



Personal Injury Commission

Office of the President

10 November 2022

The Hon Chris Rath, MLC
Committee Chair
Standing Committee on Law and Justice
Legislative Council
Parliament House, Macquarie Street
Sydney NSW 2000

By email: office.rath@parliament.nsw.gov.au

Dear Mr Rath

**Re: NSW Legislative Council Standing Committee on Law and Justice 2022
Review of the Compulsory Third Party Insurance Scheme**

I refer to the abovementioned review which will be the subject of proceedings before the Standing Committee on Friday 18 November 2022.

On 28 September 2022, the Committee received a submission from the Australian Lawyers Alliance which, inter alia, raises various issues about the Personal Injury Commission's operations.

Attached to this correspondence please find a copy of a letter dated 10 November 2022 which I have sent to the author of that submissions, Mr Joshua Dale.

I would be grateful if you could furnish a copy of my letter to Mr Dale to members of the Committee ahead of the hearing.

Yours sincerely

Judge Gerard Phillips
President, Personal Injury Commission



Personal Injury Commission

Office of the President

10 November 2022

Mr Joshua Dale
NSW President, Australia Lawyers Alliance
By email:

Dear Mr Dale

Re Personal Injury Commission

I refer to the Australian Lawyers Alliance (ALA) submission which has been submitted to the New South Wales Legislative Council's Standing Committee (Committee) on Law & Justice ahead of the 2022 Review of the Compulsory Third Party Insurance Scheme.

In that submission, the ALA makes assertions about the operations of the Personal Injury Commission (Commission). Ordinarily I would not respond to such a submission. However given that this is a public document and may be considered by the Committee, it is necessary for me to respond to ensure that accurate information is available.

I set out below the Commission's response to the ALA submission.

Item One

Delays

The ALA asserts that:

*"Fundamental to the motor accidents scheme is the efficient operation of the PIC. If the PIC is not producing timely medical and other assessments, then the motor accidents scheme grinds to an entirely unsatisfactory halt. The PIC is beset with delays."*¹

This assertion, whilst in part referring to work in the Motor Accidents Division of the Commission, makes a broad assertion that the Commission is beset with delays, seemingly referring to all aspects of the Commission's operations. The submission is not limited.

¹ ALA submission, [6].

The submission then proceeds to state as follows:

“The PIC largely attributes those delays to the pandemic. The ALA is concerned that there are more widespread reasons for delay at the PIC and that the PIC is not fully addressing all of the causes of delay.”

In response to these assertions, the Commission refers to the following facts:

- The Commission commenced on 1 March 2021 and was a merger of two legacy organisations, the Workers Compensation Commission (WCC) and the Dispute Resolution Service (DRS). Upon commencement, the Commission acquired almost 2,000 motor accidents disputes involving outstanding medical assessments from the DRS which had been suspended due to the COVID-19 pandemic in 2020. The Commission also acquired each organisation’s legacy IT system, in the case of the WCC the Comcase system and with respect to the DRS the Motor Accidents platform, known as Nexus.
- In the Commission’s first reporting period from 1 March 2021 to 30 June 2021, the Commission dealt with the following matters over both the Workers Compensation and Motor Accidents Divisions:
 - 5,256 dispute applications were registered in this period;
 - 5,041 dispute applications were finalised in this period;
 - 2,420 medical assessments were held in this period, and
 - 374 decisions were published during this period.²
- With respect to the 2021/22 reporting period, the following activity took place. It is to be noted that this is the first full reporting year of the Commission’s existence.
 - 14,509 dispute applications were registered in this period;
 - 13,667 dispute applications were finalised in this period;
 - 4,961 medical assessments were held in this period;
 - 1,042 decisions were published during this period;
 - 91% of all workers compensation disputes were resolved without a formal determination, and
 - 72% of motor accidents damages disputes were settled without a formal determination.³

The ALA’s submission, in broad, unparticularised terms, asserts that the Commission’s operations are not efficient. The data that I have set out above from the Commission’s first two Annual Reviews would suggest otherwise. It is noteworthy that this data reflects the Commission’s first 16 months of operations

² Source: Personal Injury Commission Annual Review, 2021.

³ Source: Personal Injury Commission Annual Review, 2021/22.

during pandemic conditions. It is true that there are challenges with certain parts of the Commission's operations, which I discuss more fully later in this correspondence.

The COVID-19 pandemic commenced in March 2020. At that time I was the President of the WCC and as a result of the deteriorating public health situation I closed in-person operations at the WCC's 1 Oxford Street premises. Staff and members then proceeded to work online and continued to deliver the WCC's services remotely. Obviously I had no role with respect to the motor accidents matters at that time, but it is my understanding that the DRS responded to the pandemic and the ensuing restrictions in a similar manner.

Since March 2020 as President of the WCC and then from 1 March 2021 as President of the Commission, I have had to make a number of decisions at different points in time in response to the ongoing and changing public health crisis occasioned by the COVID-19 pandemic and the various Public Health Orders issued by the Government. In addition, the Commission undertook its own risk assessments during this period and consulted widely with stakeholders with respect to the ongoing response to the significant challenge posed by the public health situation.

Perhaps the most significant challenge during the period 2020–2022 related to in-person medical examinations. In-person medical examinations by the cohort of medical assessors in the two legacy organisations and then in the Commission is a significant part of daily operations and the dispute resolution process. It is a larger proportion of the work in motor accidents, both in percentage terms and in numbers. It is important to note that in-person medical examinations deliberately breach the social distancing requirements given that medical examinations take place in a doctor's surgery over a period of at least an hour, sometimes longer, and with respect to the physical disciplines, require the doctor to undertake a physical examination of a claimant. Additionally, claimants would have to travel distances, often on public transport, which for a person with existing health difficulties was obviously a risk during the pandemic.

As a result, for various periods during 2020, all in-person medical examinations were suspended, and at other times limitations imposed. Additionally, there were various travel restrictions during that year which meant that certain regional claimants were unable to travel out of their area to a WCC medical appointment. Interstate and overseas claimants were of course affected by travel restrictions. I have no reason to believe that the situation was any different in the DRS.

The Government announced lockdown measures which encompassed areas of Sydney's eastern suburbs and the Sydney CBD, including the Commission's premises, on 25 June 2021. These measures were expanded as the then Delta variant outbreak began in earnest. Additional measures were applied in August 2021 when Sydney residents were restricted to a radius of 5 km from their homes. The various Public Health Orders constituting the Sydney lockdown were not lifted until 11 October 2021. During this period, the Commission had to suspend all in-person medical examinations as a consequence of the Delta outbreak.

The Commission announced the recommencement of in-person medical assessments from 25 October 2021, under strict controls. Medical assessments recommenced at this time and lasted until the Omicron outbreak which once again led to an interim pause of in-person medical assessments during January and February 2022. In-person medical assessments recommenced in March 2022, except for unvaccinated claimants. In May 2022 I announced that from 1 June 2022, Commission medical assessors on a voluntary basis would examine unvaccinated claimants in person.

During the first six months of 2022, the Commission's operations were significantly challenged as a result of the Omicron outbreak. For example, in the Motor Accidents Division alone, the Commission booked approximately 3,600 medical appointments during the six-month period from 1 January 2022 to 30 June 2022. Of these, approximately 1,800 or 50% were unable to proceed for various reasons. The reasons for this included the claimant or the medical assessor had COVID or were a close contact, the claimant sought to reschedule the appointment, the claimant could not travel, the claimant simply did not attend the examination, or their capacity to travel to the examination was adversely affected by other matters such as train strikes, floods or the very bad flu season.

From the above history, it is obvious that the Commission's operations during the 2021/22 period were significantly and adversely disrupted by the various events referred to above. The net result of these challenges has been to create a backlog in the Commission's medical assessment operations. This is not a surprise and is well known to all Commission users as it has been a topic of frequent communication to all users and stakeholders through the Commission's periodic publication called the Personal Injury Commission News (PIC News). PIC News is published regularly, usually at least once or twice a month, and has dealt with the challenge of the medical assessment backlog in multiple editions during the 2021/22 period. Whenever I had to take the decision to suspend or impose conditions on in-person medical examinations, that was done after consultation with the Presidents of the Bar Association and Law Society, the Commission's various stakeholder and medical assessor groups and the State Insurance Regulatory Authority (SIRA). Each body was very supportive of the action taken by the Commission.

One pleasing aspect of our operations during this period was in relation to psychiatric assessments. These were able to be moved to an online setting. The majority of psychiatric assessments proceed online, a minority do not and require an in-person medical assessment if it is the opinion of the medical assessor that the examination cannot fairly be conducted online. The Commission's psychiatrists (who presently number 36 in total) will in all probability maintain such examinations online into the future as it has been a successful response to the challenge of the pandemic and has broad acceptance among the Commission's stakeholders.

However it is true to say that the Commission's psychiatric assessments are under pressure. I have recently conferred with the New South Wales Branch Committee Chair of the Royal Australian and New Zealand College of Psychiatrists who advises me that their members have never been under such great pressure for

their services. This opinion has been confirmed to me personally by the Commission's psychiatrists. Our community currently has mental well-being challenges and this has led to great calls upon psychiatric services and often delays in the provision of treatment. The situation in the Commission reflects the circumstance which is existent in the wider community. Pleasingly, during 2022, the Commission has recruited five new psychiatrists, but unfortunately there are delays in appointing psychiatric assessments.

In terms of how the Commission is dealing with the challenge of medical assessment delays, attached to this correspondence is a copy of the PIC News issued on 4 November 2022. During the weeks commencing 24 October and 31 October 2022, the Commission conducted a number of presentations to stakeholders on the state of the medical assessment lists and delays. The content of these presentations is reflected in this PIC News edition.

In terms of the attached PIC News publication, the Commission is approaching the backlog in the following manner. The Commission defined all of its current medical assessment matters filed prior to 1 January 2022 as constituting "the backlog". That is, even if the matter had only recently been filed prior to the commencement of the 2022 calendar year. This relates to matters in the Motor Accidents Division only. The backlog thus defined was constituted by 4,667 motor accident applications requiring a medical assessment.

By the end of October 2022, the Commission had succeeded in reducing this backlog figure from 4,667 to 1,950. This figure of 1,950 obviously does not include 2022 filings. The Commission is dealing with 2022 filings while at the same time attempting to dispense with the backlog (as defined).

New filings during the pandemic continued to be made in very healthy numbers, except for a short period after the long Sydney lockdown during the second half of 2021. The legal profession advised that during that period they found it difficult to have clients examined by medico-legal specialists due to the public health orders. Filings slightly decreased for a short time during that period, but they have once again returned to usual levels once restrictions were relaxed. The situation is that for periods where we were unable to undertake in-person medical examinations either at all or in our usual volume, new cases continued to be filed.

Currently, the Commission has a total of 159 medical assessors. The delays in terms of medical appointments are not uniform across this group. The longer delays relate to high use specialities, including psychiatry, rehabilitation and orthopaedics. In some of the specialities which do not attract significant numbers of claims, appointments can be made more quickly (depending on availability and provided that the claimant and insurer submit all relevant material with their application and response). Conversely, there are a few low use specialities where it is hard to get a swift appointment because the specialist is in great demand.

Since the end of July 2022, the Commission has been scheduling on average over 700 medical appointments per month in the Motor Accidents Division alone. In November, as at the date of this correspondence, 791 medical appointments have been scheduled. In the Workers Compensation Division, in excess of 200 medical appointments per month have been scheduled during the same period. This

period of high numbers in appointments being scheduled corresponds to the period when, for the first time since the Commission commenced in March 2021, we have had operating conditions which have been less inhibited by factors such as the pandemic.

The presentations to stakeholders referred to above plot our path out of the pandemic inspired backlog. Obviously over the Christmas/New Year holiday period, the Commission will not be scheduling large numbers of medical assessments as has been experienced during the August – November period. The Commission is already scheduling assessments in 2023 and our aim is to eliminate the defined backlog (that is all pre-1 January 2022 filed matters) by the third quarter of 2023. This period would be shorter if claimant non-attendances at examinations were not so high. I expand on this issue later in this correspondence. Psychiatric assessments will remain a challenge for some time for the reasons I have outlined above, but once the backlog has been eliminated, I expect that the situation will stabilise and waiting times for such assessments will become much shorter.

With respect to the Workers Compensation Division medical list, there are delays in psychiatric assessments, but it is not greatly affecting the passage of matters in the workers compensation list. Currently, a matter is initially referred to a member who attempts to resolve the matter. If it cannot be resolved, the psychiatric assessment will take place approximately 12-15 weeks later. The delays exist in the medical assessments in the Motor Accidents Division for the reasons I have outlined above.

There is also a structural reason as to why there is a difference between medical assessments in the Workers Compensation Division as opposed to the Motor Accidents Division of the Commission. Workers compensation provides for a different dispute resolution method as opposed to the motor accidents legislation. In workers compensation, the Commission member decides all questions associated with causation. Once an Application and a Reply have been filed in a workers compensation matter, a member attempts to conciliate the dispute. In workers compensation, recourse to the Commission's medical assessors only occurs in a minority of cases, primarily to assess levels of impairment. This is to be contrasted with the Motor Accidents Division, where it is the medical assessor who decides causation and whether the injury is minor or not, rather than a Commission member. Consequently, the medical assessment in motor accidents matters becomes essential because the result of that assessment will dictate whether or not the claimant can access benefits. This produces a high demand for medical assessments in motor accident cases. As a consequence, a delay in being able to schedule a medical assessment, as I have outlined above, causes delays in the motor accidents list.

A consideration of the NSW Bar Association's Submission to the 2022 Review of the Compulsory Third Party Insurance Scheme dated 12 October 2022 confirms this observation. In Recommendation 2 of the Bar Association submission, the Bar compares the respective dispute resolution models between motor accidents and workers compensation. To quote the submission:

“The Association regards the model for medical assessment under the workers compensation scheme as far preferable to the current processes under the MAI Act. Where there is a dispute about causation of an injury, the Workers Compensation Dispute Resolution Pathway works more efficiently and finalises claims in a more satisfactory way than similar disputes under the MAI Act.”⁴

And further:

“Members of the Association have also observed that medical disputes in the motor accident context are more prolonged and often unnecessarily expensive, placing a substantial burden on the medical assessment system as a whole under the MAI Act.”⁵ (emphasis added)

I agree with the Bar Association’s observation of the respective dispute resolution models which the Commission currently employs. I would remark that the ALA’s submission to the Committee fails to mention, let alone address, the motor accidents dispute resolution model. It is not possible to have a substantive discussion about delays in motor accidents without considering the dispute resolution model. Obviously, given the high dependence that the motor accidents dispute resolution model has upon expert medical assessment, any delay in the assessment will impede the timeliness of the dispute being finalised. The Bar has correctly identified the dispute models as worthy of consideration.

Another cause of delays in medical assessments is the following practice by claimants’ lawyers. Claimants’ lawyers have a practice of filing hundreds if not thousands of pages of irrelevant medical records in their applications. Commission medical assessors frequently complain about this practice to me as a cause of great frustration. The medical assessors feel duty bound to review all of the material submitted and this causes a consequent delay in the issuing of Certificates. The Commission’s Rule Committee will be considering changes to the Commission’s Rules to deal with this inefficient practice.

In conclusion with respect to this issue identified by the ALA submission, it is true that there are delays in *some* aspects of the Motor Accidents Division pertaining to our high use specialities, including psychiatry, rehabilitation and orthopaedics. In terms of the Workers Compensation Division, there are delays in some psychiatric assessments as mentioned above, but they are not impacting upon the Commission’s timeliness to a great extent because they are much smaller in number than the Motor Accidents Division and the Workers Compensation Division operates a more efficient dispute resolution model. Not every case involving psychiatric injury in workers compensation requires a Commission medical examination.

A significant challenge in terms of dealing with the medical assessment backlog is non-attendances by claimants. For example, whilst the Commission scheduled over 700 appointments in September, the attendance rate was only 54%. The Commission’s experience is as follows. Frequently claimants will contact the

⁴ Bar Association submission, [41].

⁵ Bar Association submission, [45].

Commission and request that their allocated appointment be shifted to another date. There are circumstances where some individual claimants have requested that their appointment be cancelled and rescheduled to another date on four, five and six occasions. Administratively this is a significant burden for the Commission's medical services staff in terms of not only having to cancel and reschedule an appointment multiple times, but to then identify and allocate the cancelled appointment to another claimant. If sufficient notice is not given, the cancelled appointment is wasted. The other challenge is the circumstance where claimants simply do not turn up to their scheduled appointment.

The Commission's medical services staff are working on various ways to remind claimants of their scheduled appointments and encourage attendance. Discussions with the CTP insurers have been positive in terms of trying to assist in encouraging attendance. The group however who does need to promote attendance is the claimants' lawyers, as they are best placed to urge this upon their client.

On 1 November 2022, I wrote to the President of the Law Society asking for the Society's assistance in encouraging their members' clients to attend scheduled medical examinations. This is a matter that I have raised with the Commission's Stakeholder Reference Group, which includes legal representatives, as well as with the Law Society's representatives who were present at a briefing during the week beginning 24 October 2022 regarding our medical assessment list.⁶

The incidence of non-attendance is an ongoing problem and means that it will take longer to eliminate the defined backlog if this behaviour continues. The cancellation figures of 46% for September 2022 and 44% for October 2022 are simply unacceptable.

I also add the following consideration. Currently before the Parliament is the Personal Injury Commission Amendment Bill 2022 which, inter alia, proposes to extend mediation into the Commission's Motor Accidents Division. This would be a significant benefit in terms of dealing with the backlog. The backlog does include a number of claims pertaining to modestly valued medical treatment or care. For example, a claim might be for a series of six physiotherapy sessions which have been declined by the insurer. If this amendment bill passes with that provision, we will immediately deploy Commission mediators to deal with modestly valued or single-issue medical disputes. Currently, of the medical assessment matters on hand in the Motor Accidents Division, approximately 1,000 relate to disputes with respect to medical treatment and care. Some of these matters will, because of their size and complexity, of necessity, have to wait for a medical assessment. There are other claims where the claimant has not attended a number of scheduled medical assessments (for whatever reason). This is one type of case which would benefit from mediation. On our current review of the list there are many that would benefit from mediation.

I would remark that the Commission's mediators, currently limited to operating in the Workers Compensation Division, in the 2021/22 financial year successfully

⁶ A copy of the letter to the Law Society President is attached to this correspondence.

resolved 70% of all mediations conducted by them. The Commission hopes to see, in time, similar results in the Motor Accidents Division, and in particular with respect to medical treatment claims.

Delays in members issuing decisions

The ALA assertion about delays is not restricted to medical assessments. The Commission has 56 members across both divisions, and the vast majority of members in both Divisions issue their decisions in a timely manner.

Generally, members across both Divisions deliver their decisions within 28 days of the hearing which is a strong performance. Some matters due to their size and complexity take longer to deliver, members may fall ill or require unexpected leave, which is consistent with all decision-makers in courts and tribunals. When an individual member falls behind in producing their decisions, they are actively supported by the head of the relevant Division.

In the Motor Accidents Division, delays with respect to members issuing decisions is at present limited to less than three members, although, this can vary from time to time, by virtue of the reasons above. These members are not currently producing timely decisions. The Commission is working with these members, as with any other member, in order to support their performance. This is not an issue in the Workers Compensation Division.

The numbers from the Commission's Annual Reviews, in terms of not only decisions but matters resolved across both divisions, show significant operational performance under extremely trying conditions. That there are some delays in various aspects of our operations is unsurprising. These issues are known and are being addressed, but they are not representative of the Commission's overall performance.

Item Two

The ALA submission asserts that there are issues with the operation of the PIC:

*"including its computer service procurement issues, staff turnover, the drop-out rate of medical experts willing to participate in the scheme and a number of other issues that potentially affect PIC efficiency and performance."*⁷

I deal with each of these assertions below.

Computer service procurement issues

When the Commission came into existence on 1 March 2021, it acquired the legacy IT platforms of the WCC and DRS. The WCC platform, known as Comcase, has been in service for a lengthy period and is quite a stable, reliable platform. In 2019, development of the WCC system's online portal was undertaken and it was opened late in 2019. In terms of the WCC platform, it is relatively easy for users to navigate and has provided reliable service. It is however nearing the end of its service life.

⁷ ALA submission, [7].

The new Commission acquired the DRS platform, known as Nexus. I have made enquiries and was informed that the procurement and development of the Nexus platform commenced in early 2017, four years before the Commission was established. The Commission had no role in the procurement, choice, development or implementation of the Nexus system. I was not approached by the DRS after my appointment as President of the then WCC about the development of the Nexus platform. The ALA is therefore entirely mistaken if it is suggesting that the Commission is responsible for the procurement of the Nexus platform.

Soon after the Commission commenced in 2021, problems with the Nexus system, its effectiveness and efficiency became clear to the Commission. The Commission received a large number of complaints through our Stakeholder Reference Group, individual lawyers and through our dedicated helpline about problems with the Nexus system. We were also receiving complaints from our members and medical assessors about how difficult Nexus was to navigate. The problems with this platform have made dealing with disputes more difficult.

As a consequence of these problems, a review was commissioned of Comcase and Nexus by an external consultant. As a result of their work and the recommendations, the Commission's steering committee on IT matters resolved that the Commission's long term IT needs would best be serviced by a single IT platform. A selective tender was then conducted in late 2021 with the IT supplier SBC being awarded the contract to develop the new single IT platform. This process was supervised by an external law firm who were retained as the probity advisers. The process outlined above met with their approval and the accepted standards of procurement in the public sector.

The development of the Commission's single IT platform, known as Pathway, is well advanced, and it is anticipated that this IT platform will be opened in the Motor Accidents Division in approximately April 2023 with the Workers Compensation Division to follow 3-4 months afterwards. Commission members, medical assessors and the legal profession are all eagerly awaiting this development due to the frustrations they experienced with endeavouring to navigate the existing Motor Accidents IT system.

There is no "IT procurement issue" as asserted by the ALA's submissions. This assertion is incorrect. The Commission's process of procuring the Pathway platform has been rigorous and in accordance with public sector procurement requirements. It will be more efficient and cost effective to maintain a single IT platform rather than two.

I would make this following remark in relation to this submission made by the ALA. You have been a member of the Commission's Stakeholder Reference Group at all times since that group commenced, soon after 1 March 2021. At no stage either in those meetings or in any of your interactions with the Commission leadership have you on behalf of the ALA ever raised any issue regarding the procurement process pertaining to the new Pathway IT system. Indeed ALA members have urged the replacement of the Nexus system since the Commission's establishment. The process adopted to procure the new IT system was well known to all Commission users as it was described in various editions of

PIC News and was the subject of information being supplied to the Stakeholder Reference Group from time to time. The ALA has raised an issue which is without factual basis.

Staff turnover

The creation of the Commission was a merger of the two legacy organisations, the WCC and the DRS. The WCC was a long time NSW tribunal, the DRS was not. Both were configured differently.

Once the *Personal Injury Commission Act 2020* (the 2020 Act) passed the Parliament in August 2020, both organisations commenced preparatory work in order to establish the new Commission. A restructure was undertaken in the former WCC in order to better align the workforce and positions with the new structure of the Commission. I understand that similar activities took place in the DRS.

The new Commission created a structure which consisted of a Workers Compensation Division and Motor Accidents Division, and established five new directorates: Registry and Dispute Services, Medical Services, Legal and Policy, Finance and Organisational Performance and Digital Transformation. An Office of the Principal Registrar was established. By definition in such a circumstance, there were a number of redundancies which were identified prior to the commencement of the Commission and which were actioned after the commencement of the Commission. Excluding these redundancies associated with the Commission's establishment, the Commission's annual turnover rate as at mid-September 2022 was 20.9% which is below the rate for the department in which the Commission sits, the Department of Customer Service.

Redundancies upon the merger of organisations are a common circumstance, particularly when it is necessary to create a new structure. Clearly, certain roles ceased to exist or did not require multiple occupants. New roles were created. These redundancies were staggered in order to ensure an orderly transition.

The Commission is growing and developing a professional and dedicated group of public servants who are committed to their task of assisting injured claimants and insurers to deal with their disputes in an efficient manner. As is evident from the Commission's Annual Review 2021/22, the Commission completed its strategic plan in 2022 which was developed in consultation with its staff. This plan is being implemented.

The Commission is in the process of building an institution that will serve the people of this State in the long term and this has (unsurprisingly) taken time.

The ALA assertion that there is some problem with the Commission's "staff turnover" in light of these facts is not correct and is entirely speculative.

Drop-out rate of medical experts

This allegation is vague and imprecise.

Upon establishment, i.e. on 1 March 2021, the Commission acquired 187 medical assessors who were transferred from both the DRS and WCC by virtue of Sch 1,

Pt 2, Div 4 of the 2020 Act. The medical assessors were appointed for a period of 12 months commencing on the establishment date or the balance of the term to which they had already been appointed, whichever was the longer.

Currently there are 159 medical assessors appointed to the Commission for a period of three years.

Based upon my previous experience as the President of the WCC, this is a group that one has to constantly recruit new members into, because every year there is turnover within the group of medical assessors. As you doubtless appreciate, a number of medical assessors take up work with the Commission after they have either finished or scaled back their clinical practice. It is therefore a common occurrence for a number of medical assessors to retire each year. There are various reasons why doctors leave, however retirement from work is a common reason.

Medical Assessors who elect not to continue with the Commission are contacted to ascertain their reasons for leaving, and this has included:

- Retirement (age-related)
- Inability to commit to the Commission due to the busy work of their private practice
- Frustration with the Motor Accidents Portal, Nexus, and resulting inability to keep up with associated administrative requirements
- Not receiving enough medical assessment referrals to warrant continuing due to rare utilisation of their speciality
- Pay issues
- Unwillingness to agree to the terms and conditions and code of conduct implemented by the Commission, which differed to those in the Dispute Resolution Service.

In regard to pay issues referred to above, the Commission has recently commenced a process with the Statutory and Other Offices Remuneration Tribunal (SOORT) for a non-binding determination on medical assessor fee rates across both the Workers Compensation and Motor Accidents Divisions, as the medical assessor fee rates did not change following transition from the DRS and the WCC to the Commission. Further, an issue of concern was a private tax ruling by the ATO from 1 September 2020 which required the withholding of PAYG tax from payments to medical assessors, impacting their pay. The Commission has consulted medical assessors throughout this process with SOORT, and they have been invited to submit their views and/or proposals to SOORT. In regard to the IT issues relating to the existing Motor Accidents Portal, medical assessors have positively welcomed the Commission's progress toward our new IT platform, Pathway.

The Commission is pursuing a dedicated strategy where we have a slightly smaller group, but a group which offers us more availability. A number of the doctors who are no longer with the Commission were in either low-use specialities, or they simply did not provide us with sufficient availability to make their appointment worthwhile. The situation at present is that the smaller group (159) that the

Commission currently has appointed offers a greater number of appointments than the slightly larger number (187) acquired on 1 March 2021. Further, some doctors who previously only offered medical assessments in one jurisdiction, now offer assessments in both Commission Divisions.

The 159 medical assessors are sufficient to deal with the business-as-usual workload. The challenge with regards to the medical assessors relates to the backlog of cases which we continue to decrease each month.

The assertion that the Commission has a problem with the “drop-out rate” of medical assessors is without basis. Numbers alone are only part of the overall consideration. Medical assessors who provide us with greater availability are the key. One number which is of note in this regard is as follows. For November 2022 in motor accidents alone, 791 appointments have been scheduled which is an historic high.

Of course at the present time it would be of benefit to have, for example, more psychiatrists as that would assist us in more quickly dispensing with that specific backlog. In this regard, we have retained five new psychiatrists during 2022 and we remain in the market for suitable candidates in this speciality.

I would add this point to the discussion. If the motor accidents dispute resolution model was not so reliant on medical assessments, there would be no need for a large number of medical assessors or assessments. This would be a significant saving in scheme funds and the time taken for disputes to be finalised.

The ALA “assertion” about the drop-out rate of doctors is not substantiated.

Other issues

The ALA submission ends with this vague, unparticularised suggestion that there are “other issues”. This suggestion is so vague as being incapable of a proper response.

Conclusion

The ALA’s submission which you have authored makes a number of broad assertions which are unsupported by any evidence or data. Much of the ALA submission is speculative. My working assumption is that the origin of these assertions is a poor experience in an individual matter or rumours and anecdotes which have been related to you. Whilst this might be a starting point for a discussion about an individual matter, it is not a reliable way to assess performance in a high-volume tribunal which has finalised 18,718 matters in its first 16 months of operation.⁸

In this response, I have supplied both empirical data and explanatory commentary in order to present a more reliable description of the Commission’s operations. Much of the data I have referred to is publicly available.⁹

⁸ Source: Personal Injury Commission Annual Reviews 2021, 2021/22.

⁹ Annual Reviews, PIC News October 2022, stakeholder presentations.

The ALA's "demand" with respect to the retention of management consultants is not supported by the data and is at best a tenuous proposition.

The Commission is successfully working through its backlog of medical assessments which was created by the COVID-19 pandemic. The Commission is significantly advanced in its digital transformation project, the implementation of which is both welcomed and anticipated by stakeholders.

I hope this response to the ALA submission addresses the "concerns" that have been raised. I must however record my disappointment with the insinuation in the ALA's submission that the Commission's statement that the pandemic has affected its operations is somehow disingenuous. The contrary is the position. The COVID-19 pandemic has been hugely disruptive to our operations, particularly with respect to completing medical assessments.

I hope that the facts that I have provided in this submission and the commentary around those facts is of assistance to the ALA, the Committee and to those appearing in the 2022 CTP Review to know and understand not only the current situation, but also how the Commission intends to deal with those circumstances.

Yours faithfully

His Hon Judge G Phillips
President, Personal Injury Commission

CC:

The Hon Chris Rath, MLC, Chair, New South Wales Parliament Legislative Council
Standing Committee on Law and Justice

The Hon Victor Dominello, MP, Minister for Customer Service and Digital
Government

Ms Joanne van der Plaats, President, New South Wales Law Society

Ms Gabrielle Bashir SC, President, New South Wales Bar Association

Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority

Ms Sophie Cotsis, MP, Shadow Minister for Industrial Relations, and Shadow
Minister for Work Health and Safety

Ms Yasmin Catley, MP, Shadow Minister for Customer Service, Shadow Minister for
Digital, and Shadow Minister for the Hunter

Mr Richard Harding, CEO, icare NSW

Mr Simon Cohen, Independent Review Officer

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Welcome

Welcome to the latest edition of the Personal Injury Commission News.

This edition calls out the highlights from our 2021-2022 Annual Review, continues our focus on in-person medical assessments, provides updates on Procedural Directions, and includes a progress report on our upcoming Single Digital Platform.

Over the past week, the Commission undertook a number of in-person briefings with stakeholders. Included in this edition is some of the data presented to stakeholders detailing the current state of medical assessments across both Divisions.

I will be in touch with another edition of Personal Injury Commission News soon.

Regards,
Judge Gerard Phillips
President

The Commission's 2021-2022 Annual Review

On Thursday 20 October 2022, the Personal Injury Commission's 2021/2022 Annual Review (covering the period 1 July 2021 to 30 June 2022) was tabled in Parliament. The Review has now been posted on the Commission's website and can [be found here](#).

Pages 12-13 provide a good overview of all of the work that we completed during the reporting year.

A review of this section will show that the Commission:

- Finalised **13,667** dispute applications;
- Held **4,961** medical assessments;
- Issued over **1,000** decisions of all types;
- Saw our mediators resolve **70%** of all damages cases which proceeded to mediation;
- Resolved **91%** of all disputes in the Workers Compensation Division without formal determination;
- Resolved **72%** of all disputes in the Motor Accidents Division without formal determination;
- Fielded over **16,500** calls to our enquiry line and **14,000** emails to our helpdesk;
- Kept users fully informed of all relevant issues through our regular publications and reference group meetings.

These achievements, in the face of the significant challenges we experienced as a result of the pandemic, are a reflection of the commitment and hard work of our staff, Members, Medical Assessors, Mediators and Merit Reviewers. I would like to take this opportunity to thank them for their incredible efforts.

Finally, I refer you to chapter four which details the Commission's Strategic Plan, which was developed in early 2022. The way we go about our daily work will be informed by the furtherance of that plan.

In-Person Medical Assessments – Current Status Report

Readers of Personal Injury Commission News will note that one of the big challenges we have described at length during 2022 has been the backlog of in-person medical examinations posed by the COVID-19 pandemic.

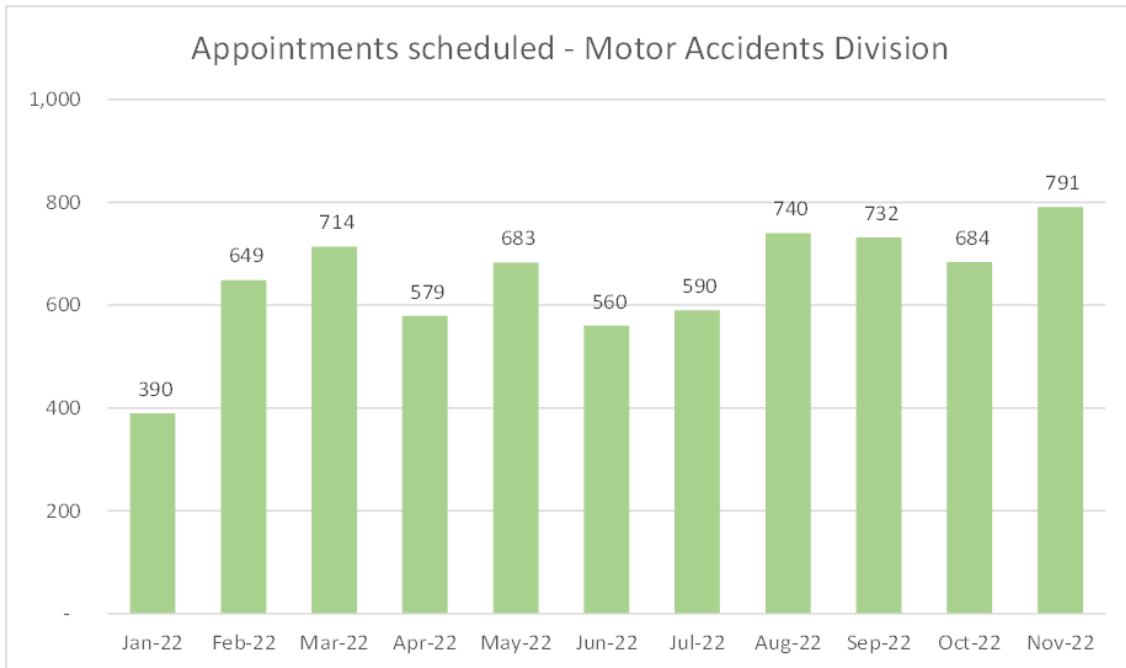
Since the end of July 2022, however, it is becoming apparent that for the first time since the Commission came into its existence (1 March 2021) our operations are experiencing "clear air". By this I mean that our operations are no longer constantly beset by issues associated with the pandemic or other matters such as floods, the bad flu season or train strikes. Since July, the experience of either COVID infections or people having to isolate amongst the claimant group, the Commission's staff, Members and Medical Assessors has been declining.

As a result, while our performance reporting in the Annual Review demonstrated significant achievements in this area despite the challenges faced, I am pleased to say that there has been further advancement since the financial year ended.

I outline some key recent performance data below that highlights these improvements but also outlines action required from claimants and their legal representatives in regard to medical assessment attendance. Please note that the data quoted, in particular the numbers related to the backlog, matters on hand and matters in and out, obviously changes on a monthly basis dependent upon assessments scheduled, assessments that actually go ahead and new filings. This means that some of the data has a short shelf life depending on what is actually happening in terms of filings and finalisations.

Volume of Medical Assessments Scheduled Has Increased

Since the beginning of August, the Commission is, on average, scheduling in excess of 700 medical assessments each month in motor accidents and more than 200 in workers compensation matters.



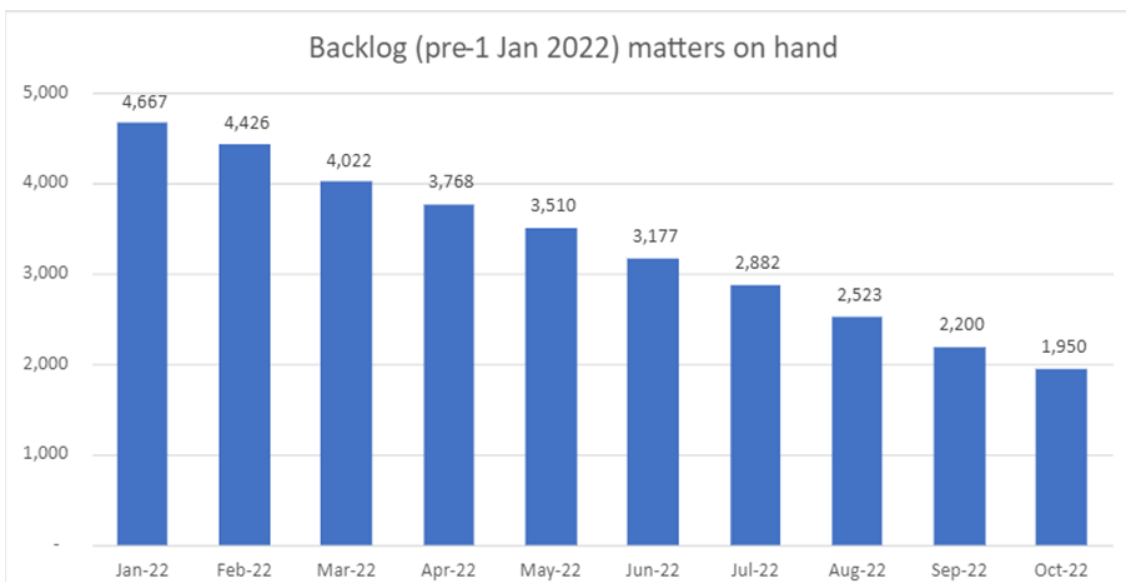
*Data was extracted on 1 November 2022 for October EOM and is subject to change.

The increased volume of scheduled appointments is helping us reach dispute outcomes for claimants and workers more rapidly and enabling us to make pleasing inroads in terms of reducing our medical assessments backlog. While the number of medical assessments scheduled during December and January will be lower due to the holiday period, there will be a focus on returning to a high volume of assessments from February 2023.

Please note that our high-use specialties (psychiatry, rehabilitation and orthopaedics) remain under pressure and there are delays in appointments in these fields.

Medical Assessment Backlog is Reducing Month-on-Month

Since the commencement of 2022, the motor accidents backlog has reduced from 4,667 medical disputes to 1,950. The backlog is defined as all medical disputes lodged prior to 1 January 2022.

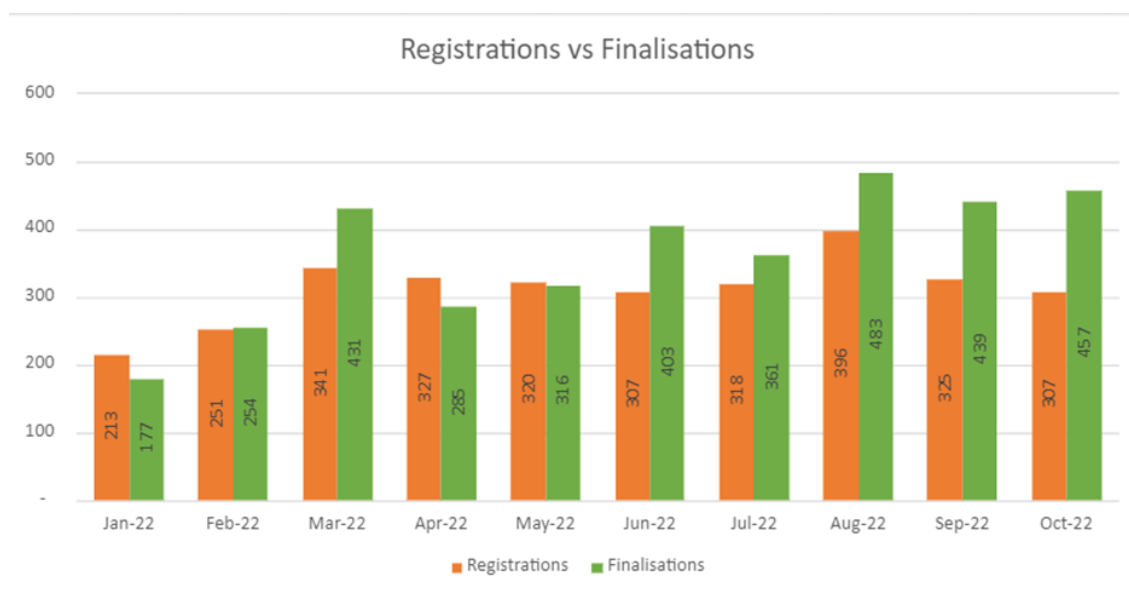


*Data was extracted on 1 November 2022 for October EOM and is subject to change.

As is evident from the data, the Commission has made great strides in dealing with the backlog month-on-month during this year, but more work remains to be done to dispense with it as soon as we can.

Motor Accidents Division Clearance Rates Are High

Pleasingly, the clearance rates of motor accidents matters have increased across the year. Our clearance rate based on the calendar year is currently sitting at 117% and 130% for the financial year to date. **Clearance rates over 100% mean that more matters are being completed than are being lodged.** In short, the good news is that the backlog is heading down, and we are finalising more matters than are being filed.



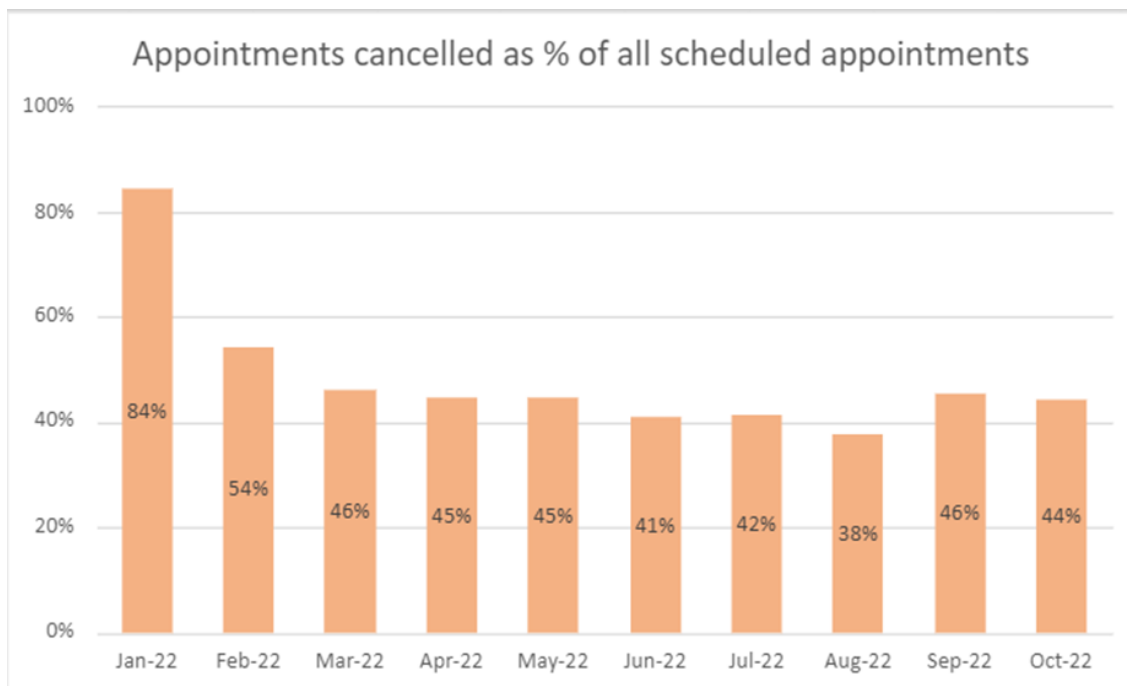
*Data was extracted on 1 November 2022 for October EOM and is subject to change.

The data shows that finalisations on average, have continued to outpace lodgments across the calendar year.

Claimants Must Attend Medical Assessments Scheduled for Them

The Commission currently has 791 medical assessments scheduled in the Motor Accidents Division alone for November. This is a huge logistical undertaking by the Commission and its Medical Assessors.

Reduction of the backlog will only be achieved more quickly if we can increase the incidence of claimants attending their scheduled examinations. As is demonstrated in the graph below, there are still too many appointments which do not go ahead because the assessment has been cancelled, rescheduled or simply recorded as “unattended”. In previous editions of Personal Injury Commission News, I have stressed the imperative for claimants to attend their scheduled medical assessment. In August the completion rate was 62%, which unfortunately dropped to 54% in September and 56% in October notwithstanding the scheduling of large numbers of appointments.



***Data was extracted on 1 November 2022 for October EOM and is subject to change.**

Claimants and their lawyers should consider the appointment of a medical assessment to be analogous to a Commission hearing. Attendance should not be considered a discretionary activity, especially in a high-use specialty. An individual claimants' preference for a different date will generally not be an acceptable reason to reschedule. I understand that emergencies sometimes arise. However it is essential that claimants attend the assessments booked for them in the majority of cases so that outcomes for their disputes can be achieved as quickly as possible. This will also assist the Commission with working through the medical assessments backlog more rapidly.

It is the collective duty of claimants and their lawyers, the insurers and the Commission to work to ensure that as many scheduled appointments as possible proceed. I would urge all claimants' lawyers to impress upon their clients the need to attend the appointment as and when scheduled. I want to see November's attendance rate significantly above where it currently sits. As a large number of appointments have been scheduled for November, a high attendance rate will significantly decrease the backlog of cases.

Conclusion

In closing, in the run-up to Christmas, it is of great importance that scheduled examinations are attended. We are continuing to reduce the backlog and at the same time deal with matters filed in 2022.

I'd like to conclude by restating that the good news is we are now able to operate under normal conditions and I feel strongly that by working together we should start to see the improvements we desire, which will benefit all Commission users.

Amendment to Procedural Direction PIC6 – Medical Assessments

Please note that Procedural Direction PIC6 has been amended to:

- a. Remove an unsigned certificate as an example of an incomplete certificate – this was previously included in para 69.
Certificates have not been signed for some time and are regarded as complete when sealed instead of signed.
- b. Remove examples of evidence from paragraph 15 as practitioners said it was leading to confusion.

Clarification of Procedural Direction PIC7 – Appeals, reviews, reconsiderations and correction of obvious errors in medical disputes

Some practitioners have mentioned that the following clause in Procedural Direction PIC7 has been misinterpreted to mean a hard copy bundle –

[38] A party must lodge and serve a paginated and indexed bundle of documents that should be considered by the President and/or the Review Panel and submissions concerning the appropriate medical assessment.

The Commission confirms that any reference to a document (singular or plural) means an electronic bundle unless otherwise stated.

Update on the Commission's Single Digital Platform

Development of the Commission's new single digital platform is progressing well and we are on track to make the system operational around April or May next year in the Motor Accidents Division, and two to three months later in the Workers Compensation Division.

The establishment of a single IT platform for the Commission's case management will enable all Commission users to engage with it in the same place, in the same way in the future. This will be a welcome and exciting development in how parties to disputes interact with us.

To help differentiate our new platform from the existing Motor Accidents and Workers Compensation systems when it is launched, we have named it 'Pathway'. Commission users, including insurers, legal representatives and claimants/workers will engage with the new platform via a single online interface called the 'Pathway Portal'. Decision Makers will access the platform via an interface to be known as 'myPathway'.

As we are committed to ensuring that the platform meets the needs of all Commission users, decision makers and staff, we will demonstrate aspects of the platform for representatives of each cohort in a series of feedback 'showcases' across the coming months.

The showcases will be an opportunity for platform users to see what has been built to date, ask questions about it and provide meaningful feedback about how what has been built could be fine-tuned to best meet their needs.

Showcases of the platform's Motor Accidents functionality will be held for Commission decision makers, the CTP insurers and the legal profession from mid-November. Invitations will be issued shortly. Showcases of the Workers Compensation functionality will be held early in 2023.

I am very pleased with how the development of the Pathway platform is proceeding. I look forward to introducing the platform during 2023 and the improvements it will bring to your digital interactions with the Commission. I will update you on progress over the coming months.

Have a question about the Personal Injury Commission?

If you have a question you would like to ask about the Commission, please email us at communications@pi.nsw.gov.au

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New South Wales

Personal Injury Commission

Office of the President

1 November 2022

Ms Joanne van der Plaat
President, Law Society of New South Wales
By email: president@lawsociety.com.au
cc:

Dear Ms van der Plaat

RE: Personal Injury Commission Medical Assessment Appointments

On Thursday 27 October 2022, I briefed representatives of the Law Society regarding the status of the Commission's medical assessments.

As you may recall, our in-person medical assessments have been significantly affected by the pandemic and for many months during the pandemic were suspended due to the public health crisis and observance of the then Public Health Orders. There are delays in the high use specialities of psychiatry, orthopaedics and rehabilitation. The Commission's psychiatrists tell me that they are under significant pressure with their clinical work, and the situation we are experiencing mirrors delays in the general community. These delays are more evident in the motor accidents work.

The Commission is dealing with this challenge in a methodical and serious manner. At the start of the year, we made the decision to classify every medical assessment matter in the Motor Accidents Division that was on hand as at 1 January 2022 as constituting the "backlog". As at 1 January 2022, the backlog was constituted by 4,668 cases. Pausing here, I should note that when the Personal Injury Commission commenced on 1 March 2022, the new tribunal acquired 2,000 outstanding medical assessments from the former Dispute Resolution Service, which dealt with motor accidents matters.

As at the date of this correspondence, we have reduced the pre-1 January 2022 figure of 4,668 to 1,950 outstanding matters. At the same time, we are continuing to deal with applications for medical assessments filed during 2022. For the past three months and for November 2022, the Commission has scheduled on average

in excess of 700 medical assessment appointments per month in motor accident matters, and in excess of 200 per month in workers compensation.

There is one circumstance, beyond our control, which is delaying our ability to more speedily dispense with the motor accidents backlog in its entirety. There are far too many claimants who either do not attend, or contact the Commission through their solicitors seeking to reschedule, the medical appointment they have been notified of. In October alone, the non-attendance figure for our medical appointments was 45% (non-attendance means the appointment was rescheduled, cancelled or the claimant failed to attend). This figure is far too high and is completely unfair to other claimants awaiting medical assessments. Frequently we are advised of a person's inability or preference not to attend the scheduled date too late for it to be given to another claimant.

I have raised this issue on a number of occasions with the Law Society representatives on our Stakeholder Reference Group and reiterated the point at the 27 October meeting.

The profession's co-operation on this issue is vital.

The claimant's solicitor is the best placed person to encourage attendance of their client at the scheduled appointment. Such appointments should be treated in the same manner as a hearing before a Commission member, namely that attendance is not a discretionary activity.

I would be very grateful if the Law Society could urge its members to work with the Commission to increase the rate of attendances at our medical examinations. Already for November the Commission has scheduled 790 appointments in motor accident matters alone. Scheduling this quantity of appointments is a large logistical undertaking on the Commission's part and they simply must not be wasted.

I will be reiterating this message in the next edition of the Personal Injury Commission News but it is a matter that I wish to bring to your attention because it is a significant factor inhibiting the speed with which we can dispense with the backlog. Thus far, I have deliberately avoided any sanctions for non-attendance or late rescheduling given the vicissitudes of the pandemic. I also appreciate the position of many claimants as vulnerable persons.

But this situation cannot endure and it may be necessary to take more stern steps so as to ensure that attendance is the preferred outcome. If we can get the support of the claimants' lawyers in this regard, the taking of such coercive steps will not be necessary.

I would be only too happy to discuss this matter with you at your convenience.

I have copied this correspondence to the Bar President for information purposes, but the Bar in real terms is not involved in this aspect of a motor accidents case.

Yours sincerely

Judge Gerard Phillips
President, Personal Injury Commission

cc: Ms Gabrielle Bashir, SC
President, NSW Bar Association
By email: president@nswbar.asn.au