



Workers Compensation  
Commission

# **Information Kit 2020**

## **Arbitrator**



**Workers Compensation Commission**

## Contents

Background .....	3
Expectations of the Role of the Arbitrator .....	4
Selection Process .....	4
Application .....	4
Evaluation of the Applications .....	4
Shortlisting .....	4
Panel Interview .....	4
Appointment .....	5
Candidate Feedback .....	5
How to Apply .....	5
Consideration for Appointment .....	5
Assessment Criteria .....	5
Arbitrator Value Proposition .....	7
Terms of Appointment .....	7
Professional Development .....	7
Induction .....	7
Performance Evaluation .....	7
Remuneration .....	7
Accommodation and Support .....	8
Travel .....	8
Duration of Appointment .....	8
Disclosure of Information .....	8
No Economic Opportunity .....	8
Ownership .....	8
Disclaimer .....	8
Confidentiality and Disclosure of Information .....	9
Conflict of Interest .....	9
Indemnity .....	9
Termination .....	9
Electronic Operating Environment .....	9
No Partnership, Agency or Employer Relationship .....	9
About the Commission .....	9
Our Role .....	9
Our Objectives .....	10
What We Do .....	10
How We Do It .....	10
Members .....	11
Service Partners .....	12
Staff .....	12

## Background

The Workers Compensation Commission (WCC) is a statutory tribunal within the NSW justice system that resolves workers compensation disputes between employees and employers. Arbitrators assist in resolving disputes through conciliation and arbitration. The Arbitrator's role includes decision making, and Arbitrators are expected to be well-researched, organised and articulate in order to support durable determinations.

WCC is seeking to appoint appropriately qualified and experienced individuals as Arbitrators. A person is eligible to be appointed as an Arbitrator only if the person:

- (a) Is an Australian lawyer, or
- (b) Has such qualifications, skills or experience as may be determined by the Minister.

Arbitrators apply their deep technical expertise in workers compensation law, and passion for resolving legal questions, to conciliate and arbitrate in workers compensation disputes.

All activities within the WCC are approached under the principles of integrity, independence and impartiality

Applicants should have strong current knowledge of workers compensation law and practice, and demonstrated alternative dispute resolution and facilitation skills and experience. Applications are encouraged from across the NSW metropolitan and regional areas. Whilst the majority of hearings take place in Sydney, there is regular work in other locations, including Newcastle, Wollongong, Orange, Dubbo, Wagga Wagga, Coffs Harbour and Tweed Heads.

Full-time and sessional appointments are available. Full-time Arbitrators are based in Sydney. Sessional Arbitrators may be based in or outside of Sydney.

Full-time Arbitrators are paid fixed, annual remuneration. Remuneration is determined by the Statutory and Other Offices Remuneration Tribunal (SOORT).

Sessional Arbitrators are appointed on a contingent basis. Remuneration is paid at an hourly rate. The hourly rate for sessional Arbitrators is determined by the Attorney General.

For sessional Arbitrators, the WCC does not guarantee or make representations as to the amount of arbitral services that will be sought, however it is expected that they will be regularly allocated matters and are expected to complete all mandatory WCC training activities and professional development opportunities. Sessional Arbitrators can engage in work outside of the WCC but not appearance work in workers compensation disputes.

Appointments will be made for terms of up to five years, with eligibility for reappointment.

This information kit is intended to provide a comprehensive overview of the role of the Arbitrator, the WCC and the appointment process. Should you have further questions, please contact Sarah Kerr.

**Contact details:** (02) 9289 1078 or [sarah.kerr@customerservice.nsw.gov.au](mailto:sarah.kerr@customerservice.nsw.gov.au)

## **Expectations of the Role of the Arbitrator**

Arbitrators are, in the general course of their functions, subject to the general control and direction of the Registrar. They are required to implement and follow directions outlined in the Workers Compensation Legislation and in accordance with the Arbitrator Code of Conduct. Arbitrators may also be required to enter into a performance agreement with the Registrar, and their performance is measured in line with the relevant capability framework.

Arbitrators are responsible for the resolution and determination of disputes under the Workers Compensation Acts, having regard to the Workers Compensation Commission Rules 2011, relevant regulations, guidelines, procedures and practice directions. WCC will provide training in the requirements of the role.

The WCC has determined that it is not appropriate for persons who are appointed as Arbitrators to also appear as advocates in any workers compensation proceedings before the WCC.

For **information about the Commission** see page 9 of this information kit.

## **Selection Process:**

### *Application*

Your application should demonstrate how your skills, experience and qualifications meet the assessment criteria outlined in this kit on page 5. At a minimum, a cover letter and resume/CV should be provided. Any costs incurred in preparing and submitting this application, and any subsequent aspect of the selection process, will be the responsibility of the job candidate.

### *Evaluation of the Applications*

Candidates will be evaluated in accordance with the selection criteria by an Assessment Panel. An independent panel interview administrator will also be present to manage the panel interview and collate feedback.

### *Shortlisting*

Candidates will be shortlisted on the basis of relative merit between all applicants in relation to skills, knowledge and abilities demonstrated within the application.

### *Panel Interview*

Candidates selected for a panel interview will be contacted at least one week prior to the scheduled interview and advised of any documentation and information required to bring to the interview. WCC supports the NSW Government's 'Women In Leadership' initiative. WCC encourages applications from members of EEO groups and will provide reasonable adjustments for applicants upon request, e.g. wheelchair access or a reasonable adjustment to the interview format. Applicants should advise the WCC of any particular requirements at the time of being invited to interview so that appropriate adjustments can be made.

## *Appointment*

The Assessment Panel will recommend applicants for appointment. Appointments are made by the NSW Attorney General in consultation with the Minister for Finance, Services and Property, and are subject to final approval by the NSW Cabinet. At the conclusion of the approval process, all candidates will be notified of the outcome of their application.

Prior to any appointment, recommended candidates will be probity checked, including a qualifications and national criminal background check.

Should any unexpected delays occur in the assessment and appointment process, applicants will be advised accordingly of the revised anticipated completion date.

## *Candidate Feedback*

Candidates who are unsuccessful will receive verbal feedback from the independent panel administrator and will be notified in writing of the outcome. Feedback provided will be constructive in nature in order to assist the candidate in future applications.

## *How to Apply*

Applications close at 9:59am (AEST) on Friday 14 February 2020.

Your application is to:

- be submitted by the nominated closing date and time
- include a cover letter and resume/CV
- include the names and contact details of at least 2 referees (preferably current or recent supervisors) that can be contacted during the appointment process
- nominate a preference for full-time or sessional appointment
- nominate a preferred location (Sydney, Newcastle or other)

## *Consideration for Appointment*

In addition to the Assessment, candidates may be asked to provide supplementary information. Such information may be sought through a telephone request, interview or through a formal presentation. Applicants will not be permitted to revise or vary their responses.

## *Assessment Criteria*

Candidates are required to submit a cover letter (maximum 2 pages) and CV/resume (maximum 4 pages) that demonstrates how they meet the following criteria that are aligned to the Arbitrator Capability Framework

<b>Competency</b>	<b>Behavioural Indicators</b>
Knowledge and Values	<ul style="list-style-type: none"><li>• Interprets and determines complex questions of law</li><li>• Maintains current knowledge of legislation and relevant case law</li><li>• Ability to quickly build an understanding of complex facts and issues</li><li>• Takes on constructive feedback and uses it to improve personal performance</li></ul>

Communication	<ul style="list-style-type: none"> <li>• Facilitates legal hearings and disputes effectively</li> <li>• Writes decisions and documentation relating to proceedings with accuracy and clarity</li> <li>• Proficient in the use of relevant writing and word processing software and tools</li> </ul>
Conduct of Cases	<ul style="list-style-type: none"> <li>• Reports on findings in a timely and effective manner</li> <li>• Strong stakeholder management skills and an ability for effective conciliation</li> <li>• Understands the needs and interests of all parties involved in cases</li> <li>• Considers the impact of the dispute on parties in how cases are conducted to minimise adverse impact on parties</li> </ul>
Evidence	<ul style="list-style-type: none"> <li>• Ability to understand complex case evidence and information</li> <li>• Leverages evidence in making appropriate determinations</li> </ul>
Decision Making	<ul style="list-style-type: none"> <li>• Demonstrated ability to resolve and determine disputes</li> <li>• Undertakes an objective and critical analysis to draw accurate conclusions that recognise and manage contextual issues</li> <li>• Sound judgement</li> <li>• Takes a structured approach to decision making</li> <li>• Has a strong track record of making quality and durable decisions</li> </ul>
Facilitation, case management and administrative procedures	<ul style="list-style-type: none"> <li>• Ability to manage case loads and work in an organised and effective manner</li> <li>• Ability to manage competing priorities, high volume workloads and meet strict deadlines</li> <li>• Delegates effectively to researchers and administrative support staff</li> </ul>
Act with Integrity	<ul style="list-style-type: none"> <li>• Model the highest standards of ethical behaviour and reinforce this in others</li> <li>• Represent the WCC as an honest, objective and professional organisation</li> <li>• Ensure that they have a clear understanding of the legislation and policy framework in which they operate</li> </ul>

## *Arbitrator Value Proposition*

A career as an WCC Arbitrator is an exciting opportunity that can offer many significant benefits:



### **Terms of Appointment**

#### *Professional Development*

WCC provides professional development opportunities for Arbitrators, including comprehensive induction upon commencement.

#### *Induction*

All new appointees will be required to attend an induction that will be held at the WCC's office in Sydney.

#### *Performance Evaluation*

Arbitrators are required to participate in a performance evaluation process at six monthly intervals. The following measures are among those considered:

- percentage of matters resolved, compared with percentage of matters determined
- percentage of determinations subject to an appeal application
- percentage of determinations revoked or part revoked on appeal
- timeliness of resolution of dispute
- quality of determinations
- adherence to the dispute resolution model
- number of complaints substantiated

WCC reserves the right to canvass parties on Arbitrator performance.

#### *Remuneration*

The rates of remuneration are as follows.

Full-time Arbitrator:

- Salary with legal qualifications: \$232,730 p.a.
- Salary without legal qualifications: \$209,225 p.a.

Sessional Arbitrators with legal qualifications will be remunerated under a fee schedule which is based on an hourly rate of \$185.45 (legally qualified) and \$166.73 p/h (not legally qualified).

### *Accommodation and Support*

Sessional Arbitrators are required to provide their own office accommodation and associated business needs, other than for face-to-face conciliation conferences and arbitration hearings. Face-to-face conferences/hearings will be held in the WCC's premises in the CBD or in various regional locations.

### *Travel*

Full-time and sessional Arbitrators may be required to undertake intrastate and interstate travel from time to time.

### *Duration of Appointment*

Arbitrators will be appointed for terms of up to five years.

### *Disclosure of Information*

No potential applicant shall disclose any information relating to this application process or the required services via any media release or any other written publication without prior written consent from the President of the WCC.

The President of the WCC has no objection to the applicant copying this document for the purpose of preparing their application.

### *No Economic Opportunity*

By lodgment of an application with the WCC, the applicant affirms that he or she has not given, offered to give, nor intends to give at any time thereafter, any inducement, reward including any economic opportunity, future appointment, gift, loan, gratuity, special discount, trip, favour or service to any public servant or member of the WCC in connection with the submitted application.

If the applicant is found to have offered any inducement or reward in accordance with the preceding paragraph, or is found to have committed corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act 1988*, the applicant shall be disqualified and any resulting arrangements for arbitral services void.

### *Ownership*

All information submitted by an applicant shall become the property of the WCC. All ownership in such documentation shall vest entirely in the President of the WCC.

### *Disclaimer*

While the information contained in this document has been formulated with all due care, the WCC does not warrant or represent that the information is free from errors or omissions. The information is made available on the understanding that the WCC and their employees and members shall have no liability (including liability for reason of negligence) for any loss, damage, cost or expense incurred or arising by reason or any error, omission or misrepresentation in the information or otherwise.

Furthermore, the WCC takes no responsibility for the accuracy, currency, reliability and correctness of any information included in this document, in particular any information provided by third parties.

### *Confidentiality and Disclosure of Information*

An Arbitrator shall take all reasonable steps to ensure that he or she does not disclose to any person the contents of, or information relating to, any document or material which has been provided by the WCC to the Arbitrator and which relates to the affairs of a third person other than as provided by legislation.

All reports, working papers and other documents of Arbitrators that have been prepared or obtained shall be confidential to the WCC.

### *Conflict of Interest*

Arbitrators shall ensure that no conflict of interest exists or is likely to arise in the performance of his or her role. If a conflict or risk of conflict of interest arises, the Arbitrator shall notify in writing the Registrar of the WCC advising of the possible conflict and possible measures to overcome the existing or perceived conflict of interest.

### *Indemnity*

As members of the WCC, Arbitrators have, in the performance of functions performed as a Member, the same protections and immunities as a Judge of the District Court of NSW.

An Arbitrator shall promptly notify and fully disclose to the WCC in writing an event or occurrence, actual or threatened, which would materially affect the Arbitrator's ability to perform any of his or her obligations.

### *Termination*

The Minister may remove an Arbitrator from office in accordance with the provisions of the Schedule 5, Clause 6(2) of the *Workplace Injury Management and Workers Compensation Act 1998*.

### *Electronic Operating Environment*

The WCC operates in an environment that provides for electronic lodgment and electronic document storage and retrieval. Arbitrators will be required to update matters through the WCC's electronic case management system, and to provide documentation (including Certificates of Determination and Statements of Reasons) electronically.

### *No Partnership, Agency or Employer Relationship*

Appointment as an Arbitrator does not constitute the Arbitrator as an agent, partner or employee of the WCC.

## **About the Commission**

### *Our Role*

The WCC is an independent statutory tribunal within the justice system of New South Wales. Our role, as part of a broader statutory scheme, is to resolve disputes about workers compensation claims between injured workers and employers.

The WCC was established under the *Workplace Injury Management and Workers Compensation Act 1998* and commenced operations on 1 January 2002.

Legislation relevant to the WCC's jurisdiction includes the:

- *Workers Compensation Act 1987*;
- *Workplace Injury Management and Workers Compensation Act 1998*;
- *Workers Compensation Regulation 2016*, and
- *Workers Compensation Commission Rules 2011*.

The Hon Victor Dominello MP, Minister for Customer Service, is the Minister responsible for the administration of workers compensation legislation, except for:

- the appointment and remuneration of members - Attorney General and Minister for Domestic Violence, and
- uninsured liabilities, the Nominal Insurer, the Insurance Fund and scheme agents – Treasurer.

### *Our Objectives*

The objectives of the WCC, set out in s367 of the *Workplace Injury Management and Workers Compensation Act 1998* are to:

- provide a fair and cost-effective system for the resolution of disputes;
- reduce administrative costs;
- provide a timely service;
- create a registry and dispute resolution service that meets expectations in relation to accessibility, approachability and professionalism;
- provide an independent dispute resolution service that is effective in settling disputes and leads to durable agreements, and
- establish effective communication and liaison with interested parties.

### *What We Do*

WCC's non-adversarial process ensures that parties are directly involved in resolving disputes relating to workers' compensation claims.

The main types of dispute include:

- Liability disputes:
  - weekly compensation payments;
  - past medical and related treatment expenses;
  - compensation to dependants of deceased workers;
  - lump sum compensation for permanent impairment where liability is in dispute;
  - lump sum compensation for pain and suffering;
- Medical disputes:
  - lump sum compensation for permanent impairment where degree of permanent impairment is in dispute;
  - future medical and related treatment expenses;
- Expedited assessments;
- Common law mediations; and
- Legal costs assessments.

### *How We Do It*

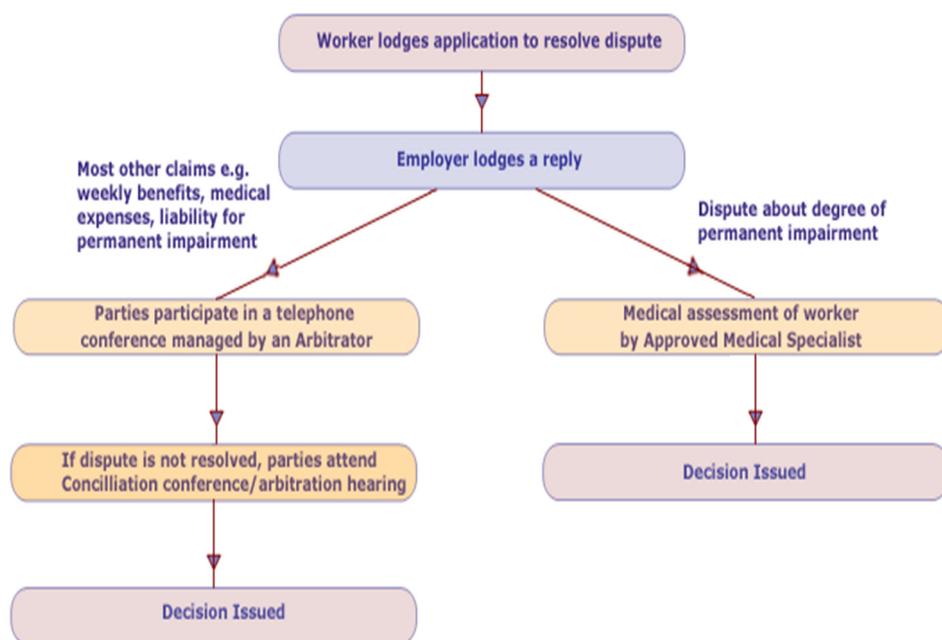
The process for resolving a dispute depends on the type of claim that is in dispute. Parties are encouraged to settle their dispute at any time during the process.

The Registrar will refer liability disputes to Arbitrators for determination. Medical disputes are referred directly to Approved Medical Specialists for assessment.

WCC has an intermediate appellate jurisdiction that is a distinguishing feature of its operations. Presidential Members of the WCC hear appeals against the decisions of the Arbitrators.

Similarly, Medical Appeal Panels determine appeals against assessments by Approved Medical Specialists.

A simple guide to how the process works is shown below:



Parties are encouraged to settle their dispute at any time during the process.

## Members

The WCC consists of the following members:

- President;
- two Deputy Presidents;
- two Acting Deputy Presidents;
- Registrar;
- full-time Senior Arbitrators, and
- full-time and sessional Arbitrators.

The Attorney General and Minister for Domestic Violence, the Hon Mark Speakman SC MP, appoints the members of the WCC.

### *President and Deputy Presidents*

The President is the head of jurisdiction and works closely with the Registrar in the overall leadership of the WCC. The President is also responsible for the general direction and control of the Deputy Presidents and Registrar in the exercise of their functions.

The Presidential Members hear and determine appeals from decisions of Arbitrators. The decisions of Presidential Members may be appealed to the NSW Court of Appeal on questions of law only.

The President also has the responsibility of determining 'novel or complex' questions of law referred by Arbitrators or parties. In relation to work injury damages matters, the President has exclusive jurisdiction to determine applications by defendants to strike out pre-filing statements.

### *Registrar*

The Registrar is responsible for the administrative management of the WCC and is the functional head of the WCC's services.

The Registrar is directly responsible for providing high-level, executive leadership and strategic advice to the President on the resources of the WCC, including human resources, finance, asset management, facilities, resources and case management strategies.

In addition to the administrative responsibilities, the Registrar may exercise all of the functions of an Arbitrator. Further, the Registrar is responsible for the general control and direction of Arbitrators in the exercise of their functions.

### *Senior Arbitrators*

Senior Arbitrators are responsible for the resolution and determination of disputes about workers compensation claims. They also assist the WCC in professional development, peer review, mentoring and appraisal of Arbitrators, case management, and the development of practice and procedure.

### *Arbitrators*

Arbitrators work with the parties to explore settlement options and, where possible, reach an agreed resolution of the dispute. Arbitrators manage disputes through to finalisation, utilising a series of conferences, including either teleconferences and/or conciliation conferences. Unresolved disputes proceed to a formal arbitration hearing.

### *Service Partners*

#### *Approved Medical Specialists*

Approved Medical Specialists are highly-experienced, medical practitioners from a variety of specialities. To be appointed, they must have completed the necessary training in the workers compensation guidelines to assess whole person impairment, and their application must have undergone a rigorous assessment for impartiality. Approved Medical Specialists appointed for the assessment of general medical disputes must also be in clinical practice or teaching.

The WCC refers medical disputes, such as the degree of permanent impairment of the worker as a result of an injury, to an Approved Medical Specialist for assessment.

#### *Mediators*

The WCC is supported by contracted Mediators. All Mediators have extensive experience in alternative dispute resolution, as well as knowledge of the workers compensation jurisdiction.

Mediators are required to use their best endeavours to bring the parties to a negotiated settlement. They conduct mediation conferences in the WCC's Oxford Street premises and in other regional locations when required.

### *Staff*

WCC's staff are located at 1 Oxford Street, Darlinghurst. WCC staff provide administrative, clerical and legal support to members and service partners.

### *Further Information*

Workers Compensation Commission (NSW) website: [www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au)