year the WRCT received 164 s132A(4) referrals. A total of 159 have been approved and 5 are still in progress. The average number of days to resolve a reference of this nature is 11. 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 resulted in delays by the parties and an increase in the average time to resolve.

Of the 164 s132A(4) referrals which were approved, 42% (68) had earlier been disputed under s81A, findings of a reasonably arguable case had been made and therefore liability for the claim remained in dispute.

Section 132A Referrals lodged in 2017/2018 by Nature of Injury	
Psychological	46
Back	37
Shoulder	24
Knee	12
Arm	7
Other	38
Total:	164

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.

The number of notifications in 2017/2018 is the same as for 2016/2017; ie. 10. 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.

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

11 Appeals to the 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 2017/18, two appeals were filed in the Supreme Court of Tasmania.

The following table indicates their progress.

APPEAL OUTCOME	Matter Count
Upheld	1
Decision Pending	1

In last year's report one decision from the Supreme Court was pending. That appeal was dismissed in April 2018²¹. While not strictly an appeal from a decision of the Tribunal, an application was lodged in the Supreme Court in April 2018 challenging the validity of a decision of a medical panel of 9 April 2018 with regard to a medical question which the Tribunal had referred to a medical panel pursuant to ss49 and 50. That application has not yet been heard.

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 my appointment in November 2016.

13 Legislative Amendments

Despite the Legislative Review Advisory Committee not meeting, there were significant amendments to the Act and the Regulations during the 2017/2018 year. The first was the *Workers Rehabilitation and Compensation Amendment (Presumption of Cause of Disease) Act* No 57 of 2017 which commenced on the day it received Royal Assent²² which was on 20 December 2017. In 2013 amendments to the Act established a rebuttable presumption that particular forms of cancer developed by firefighters are taken to be work caused. However, in order for volunteer firefighters to qualify they needed to meet an additional requirement of attending 150 exposure events as a firefighter over a period of 5 or 10 years, the length of time of which depended upon the type of cancer. This Act removed the requirement for volunteer firefighters to attend a specified number of exposure events.

In addition the amendments required the Minister to commission a review by 30 June 2018 as to whether a presumption that post-traumatic stress disorder is occupationally linked for specified workers should be included in the Act. As I

²¹ *Toll Transport v Medwin* [2018] TASSC 15

²² See s2 of that Act.

understand it, the report in relation to that review was to be tabled in both Houses of Parliament by 1 October 2018.

The second Act which amended the principal Act is the *Workers Rehabilitation and Compensation Amendment Act No 39 2017* which commenced on 1 January 2018²³. The more significant amendments introduced by this Act are as follows:

- The structure of the WorkCover Tasmania Board (the Board) was altered from one which reflected membership of certain industry stakeholders to one which was comprised of members selected on the basis of their skills and expertise.
- Accreditation under the Act is only now required to assess a worker's degree of permanent impairment under s71.
- The scheduled diseases deemed to be work related was removed from the Act and instead the Board was given power to give notice of relevant diseases pursuant to s26(1).
- In cases of a work related death a dependant claiming compensation no longer needs to provide a death certificate with their claim. Rather a specific form is provided for use in these circumstances.
- Insofar as compensation for work related deaths is concerned, s67 has been amended to include a partially dependent spouse and fully and/or partially dependent children.
- Section 87 has been amended so that a worker's entitlement to compensation now ceases at the pension age as that term is defined in the *Social Security Act 1991* and not at 65 years of age or one year post injury in the case of a worker who was injured when they were older than 64 years. These amendments apply to injuries or claims whether before or after 1 January 2018.

There were also the following statutory rules made in the 2017/2018 year:

- The *Workers Rehabilitation and Compensation Amendment Regulations 2017* (Statutory Rule 117 of 2017) which commenced on 1 January 2018. This statutory rule substituted regulation 19 and amended regulations 23 and 27. It also amended, in Schedule 1, the form of notice for the purposes of s33A of the Act and amended Schedule 2 with respect to infringement notice offences.
- The *Workers Rehabilitation and Compensation (Deemed Diseases) Notice 2017* (Statutory Rule 118 of 2017) which commenced on the day on which the *Workers Rehabilitation and Compensation Amendment Act 2017* commences²⁴. This notice made by the Board pursuant to s26(1) of the Act sets out an occupation, or an exposure in the Schedule to the notice, which is specified for the purposes of s26(3) of the Act to be presumed to contribute to a substantial degree to the corresponding disease which is specified in the

²³ Section 2 of that Act says it commences on 1 July 2017 or if the Act has not received Royal Assent by that date, a later date that is proclaimed. Statutory Rule No 81 of 2017 proclaimed 1 January 2018 as the commencement date for that Act.

²⁴ 1 January 2018

Schedule to the notice. The Schedule includes, for example, infectious diseases such as anthrax, hepatitis A, B or C, HIV/AIDS, certain cancers and specific respiratory, hepatic, skin and musculoskeletal diseases. Diseases of the nervous system and poisoning or toxicity are also provided for.

14 Report on Financial Statement

Operating Expenditure			
	Budget	Actual	Variance
Total Salary Related Expenditure	\$1,003,208	\$768,044	\$235,164
Total Non-Salary Related Expenditure	\$627,310	\$560,871	\$66,439
Total Operating Expenditure	\$1,630,518	\$1,328,915	\$301,603

TOTAL EXPENDITURE	
2012/2013	\$1,222,156
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

The Department of Justice engaged KPMG to conduct an audit of the funding and accounting for the various tribunals²⁵ overseen by the Chief Commissioner of the WRCT. That firm was engaged by the Department as a result of my predecessor's comments 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 are 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 fees being charged for the service being provided adequately reflect the cost of providing those services. That review has not yet commenced. The bigger issue, from my point of view, is where possible the service level agreement should be scrapped in favour of a direct budget allocation. Not only would that method 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

²⁵ See sections 2.1-2.4 of this report

seek reimbursement. The time saved can be directed towards our core business of efficiently managing the work.

15 Intent for 2018/2019

- Discuss with the Department of Justice the findings of the KPMG audit and the issues I have identified in Section 14 of this report.
- Review the Council of Australasian Tribunals (COAT) Australia and New Zealand Tribunal Excellence Framework which has been adopted by NCAT. COAT “*considers that there are 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 users”²⁶.

- The WRCT will continue to endeavour 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 WRCT will continue to progress the integration of the Tribunals hosted by WRCT into a common IT case management and reporting format.
- The WRCT will engage with stakeholders in respect of the project to establish a consolidated Civil and Administrative Tribunal.
- The WRCT will continue to provide input into what it believes to be legislative amendments necessary to improve dispute resolution procedures within all tribunals overseen by the WRCT. The WRCT will seek clear legislative

²⁶ COAT Australia and New Zealand Tribunal Excellence Framework June 2017

authority to mandate rules of practice to achieve a less adversarial environment in all tribunals operating under the umbrella of the WRCT.

- Continue to accept speaking engagements at which the work of the WRCT can be discussed and explained to stakeholders and to the public.
- Continue to assist 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.
- Continue to hold meetings of the Tribunals' Users Group (see Section 16 below) in order to improve practice and procedure and ultimately the service delivery of tribunals.
- In December 2017 I replaced Justice Geason as the Tasmanian representative on the COAT Executive (see section 17 below). I will continue to attend meetings of the Executive.

16 Tribunals' Users Group

In late 2017 I formed a Tribunals' Users 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 provided by WRCT, MACT, ACT, HPT and ADT. I have invited senior legal practitioners from the North West, North and South of the State to join that group. It meets approximately six times per year. The first meeting was held on 1 December 2017 and subsequent meetings have been held on 16 February 2018, 27 April 2018, 6 July 2018 and most recently on 7 September 2018.

Because of the volume of work in the WRCT as compared to the other tribunals, most of the issues discussed inevitably relate to the WRCT.

Issues dealt with at past meetings include:

- the process of setting matters down for hearing after an unsuccessful conciliation;
- the form of discovery;
- the provision by the Tribunal of electronic notices of hearing;
- delay with respect to the provision of doctors' reports;
- exchange of lists of authorities;
- the functioning of medical panels; and
- more recently , the dearth of occupational physicians in Tasmania.

17 COAT Executive

The purpose of COAT is to facilitate liaison and discussion between the heads of tribunals both in Australia and New Zealand. It endeavours to “*support the development of best practice models and model procedural rules, standards of behaviour and conduct for members and increased capacity for training and support for members.*”²⁷

The Executive meets approximately five times a year usually by teleconference. There is one National conference per year and one planning day. The National conference is normally held in a different State or Territory each year. As indicated in section 15 of this report, I will continue to attend meetings of the Executive. I will bring back any ideas or initiatives to this Tribunal if they will assist in improving the process by which claims are managed and determined.

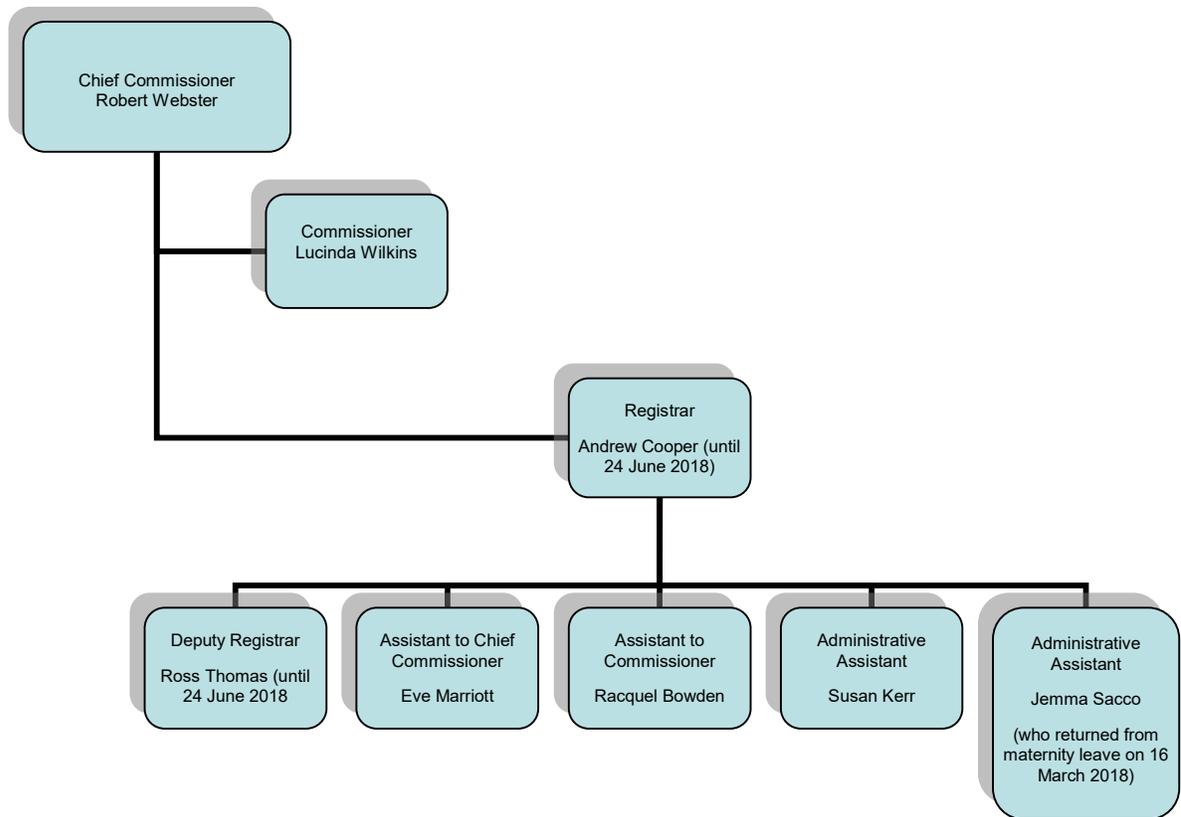
18 Members of WRCT & Staff

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

On 24 June 2018, Mr Cooper returned to his substantive position of Deputy Registrar and Mr Thomas assumed the position of Registrar after being the successful candidate following the position becoming vacant and being advertised and a selection process being conducted.

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 this year. Although both of us had appeared in this jurisdiction for many years prior to our respective appointments in November 2016 and February 2017, 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.

²⁷ COAT website: <http://www.coat.gov.au/>



R Webster
Chief Commissioner