

Medical Panels Victoria

The Office of the Convenor of Medical Panels
end of year results 2015/16

September 2016

CONVENOR FOREWORD

Dear Minister,

I am pleased to present the 2015/16 end-of-year results of Medical Panels. This report presents details of the work undertaken by the 4343 constituted Medical Panels and the Office of the Convenor of Medical Panels.

Medical Panels demonstrates a profound commitment to procedural fairness, opinions are well considered and legally sound, and the process operates in a timely and effective manner. In a broader sense, Medical Panels play an important role in the alternative dispute resolution process by contributing to the efficient and effective resolution of disputes which otherwise could extend into further litigation and disputation.

During the last year, Medical Panels faced some new challenges as the growth in referral numbers experienced over the previous five years began to slow down. The current referral reduction seems to be related to a general reduction in Workers' Compensation scheme disputes. Wrongs Act referrals also reduced but to a lesser extent. Although the total number of new referrals received has reduced, the proportion of complex referrals is now larger.

The terms of appointment for all medical practitioners on the Governor-in-Council list eligible to be appointed to a Medical Panel expired on 30 June 2016. Therefore, in February 2016, applications were sought from suitably qualified and registered medical practitioners to be appointed to the list from 1 July 2016 until 30 June 2019. General and targeted advertising and promotion activity was undertaken to meet the anticipated needs of Medical Panels including addressing gender balance. Following this recruitment campaign, 215 Panel Members were appointed, of which 46 are female. This also included 17 new medical practitioners, of which 6 (35%) are female.

The average time taken to respond to a referral and provide a final Medical Panel opinion was reduced in 2015-16 for the majority of referrals and referral types. This was achieved through a continued focus on reducing unnecessary delays combined with a reduction in referrals. The Office of the Convenor of Medical Panels continues to review and streamline administrative processes to assist in managing the different referral types and ranging complexity.

A new Medical Panels website went live in November 2015, providing easier access to more information to assist injured workers, claimants, referrers, parties, medical practitioners and the wider community.

To prepare for the future, the Office of the Convenor of Medical Panels also undertook a strategic planning process in 2015/16 which will see a greater focus on providing information and training to Panel and Presiding Members to respond to the changes in the law and referral profiles.

In the coming year there will be some exciting opportunities as the Office of the Convenor of Medical Panels prepares to relocate the office and medical suite accommodation in May 2017. We will also continue to work towards a new IT system to improve service and the management of referrals to Medical Panels.

The results presented in this report reflect the continued value of the unique Medical Panels process. This work is made possible by the strong professionalism, expertise and dedication of the medical practitioners appointed to each Medical Panel and the committed staff of the Office of the Convenor of Medical Panels.



Dr John Malios
Convenor

OFFICE OF THE CONVENOR OF MEDICAL PANELS' MISSION

To support the fair and timely resolution of disputes, through the provision of final and binding opinions and reasons in relation to medical questions referred under the Victorian Workers' Compensation legislation and the *Wrongs Act 1958*.

ABOUT MEDICAL PANELS

Medical Panels are established under the Workers' Compensation legislation and the *Wrongs Act 1958*. Medical Panels have been part of the dispute-resolution process in Victoria in one form or another since the early 1990s. Medical Panels were established as an alternative to the lengthy and costly legal system. In essence a Panel seeks to resolve disputes on medical questions without excessive delay or expense.

Where there is disagreement or uncertainty about aspects of an injury or medical condition, a Medical Panel may be convened to answer referred questions and provide a legally conclusive and binding Opinion on the medical issue/s in dispute.

- A Medical Panel may be asked to provide an Opinion where there is disagreement or uncertainty about aspects of a WorkCover-related injury or medical condition.
- A Medical Panel may be asked to provide a Determination where there is disagreement or uncertainty about the degree of impairment resulting from an alleged *Wrongs Act* injury.

Each Medical Panel has the status of a Tribunal and a Medical Panel Opinion and Determination on a medical question must be accepted as final and binding.

Referrals to Medical Panels can be made by the Accident Compensation Conciliation Service, the Courts, WorkSafe Agents, VCAT, self-insured organisations, and respondents for *Wrongs Act* matters.

An individually constituted Medical Panel is an independent tribunal that consists of Panel Members who are medical practitioners appointed by the Governor in Council and are selected by the Convenor of Medical Panels for the particular referral.

MEDICAL PANEL REFERRAL PROCESS

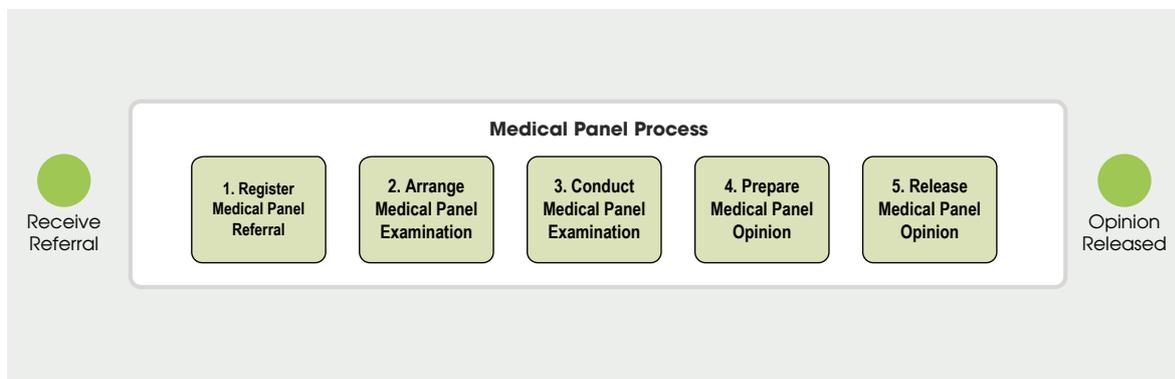
Each referral is examined to ensure that the referral is validly made and is from a person or body exercising appropriate referral powers under the Act. They will also examine whether the referrer asks a statutory medical question appropriate to be determined by a Medical Panel. Any deficiencies, omissions or errors are pursued.

Once the Convenor is satisfied that the referral is validly made and asks a statutory medical question that is appropriately worded, clear and valid, the Convenor will convene a Medical Panel of expert medical practitioners from the Governor in Council approved list, including a Presiding member that they consider appropriate in specialty, number and relevant to the referral.

The Medical Panel must form an opinion on a medical question within 60 days of a Medical Panel being convened and the documents given to the Panel for Workers' Compensation legislation referrals. Within seven days of forming an opinion it must give the referrer its opinion in writing. The Panel must provide a certificate indicating its opinion, and a written statement of reasons for the opinion. This period may be extended with consent of the referring party (e.g. Conciliation Officer, Court or Self-Insurer or Agent).

For referrals made pursuant to the Wrongs Act 1958, a Medical Panel must provide notification of an appointment for a Medical Panel examination, or reject or request further information within 30 days from lodgement of a Wrongs Act referral. The Medical Panel is required to give a determination within 30 days of the date of the last appointment with the Medical Panel, or the date when additional information is received or a longer time as agreed to by the respondent/s and claimant.

High-level Medical Panel process - referral to opinion release



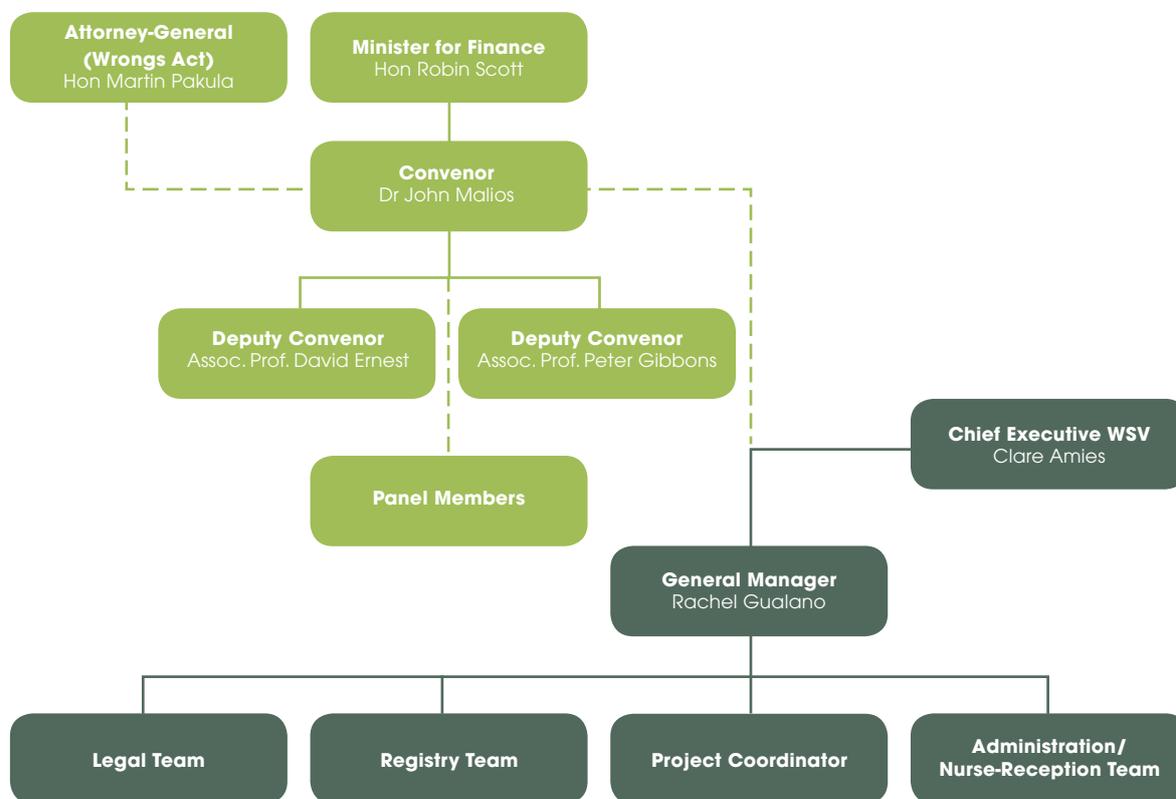
"What beautiful people you are. Thank you for your help and support before my appointment. You are kind and caring. I don't think I could have done it without you"
- Injured worker feedback

THE OFFICE OF THE CONVENOR OF MEDICAL PANELS

The Office of the Convenor of Medical Panels consists of the Convenor, two Deputy Convenors and 29 employees (27 FTE) provided by WorkSafe Victoria to support the operations of the organisation.

The employee profile includes:

- (a) General Manager
- (b) Manager, Legal Operations and Advisory Services
- (c) Legal and Impairment Advisors
- (d) Registry Manager
- (e) Registrars and Deputy Registrar
- (f) Administration Manager
- (g) Administrative Officers
- (h) Nurse Receptionists
- (i) Project Coordinator
- (j) Security Officer



■ Provided by WSV

MEDICAL PANEL MEMBERS

Panel Members are appropriately qualified and experienced medical practitioners who are able to provide independent, high-quality medical assessments, conjointly (in cooperation with other Panel Members) and develop a comprehensive Medical Panel Opinion and Reasons.

- The Convenor and Deputy Convenors are appointed by the responsible Minister from the list of Members.
- Members are those medical practitioners, appointed by the Governor in Council, who are eligible for allocation to a Medical Panel.
- Consultants to Medical Panels are either medical practitioners or allied health practitioners who are engaged by the Convenor to advise a Medical Panel on medical or allied health matters where a Medical Panel requests such advice.

In 2016 Medical Panels completed a successful Panel Member recruitment project that saw 215 medical practitioners appointed to the list, for the period of 1 July 2016 – 30 June 2019. To support this, recruitment analysis was completed by the Office of the Convenor of Medical Panels to identify

workforce needs. Targeted advertising and promotion was undertaken to attract those specialities identified as high needs. The current breakdown of Panel Member specialities is detailed below.

Of the 215 Panel Members appointed, 46 are female. There are 17 medical practitioners new to Medical Panels and of these, 6 (35%) are female. Medical Panels remains committed to improving gender balance by increasing the number of female medical practitioners appointed to the list. During this recruitment campaign, advertising efforts prioritised this commitment and consisted of a two-page profile of an experienced female Panel Member, advertising on the Office of the Convenor of Medical Panels' website encouraging female applicants to apply and targeting female applicants through the 'Refer a Colleague' strategy. Overall, the proportion of female Panel Members increased from 19% to 21%.

In addition to the medical practitioners appointed to the list, the Office of the Convenor also used 24 consultants from a number of specialities.

Panel Member speciality demographic

Specialty	Specialty Total	Specialty	Specialty Total
Orthopaedic Surgeon	40	Cardiologist	4
Psychiatrist	41	Ophthalmologist	4
Rheumatologist	19	Endocrinologist	3
General Practitioner	17	Consultant Physician	3
Neurosurgeon	14	Vascular Surgeon	3
Otolaryngology	9	Dermatologist	3
Occupational Physician	7	Urologist	3
General Surgeon	7	Pain Management Physician	3
Neurologist	7	Gynaecologist	2
Rehabilitation Physician	6	Musculoskeletal Physician	2
Plastic Surgeon	5	Neuro Psychiatrist	1
Gastroenterologist	5	Infectious Disease Physician	1
Respiratory Physician	5	General Physician	1
			Total 215

"I was very impressed with the professionalism at Medical Panels. I would also like to particularly thank the doctors involved"
 – Injured worker feedback

OVERVIEW OF ACHIEVEMENTS

2015/16

After many years of consistent growth, there was a reduction in new referrals received in the last year. This reduction in referral numbers provided new challenges to Medical Panels as they continued to provide efficient service to claimants.

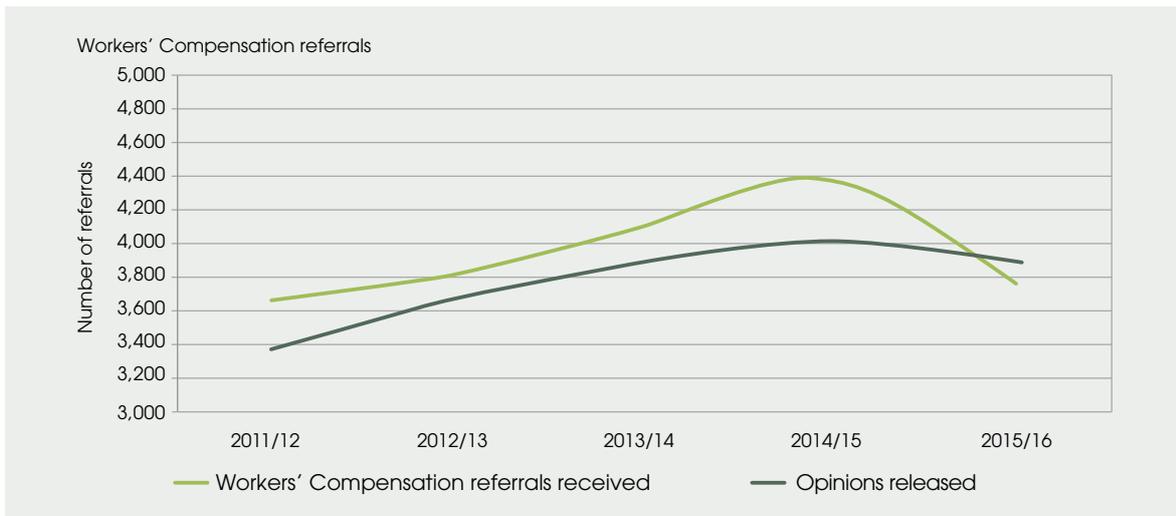
- **Strategic planning** – In 2016 strategic planning workshops were conducted to review and confirm the organisation’s mission statement, and set the strategic direction for the next 3-5 years. Medical Panels continues to focus on providing high-quality, fair and independent Opinions and Reasons in an efficient timeframe.
- **Recruitment of 215 Medical Practitioners for a three-year period** – Panel Member appointments are limited to a maximum three-year term. In February 2016 applications opened for suitably qualified and registered medical practitioners to be recommended for appointment to the list of Panel Members. Following this successful recruitment campaign, 215 medical practitioners were appointed to the list, effective from 1 July 2016.
- **Increased focus on IT system improvements** – Following the recommendations from the Medical Panels Service Review completed in 2015, significant work was completed in the last year to progress towards a new IT system. This included the identification of requirements, a business case and a procurement process for a new IT system. This project is currently on hold due to the need to further develop business strategy and is expected to be revisited in 2017. In the interim, work continued on system improvements to the current IT system, including the move to electronic lodgement of Opinions and Reasons by Panel Members.
- **Continued focus on Medical Panel Member training and development** – Formalised training and information sessions for Panel Members and Presiding Members were delivered monthly by the Deputy Convenors, Manager, Legal Operations and Advisory Services and Legal advisors. Induction training was delivered to new members in February and July 2016, and the mentoring program continues. The Office of the Convenor of Medical Panels is committed to attracting, retaining, engaging and developing Panel Members.
- **Increased engagement with external stakeholders to ensure an effective and efficient service** – There was increased focus on engagement with referrers including Agents, the Accident Compensation Conciliation Service, the Magistrates and County Courts, and WorkSafe Victoria to share appropriate information and learnings, and promote continuous improvement. In the last year, the Office of the Convenor of Medical Panels has worked collaboratively with the referrers to improve referral templates to ensure the information received is consistent and accurate so as to minimise delays. Regular liaison has continued with the Department of Treasury and Finance and the Department of Justice and Regulation on policy issues relating to Medical Panels. A presentation was delivered to the Rehabilitation and Compensation Working Group to provide information about Medical Panels, its role in dispute resolution and performance.
- **New Medical Panels Website launched** – The launch of a new Medical Panels website was completed in November 2015. This new website provides simpler, clearer and more easily accessible information for our key audiences – referrers, workers/claimants, and prospective Panel Members. The website is also an important reference point for stakeholders and those indirectly involved in the Medical Panels process.

MEDICAL PANELS REFERRAL TRENDS AND CASELOAD OVERVIEW

In 2015/16, a total of 4388 referrals were received and 4493 Opinions and Determinations were finalised. There was a decrease of 13% (665) in the total number of referrals received in comparison to 2014/15. This was comprised of a 14% (614)

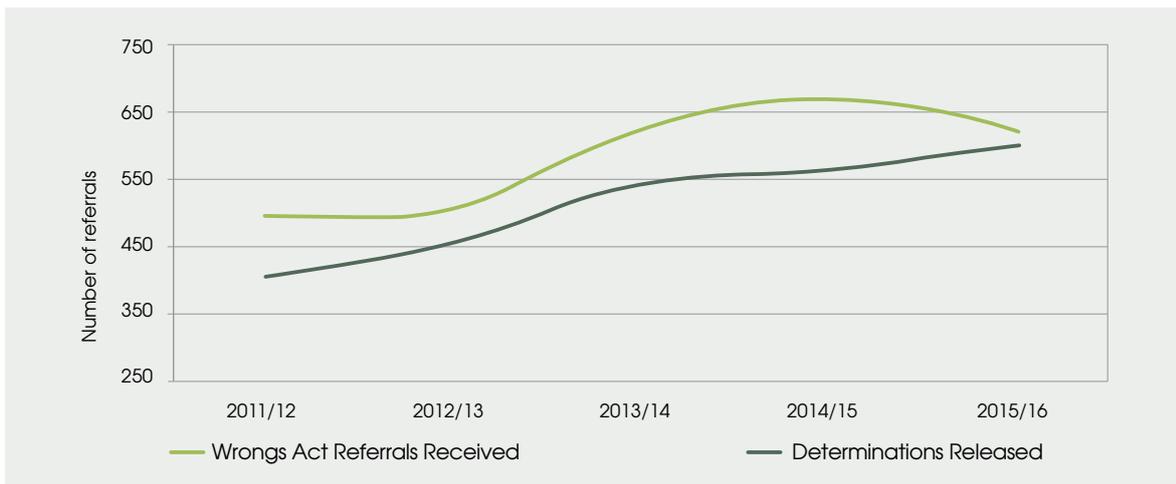
decrease in Workers' Compensation referrals and a 7.6% (51) decrease in Wrongs Act referrals. The 14% reduction in Workers' Compensation referrals seems to be related to a general reduction in Workers' Compensation scheme disputes.

Workers' Compensation referral and Opinion trends



Of the 3767 Workers' Compensation referrals received in 2015/16, 3,295 have been Opined and 146 (3.8%) were withdrawn, suspended or abandoned. The remaining 326 (as of 10/08/2016) are in progress.

Wrongs Act Referral and Determination trends



Of the 621 Wrongs Act referrals received in 2015/16, 466 have been Opined and 49 were withdrawn, suspended or abandoned (7.8%). The remaining 106 (as of 10/08/2016) are in progress.

From 2011/12 to 2015/16 the overall referral increase has been 5.5% (229), largely driven by the Wrongs Act referrals increase of 25.5% (126). Workers' Compensation referrals represented a 2.8% (103) increase in this period.

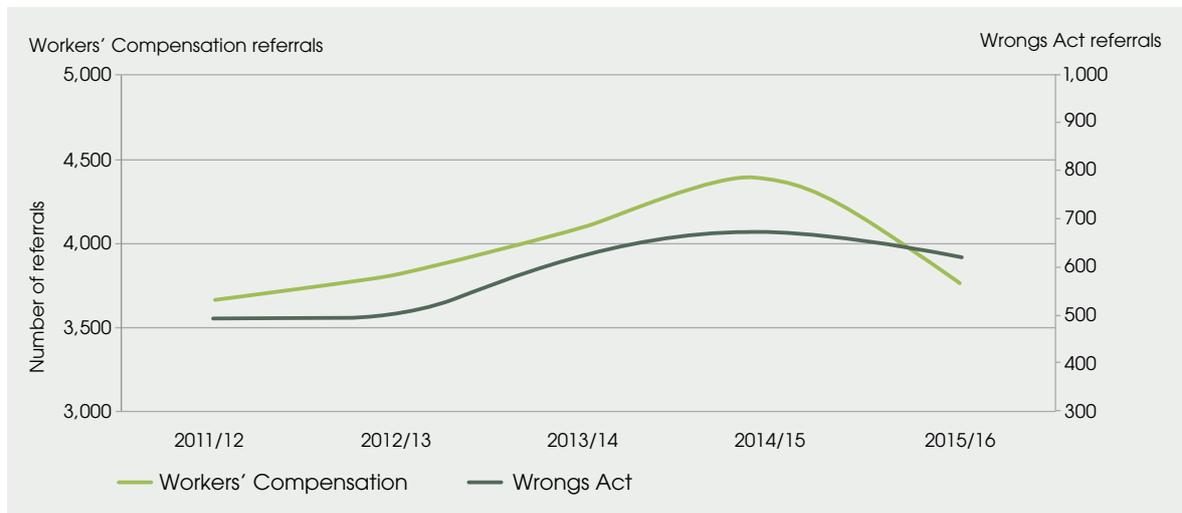
Overall the number of Opinions and Determinations released by Medical Panels has mirrored the reduced referral trends. However with the decrease in referrals in 2015-16, the number of Opinions and Determinations released has exceeded the referrals received. The lower number of referrals

received, together with a focus on streamlining processes, has enabled Medical Panels to deliver Opinions and Determinations in shorter timeframes for the majority of referrals. In the last five years, the overall increase in the output of Opinions and Determinations has been 18.7% (709), comprising a 15.2% (514) increase for Workers' Compensation Opinions and a 48% (195) increase for Wrongs Act Determinations. The Opinions and Determinations released exclude those referrals that are in progress, suspended or were withdrawn.

Five-year Opinions and Determinations numbers and percentage increases

	Workers' Compensation	Wrongs Act	Grand Total
2011/12	3,379	405	3,784
2012/13	3,683	456	4,139
Increase from previous year	9.0%	12.6%	9.4%
2013/14	3,886	546	4,432
Increase from previous year	5.5%	19.7%	7.1%
2014/15	4,006	563	4,569
Increase from previous year	3.1%	3.1%	3.1%
2015/16	3,893	600	4,493
Increase/Decrease from previous year	-2.8%	6.6%	-1.7%
Overall increase over 5 years	514	195	709
Overall % increase over 5 years	15.2%	48.1%	18.7%

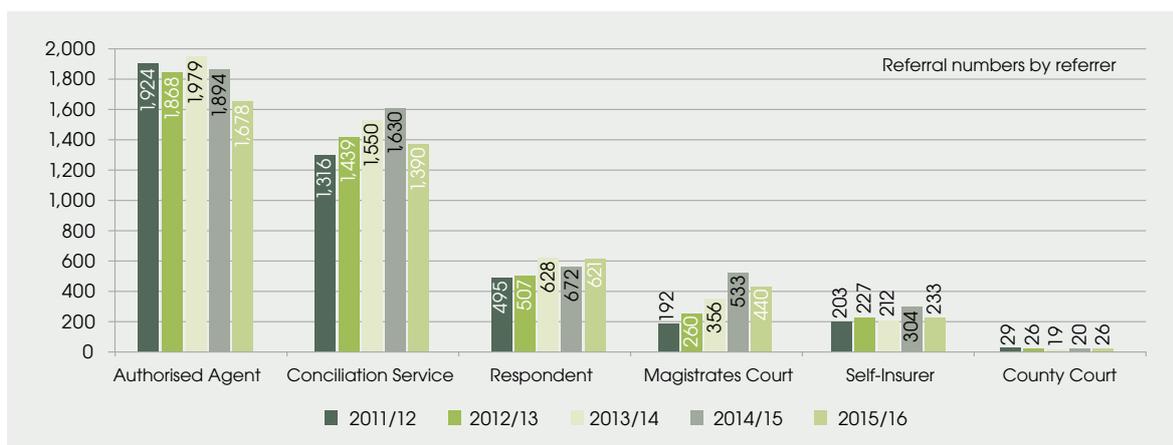
Five year referral trend by jurisdiction



Five year referral numbers and percentage increases

	Workers' Compensation	Wrongs Act	Grand Total
2011/12	3,664	495	4,159
2012/13	3,820	507	4,327
Increase from previous year	4.3%	2.4%	4.0%
2013/14	4,116	628	4,744
Increase from previous year	7.7%	23.9%	9.6%
2014/15	4,381	672	5,053
Increase from previous year	6.4%	7.0%	6.5%
2015/16	3,767	621	4,388
Decrease from previous year	-14.0%	-7.6%	-13.2%
Overall increase over 5 years	103	126	229
Overall % increase over 5 years	2.8%	25.5%	5.5%

REFERRAL SOURCE TRENDS



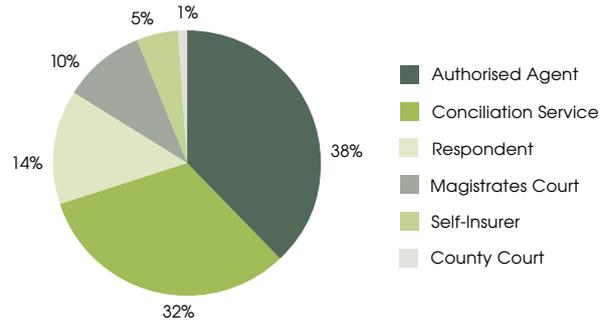
The majority of referrals received by Medical Panels are from WorkSafe Agents, the Accident Compensation Conciliation Service, and respondents in Wrongs Act matters.

In 2015/16 there was a decrease from the previous year seen across all referral types, with the exception of referrals from the County Court.

Referrer	2011/12	2012/13	2013/14	2014/15	2015/16	% Difference from previous year
Authorised Agent	1,924	1,868	1,979	1,894	1,678	↓11.4%
Conciliation Service	1,316	1,439	1,550	1,630	1,390	↓14.7%
Respondent	495	507	628	672	621	↓7.58%
Magistrates Court	192	260	356	533	440	↓17.44%
Self-Insurer	203	227	212	304	233	↓23.3%
County Court	29	26	19	20	26	↑30%
Grand Total	4,159	4,327	4,744	5,053	4,388	↓13%

Referral source 2015/16

Referrals from Authorised Agents (38%), the Conciliation Service (32%) and Wrongs Act Respondents (14%) represent the largest proportion of referrals to Medical Panels in 2015/16. In comparison to 2014/15, the proportions of referrals lodged by Authorised Agents, County Court and Wrongs Act have all increased by 1%, whilst the Self-Insurer and Magistrates Court referrals have each reduced by 1%. Referrals from the Conciliation Service remained the same.



"I would like to thank the staff sincerely for their care and assistance during that time"
 – Injured worker feedback

REFERRAL SECTION TRENDS – WORKERS' COMPENSATION

Reporting categories	Workers' Compensation section of the Act	2011/12	2012/13	2013/14	2014/15	2015/16
Changes to Weekly Compensation	Variation/termination weekly comp	753	942	1,060	1,226	986
	Liability weekly comp	140	109	153	197	164
	Continuation weekly comp (P2E)	91	67	34	33	13
	Re-instatement of weekly comp		13	8	23	28
	Termination of continued weekly comp (P2E)	14	10	7	3	2
Impairment Benefits	Impairment Benefit (IB) claims	2,033	2,029	2,159	2,173	1,901
	Liability Impairment (IB)	113	116	125	106	75
Medical and like	Medical and Like Services	483	505	542	602	568
	Personal and Household services	12		2	1	3
Other	Common Law/Serious Injury	6	11	6	5	20
	Maims claims	17	14	18	12	7
	Death claims	2	4	2		
Grand Total		3,664	3,820	4,116	4,381	3,767

In 2015/16 the majority of disputes referred to Medical Panels were comprised of impairment benefit claims. These claims represented 52% of Workers' Compensation referrals, followed by changes to weekly compensation which represented 32%. Although the profile of disputes has broadly remained the same since 2014/15, there were reductions across several of the categories since this time, particularly Variation/termination weekly comp (19.5%), Liability weekly

comp (16.75%), Continuation weekly comp (60.06%), and Liability Impairment (29.2%). In contrast, Medical Panels has seen a 300% increase in Common Law/Serious Injury category referrals. Although the numbers in this category are small, the increase year to year is significant.

Similar to 2014/15, Wrongs Act referrals were predominantly claims for slip, trip and falls; failed or injurious treatment by practitioner; and impact by an object.

REFERRAL MANAGEMENT 2015/16

To manage referrals in 2015/16, the Office of the Convenor of Medical Panels has also completed the following operational activities:

Operations	Total 2014/15	Total 2015/16
Number of appointments completed for the Opinions and Determinations released	6,149	5,957
Medical Panel related invoices processed	14,388	14,525
Interpreter requests	500	504

MEDICAL PANEL AVERAGE COSTS



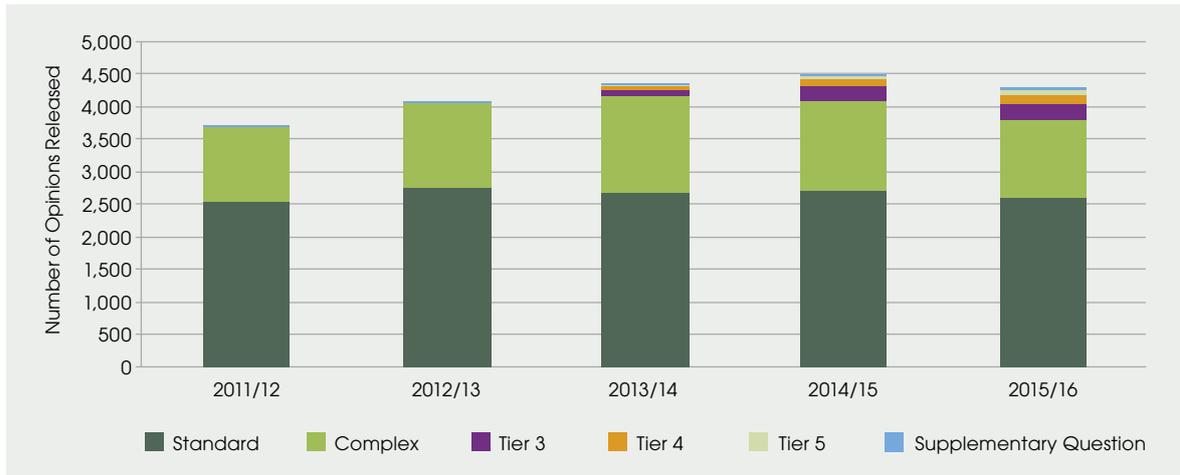
Medical Panel fees¹ are set by the Minister for Finance and the Attorney General, and are gazetted each year. The Convenor, when convening a Panel, decides on the level of fee to be allocated to each Panel Member, taking into account the complexity of the referral and the level of contribution required in accordance with the gazetted fee schedule.

Medical Panels continues to be a cost-effective, alternative dispute-resolution option. In 2015/16 the average Medical Panel cost for a Workers' Compensation referral was \$3395. For Wrongs Act referrals the average cost was \$2970.

The total spend in Medical Panels fees in 2015/16 was \$14 998 042, compared to \$14 409 087 in 2014/15. This represents a 4% increase. Over the past five years the average annual increase in cost per Medical Panel was 5.4%. This has mainly been driven by the increased complexity of referrals, in particular the increase in Court and Wrongs Act referrals.

¹ Costs associated with referrals including Medical Practitioner costs, interpreters but not including the administration fee.

Five year trend of fee type allocation by referral complexity



The Medical Panels fees are allocated to each Panel Member for the level of contribution and complexity required, as determined by the Convenor. The application of detailed criteria is used within a five-tiered fee structure ranging from a Standard fee type to a Tier five fee type.

In 2015/16, 11% (492) of referrals attracted a Tier 3, 4 or 5 fee type allocation. The allocation of these fee categories were predominantly for Magistrates Court

and Wrongs Act referrals, due to their complexity. This is an increase on 2014/15, when 9% (406) of referrals were assigned a Tier 3, 4 or 5 fee type.

The proportion of referrals being assigned a Standard fee type in 2015/16 remained similar to 2014/15 at 60%. There has been a small reduction in the number of referrals being assigned a Complex fee type in 2015/16; that is, 29% were allocated a Complex fee compared to 30.5% in 2014/15.

LEGISLATIVE TIMEFRAMES

A Medical Panel must form an opinion on a medical question within 60 days after the Medical Panel receives from the Convenor, the documents relating to the medical question. Within 7 days of forming its Opinion on a medical question, the Medical Panel must give its written Opinion, or within such longer period as is agreed by the Conciliation Officer, a Court, WorkSafe or the Self-Insurer.

In 2015/16, 93.1% of Opinions were released within 67 days of the documents being given to the Panel and the Panel giving its written Opinion. For the remaining 7% of referrals, an extension or suspension of time was made in accordance with Section 313 (b) or Section 312 (c) of the *WIRC Act 2013*. This was an overall 0.3% improvement in the number of referrals meeting the 67-day KPI.

Legislative timeframes by Referrer type

Referrer	Financial Year	<67 days		>67 ² days	
		Number	%	Number	%
Authorised Agent	2014/15	1,674	94%	113	6%
	2015/16	1,597	93%	125	7%
Conciliation Service	2014/15	1,373	94%	89	6%
	2015/16	1,381	95%	80	5%
Magistrates Court	2014/15	392	85%	67	15%
	2015/16	416	90%	46	10%
County Court	2014/15	21	84%	4	16%
	2015/16	7	64%	4	36%
Self-Insurer	2014/15	267	98%	6	2%
	2015/16	225	95%	4	2%
Total	2014/15	3,727	93.0%	279	7.0%
	2015/16	3,626	93.1%	259	6.7%

² An extension or suspension of time was made in accordance with Section 313 (b) or Section 312 (c) of the *WIRC Act 2013*.

AVERAGE DAYS FROM REFERRAL RECEIVED TO MEDICAL PANEL OPINION RELEASED

Under the Workers' Compensation legislation, the Convenor must, as expeditiously as possible, convene a Medical Panel and give the Medical Panel the documents received by the Convenor with the reference.

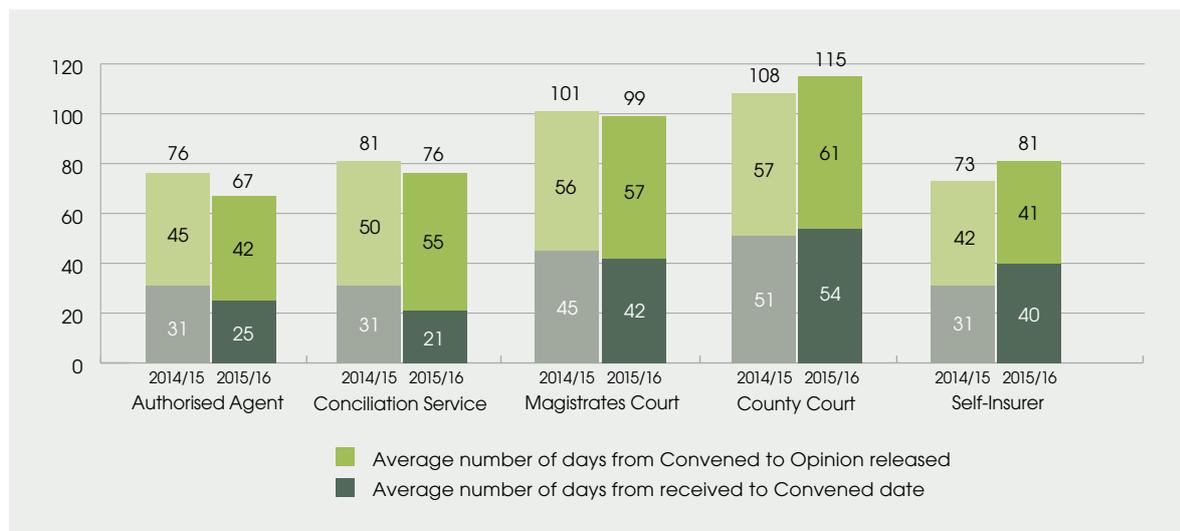
In 2015/16 the average number of days between the referral being received and a Medical Panel being convened for the different referral types is:

- Authorised Agent – 25 days
- Conciliation Service – 21 days
- Magistrates Court – 42 days
- Self-Insurer – 40 days
- County Court – 54 days.

The time taken from referral received to the Convening of a Panel was influenced by a range of internal and external factors, including the need to clarify aspects of the referral given the increasing complexity. In 2015 the Office of the Convenor of Medical Panels initiated a project to address referral timelines and reduce any backlog in referrals, and the graph below highlights a reduction in average days for several referral types.

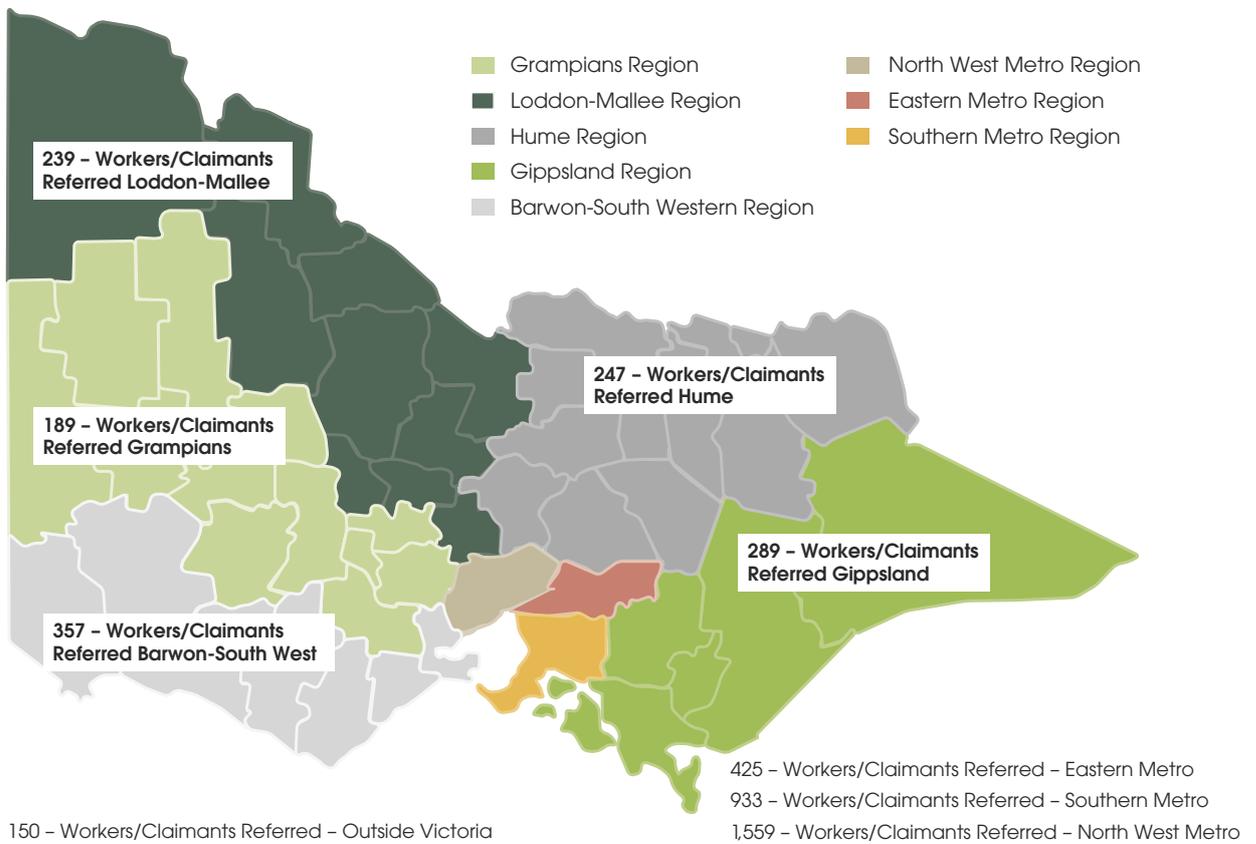
For 93% of referrals (Agents, the Conciliation Service and Magistrates Court) there has been an improvement in the average number of days from receipt to Opinion released.

Days from referral received to Opinioned



WORKER/CLAIMANT DEMOGRAPHIC

In 2015/16, 66% of workers/claimants (2917) referred to Medical Panels live in the Melbourne metropolitan region. Another 31% (1321) are from regional Victoria. The remaining 3% (150) are from outside Victoria. This profile is broadly the same as 2014/15.



JUDICIAL REVIEW OF MEDICAL PANEL OPINIONS AND DETERMINATIONS

The Opinion of a Medical Panel on a medical question must be accepted as final and conclusive. The law does not allow a Medical Panel to review its Opinion unless by order of the Supreme Court. A Medical Panel Opinion can only be judicially reviewed by the Supreme Court pursuant to its inherent jurisdiction to review and ensure the legality of the Act or omission of tribunals and administrative decision makers. The grounds for judicial review can include jurisdictional error, error of law on the face of the record and denial of natural justice or procedural fairness.

In 2015/16 a small proportion of total opinions released were subject to judicial review. There were 26 Opinions subject to judicial review by the Supreme Court. There was also one matter which was judicially reviewed previously and went on appeal to the Court of Appeal of the Supreme Court.

Based on the number of Opinions/Determinations released (4493), this represents an annual rate of judicial review applications of 0.60% and, when consideration is given to the fact that 13 matters were quashed, the annual rate of successful applications was only 0.29%.

Supreme Court Certiorari Applications

- 10 judgments were delivered with four Opinions/Determinations quashed and six applications dismissed.

Supreme Court Applications Dealt with by the Joint Memorandum Procedure Quashing a Panel Opinion/Determination (Quashing by consent)

- Eight matters.

Supreme Court Applications commenced and withdrawn

- Eight matters.

Court of Appeal of the Supreme Court

- One appeal was upheld.

NOTABLE JUDICIAL REVIEW OUTCOMES

Rosemary Ann Richter v Ian Malcolm Driscoll & Ors (2016) VSCA 142

The Court of Appeal dealt with the legal interpretation of “no current work capacity” and “suitable employment” in both the ACA and WIRC Act; and the manner by which Panels utilise and rely upon vocational assessment reports in arriving at opinions as to capacity for work. The Court of Appeal unanimously upheld the worker’s appeal against the judgment, in the first instance, dismissing her judicial review application.

The Court of Appeal held that, in addition to assessing the physical capacity to undertake the duties of a specific job or jobs for the purposes of determining “no current work capacity” and “suitable employment”, the Panel must have also taken into account the worker’s education, qualifications, employment history, literacy and numeracy skills, computer skills, residential address and linguistic skills. Further in the absence of specific jobs, with descriptions provided by the prospective employer, a Panel ought to be careful of reaching conclusions as to capacity for work based on nothing more than a generic job description.

Gary Craig Sargent v Professor Peter Disler & Ors (2016) VSC 292

The Plaintiff argued that there was a denial of procedural fairness by reason of not being afforded an opportunity to place material before the Panel in respect of the Panel’s new finding of maltracking of the patella based upon its review of the MRI scan; and that there was no evidentiary foundation for the maltracking finding notwithstanding that the worker brought the actual scan with him to the appointment.

The Supreme Court upheld the worker’s application and quashed the Panel’s Opinion, remitting the questions to a newly constituted Medical Panel.

The Supreme Court held that the Panel was entitled to have access to the MRI scan that the worker brought with him to the examination and form its own opinion in that regard. However, given that the Panel identified a new finding in respect of the maltracking of the patella, the parties must have been given the opportunity to place material, either submissions or medical reports, before the Panel within a reasonable period.

Mehdi Kakae v Wetspot Consolidated (VIC) Pty Ltd & Ors (2016) VSC 271

The Plaintiff argued that the Medical Panel had exceeded its jurisdiction when it responded to a medical question regarding the nature of the Plaintiff’s medical condition relevant to a claimed neck injury by opining that the Plaintiff’s mild persisting cervical disc disease was not attributable to the claimed injury. The Plaintiff argued the Panel should not have considered the issue of causation when answering a question as to the nature of the Plaintiff’s medical condition relevant to the claimed injury but should have limited itself to making a diagnosis only. The Supreme Court held, in dismissing the Plaintiff’s application, that the issue of the Plaintiff having a pre-existing neck condition was squarely before the Panel and it was appropriate for the Panel to consider the relationship between the pre-existing condition and the alleged injury. The Court concluded that it was open to the Panel to express its opinion on the causation of the medical condition that it diagnosed. The Court also dismissed the Plaintiff’s other grounds for review including an alleged failure to afford procedural fairness and inadequacy of reasons.

CLIENT FEEDBACK

In some cases the Convenor of Medical Panels Victoria may receive a letter of complaint or feedback from a party to a referral such as an injured worker, WorkSafe Agents, the Courts, the Conciliation Service, claimants or respondents during the progress of a Referral or after a Medical Panel Opinion or Determination is released.

In 2015/16, 58 matters were received which involved complaints and feedback about individually referred matters, compared with 67 in the previous year.

The registered matters identified some similar concerns raised and are categorised into four types of issues:

- 1. Dissatisfaction with the outcome/request matter to be 're-opened' or to consider new information (6 matters, 2 open)**
As at the end of the financial year for 2015/16, 6 matters had been addressed and 2 remain open.
- 2. Request to clarify or provide further/better reasons (11 matters, 0 open)**
As at the end of the financial year for 2015/16, all requests had been addressed.
- 3. Request to correct typographical errors (29 matters, 2 open)**
As at the end of the financial year for 2015/16, 29 matters had been addressed and 2 remain open.
- 4. Panel member conduct and behaviour (12 matters, 0 open)**
As at the end of the financial year for 2015/16, all requests had been addressed.

There has been a notable decrease in 2015/16 (6) in the number of complaints and feedback received in regards to category 1 when compared to 2014/15 (13). The number of complaints and feedback received in regards to categories 2, 3 and 4 remain at a similar level to 2014/15.

The analysis of the matters registered as complaints and feedback highlights that 69% (40) of the 58 complaints and feedback received for the 2015/16 financial year were a request by a Medical Panel to correct typographical errors or to clarify or provide further/better Reasons for Opinion or Determination.

In respect of categories 1, 2 and 3 generally, following receipt of responses from each respective Panel, the Convenor was able to respond to the matter raised with an explanation that relevant legislation provided that the Medical Panel's Opinion/Determination was final and conclusive and must be adopted by all parties and a Court. Further, it was explained that it was inappropriate for the Convenor or the Medical Panel to make any comment on the Opinion/Determination or Reasons.

In regards to complaints being received in relation to the conduct of the Medical Panel during an interview/examination, in most instances complainants may have inadvertently misunderstood the function that the Medical Panel members were undertaking and thus may have misinterpreted the conduct of the Panel members during the examination process.

In specific instances where deemed appropriate by the Panel and/or Convenor, apologies were extended to the complainant by the Convenor for any unintentional distress they may have suffered as a result of the Medical Panel dispute resolution process.

Overall, it was observed that workers/claimants were satisfied with the responses and explanations provided and the matters were resolved with no further action required or taken.

Feedback and complaints continue to be monitored to identify that no systemic issues are raised.

The Convenor continues to adhere to the Medical Panels' Complaints Management Procedure for the appropriate management of complaints, which includes respecting the rights of all individuals and ensuring the process of handling the complaint is transparent and auditable.

HEALTH, SAFETY AND SECURITY

The Office of the Convenor of Medical Panels continues to focus on maintaining a safe and healthy working environment for medical practitioners, employees and visitors. Health and safety activities included general occupational health and safety training for new staff, fire wardens and first-aiders.

Areas that continue to receive particular attention include:

- security
- medical examination equipment
- working environment
- staff and Panel Member awareness of health and safety policies and procedures
- health and wellbeing.

PUBLICATIONS AND INFORMATION

Medical Panels publishes information to assist referrers, workers and claimants to effectively prepare for a Panel examination.

The following publications and information about Medical Panels are on the Medical Panels website – www.medicalpanels.vic.gov.au:

- About Medical Panels video
- Convenor's Directions 2015 – WorkCover
- Convenor's Directions 2015 – Wrongs Act
- Feedback/complaints process
- Conflict of Interest Policy
- Procedures for Managing Conflict of Interest
- Guide for WorkCover Claimants – What to expect, Medical Panels Examinations
- Guide for Personal Injury Claimants – What to expect, Medical Panels Examinations
- Referral form to Medical Panels pursuant to Section 28LWE *Wrongs Act 1958*
- Medical Panels parking information

TRAINING

The Office of the Convenor of Medical Panels continues to provide regular training delivered by a Deputy Convenor and Legal staff, for Panel Members and Presiding Members. In addition, induction training is provided to all new medical practitioners appointed to the approved list prior to their appointment to a Medical Panel. The induction training is supported by a structured mentoring program for newly appointed Presiding Members. This includes regular review and feedback.

In addition to regular training, information sessions and electronic updates on judicial review outcomes that affect the work of Panels are also provided to Panel Members.

Staff attended a number of external training programs to develop career and role-specific skills such as policy, leadership, communication, IT, business-writing, project management, and Assessment training using the American Medical Association Guidelines. A number of internal information and training sessions were also provided to staff.

MEDICAL PANELS 2015/16 FINANCIAL REPORT

The operating expenses for Medical Panels are included in the financial report of WorkSafe Victoria within claims expense.



For information regarding this report, please contact

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