

Office of the President

10 January 2012

Ms Rebecca Main
Principal Council Officer
Legislative Council Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Main

Re: Inquiry into Opportunities to Consolidate Tribunals in New South Wales

Thank you for your letter of 20 December 2011. In response to the Committee's supplementary questions, I advise as follows.

Question 1: What aspects of the Workers Compensation Commission are working particularly well and could be used in the creation of a new tribunal structure, whether or not the Workers Compensation Commission was ultimately included in the amalgamation?

Answer: The Commission's transition from a larger number of sessional Arbitrators to a smaller group of appropriately skilled and experienced full-time Arbitrators has significantly improved the quality and durability of arbitral decisions.

Since the appointment of full-time Arbitrators, the appeal rates from decisions of Arbitrators have been reduced dramatically, as has the rate of successful appeals. I can confidently say that the move to full-time, experienced Arbitrators has resulted in better quality and more durable decisions than those of Arbitrators whose skills were more broadly based in alternative dispute resolution.

As I mentioned during the course of my evidence to the Committee, the Commission's participation in the Compensation Authorities Staff Division (CASD) arrangements has been particularly beneficial for the Commission. The capacity to share a range of corporate services, including human resources, information technology, budget and finance, and other services with a range of other entities has certainly produced efficiencies for the Commission.

The Commission's focus on a range of support mechanisms for Arbitrators has also proved to be beneficial. The Commission has developed a robust system of professional development and appraisal of Arbitrators that involves elements of self-assessment, peer review, statistical analysis and formal appraisal. The system has assisted both the Commission and its Arbitrators to identify the strengths and weaknesses of members, and to initiate appropriate

professional development programs. The peer review element has been particularly successful. This provides the Arbitrators with a confidential peer review by a more senior Arbitrator of his /her conduct of hearings, telephone conferences, and case management procedures. The peer review process is confidential to the parties and this, I believe, promotes frank and open discussion between the parties.

Other support mechanisms include the publication of a comprehensive practice manual for Arbitrators. The manual provides guidance on a range of ethical and procedural issues, and on substantive law issues. Arbitrators refer to the manual for guidance on relevant legislation, regulations, rules, guidelines and significant decisions on a range of legal issues. The manual is provided in a loose-leaf service which is updated quarterly and electronically.

The Commission's caseload allocation policy has also contributed to the quality of arbitral decisions by ensuring that an appropriate balance is reached between the timely disposition of new matters and the allocation of adequate time to research and write decisions.

In addition to changes to arbitral arrangements, the 2008 review of the Commission recommended a number of changes to the internal organisational structure. Those changes were implemented in October 2009 and delivered on a number of key objectives, including:

- Increasing the flexibility of task allocation within, and the level of collaboration between, dispute management and registry functions;
- Centralising the role of data analysis and reporting;
- Incorporating business support functions within a broader Business Support unit;
- Reducing the number of direct reports to the Registrar, and
- Providing enhanced career paths for staff.

The recent evaluation by PricewaterhouseCoopers confirmed that the internal restructure had been largely successful in achieving the identified objectives.

Question 2: Your submission (page 8) notes that the WCC hired independent management consultants to undertake a review of the WCC's structure and operational framework. What lessons did you learn from that report that might be relevant to apply to the work of a super tribunal?

Answer: I should say at the outset that the report was heavily focused on the issues then confronting the Workers Compensation Commission and may or may not have more general application.

The consultants focused on the quality and consistency of decision-making in the Commission. Their observations regarding the unacceptably high appeal rates, among other things, resulted in the recommendation to transition from sessional Arbitrators to full-time Arbitrators. The consultants also focused on a re-alignment of the structure of the organisation, with a view to ensuring clear reporting lines for accountability and the appropriate balance of resources among the Commission's business units.

One of the lessons learnt from the organisational re-alignment was the benefits derived from broad consultation and engagement with staff at all levels, and the relevant unions, on the reform options. The recommendation to create a team of senior Arbitrators to mentor and support a smaller team of Arbitrators has proved to be beneficial in practice.

Question 3: Our terms of reference ask us to inquire as to the effectiveness of tribunals in providing a fast, informal and flexible process for resolving consumer disputes. To what extent do you think the WCC is achieving this goal?

Answer: The Commission's statistics on the timely determination of disputes are a matter of public record and are published in its annual reports (copies of which have been made available to the Committee).

As I said in our submission, more than 40 per cent of applications to the Commission are finalised within the first three months, and 90 per cent are resolved within six months. One hundred per cent of applications (excluding those involving appeals) are resolved within 12 months. There are a number of factors that contribute to that outcome.

Firstly, parties are required, when lodging an application at the Commission, to lodge and serve on all other parties to the application all evidence and all documents upon which that party proposes to rely. The respondent is required, within 14 days of service, to file a reply to the application, which must also attach all relevant documentation upon which the parties rely. A large number of disputes are resolved at the initial telephone conference, which takes place approximately six weeks from lodgement of the dispute. I am confident that the fact that the Commission and both parties are fully apprised of the issues and the evidence is a major contributing factor to the resolution of cases at telephone conference. The other factor is that the Arbitrator who will ultimately hear the case, if it is not settled, is able to bring to bear his or her skills and experience in assisting the parties to reach a resolution that is acceptable to both parties.

Secondly, the informal procedures adopted by the Commission are another relevant factor in the timely disposition of disputes. Pursuant to s 354 of the *Workplace Injury Management and Workers Compensation Act 1998*, proceedings in the Commission are to be conducted with as little formality and technicality as the proper consideration of the matter permits. The Commission is not bound by rules of evidence and may inform itself on any matter and in such manner as the Commission thinks appropriate as the proper consideration of the matter permits. Notwithstanding its statutory modification, the common law rules of procedural fairness continue to operate in the Commission.

Question 4: What are your views on how other State jurisdictions have handled the process of consolidation of tribunals?

Answer: As I indicated at the outset of my opening remarks to the Committee, I would prefer to restrict my comments to the operation of the Workers Compensation Commission. I would, however, reiterate that, in those States where super tribunals have been established, the workers compensation dispute resolution tribunals have not been included in the super tribunals and have remained as discrete tribunals or entities. For the reasons stated in my submission and evidence, I regard that as appropriate and I urge the Committee to take the same approach in the context of this inquiry.

I trust that the Committee will find our responses informative. If I can be of any further assistance, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read "Greg Keating", with a stylized flourish at the end.

Judge Greg Keating
President