



SIRA

# PERSONAL INJURY COMMISSION USER EXPERIENCE INTERVIEWS

› MAY 2023

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**fiftyfive5**

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SECTION 1

# **BUSINESS NEED & RESEARCH APPROACH**

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# THE BUSINESS NEED

The Personal Injury Commission (the Commission) is an independent statutory tribunal within the New South Wales justice system, committed to providing a transparent and independent dispute resolution service.

SIRA is currently leading the Statutory Review of the Personal Injury Commission Act 2020, on behalf of the Minister.

To supplement the review, SIRA is interested in **understanding the injured person's experience going through the Commission process, including its perceived accessibility, professionalism, responsiveness, transparency, efficiency and fair resolution.**

The report will supplement the Statutory Review and inform the report to Government in August 2023.

# APPROACH

## WHAT WE DID

- **In-depth interviews, 60 mins** in length
- **15 mins pre-task** to prepare the interviewee and as input into interview
- Interviews were conducted: **April 26<sup>th</sup> – May 4<sup>th</sup> 2023**

## WHO WE SPOKE WITH

Total of **n=13 interviews** across scheme types

Workers Compensation (WC)	Compulsory Third Party (CTP)
n=8	n=5

To **explore a breadth of experience** and various aspects that impact people's experience included a **mix of:**

- **Outcome:** Favorable vs. Unfavorable
- **Dispute:** Legal vs. Medical
- **Injury:** Psychological vs. Physical
- **Interaction:** Remote vs. In-person
- **Geography:** Metro vs. Regional
- **Gender:** Male vs. Female

Final number of interviews and composition based on availability of lists and people's willingness to participate.

## KEY CONTEXTUAL POINTS

**1** The number of interviews conducted represents a **small sample of claimants** who lodged a dispute through the Commission in its first two years of operation. The methodology for selection was for those **who lodged a dispute and were willing to provide comment**. Interviews were **qualitative in nature**. Observations and learnings are therefore **not representative**.

However, for everyone we spoke with, for them their **experience was real**.

**2** People interviewed had **varying levels of interaction with the Commission**, ranging from lots of direct contact to hardly any at all, especially if contact was initiated and conducted through a lawyer.

**Greater depth of learning**, specifically around the Commission, was gathered among those who had **more direct contact**, with **broader contextual learnings** gathered from those who had **less direct contact**.



SECTION 2

# MACRO LEARNINGS

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# CLAIMANTS ACKNOWLEDGE THE IMPORTANT ROLE THE COMMISSION HAS IN HELPING RESOLVE DISPUTES

## UNABLE TO RESOLVE DISPUTE WITH INSURER

- All claimants have had a **dispute** with their insurer they're **not able to resolve**
- Unsurprisingly, there's a strong level of **scepticism and even distrust** of the insurer
- A sense insurers **don't care about the person** and are focused on **\$ only**
- **Question the independence** of the insurer's assessment
- Also **question the level of care and empathy** shown towards them by the insurer and/or assessors

## THE IMPORTANCE OF THE COMMISSION TO POTENTIALLY HELP

- An opportunity for claimants to **tell their side of the story**
- Ideally provides a **legal authority** that can assess the dispute
- Be **independent & unbiased**
- Has the **power** to make decisions and actions
- Claimants often **hear about the Commission via the insurer or their lawyer**
- The role of the Commission was **particularly appreciated** by claimants from overseas where **similar bodies may not exist**



“My personal opinion is they [insurance] **try to stretch it out**, because, for example, visa will finish, and I'll have to go back to my country and I can't do anything from there” (CTP, Legal)

“He [insurer assessor] was asking how I had **tried to harm myself multiple times**” (CTP, Medical)

“I'm glad there is a Commission. I'm like **Commissions are important**. They have to be **separate from everything else like**. If this was an internal investigation. I would not have done it” (CTP, Medical)

“I'm an immigrant, back in my country. I mean, we don't get any of these treatments, so I'm **grateful for it**” (CTP, Medical)

# MOST CLAIMANTS ARE NEW TO THE DISPUTE PROCESS

- It's **rare** for people to have an accident and a dispute, for most people it's the **first time** they've been through the process
- The process **may not always feel easy to navigate**
- As relatively few people have been through the process, it's **not easy to simply ask family or a friend** about their experiences, what to expect and what to do
- Some people feel **less confident asking questions** for fear of looking silly
- The **legal space can feel intimidating** for some and **legal terms** also don't always make it easy
- It can be harder still for those who's **first language is not English**
- While **some parts of the process and what to expect** may be available on the website, **not everyone is necessarily engaging with this**
- More so, it's not just what to expect about the process before starting, but **also knowing what to expect and do when going through the process**
- A **good lawyer** can **make a big difference** to help claimants through the process, however **some may not have a lawyer to help**, and for those that do, the lawyer **may not always be as helpful as hoped**



“When you don't know what's happening, you **feel like kind of scared** of the unknown and it makes you feel that you are not in control”  
(CTP, Legal)

“It's a good idea to know what happens, when it happens” (CTP, Medical)

THERE'S A DESIRE TO BE BETTER ENGAGED ABOUT WHAT TO EXPECT ABOUT THE PROCESS AND DURING THE PROCESS.



# A VERY CHALLENGING TIME FOR CLAIMANTS

FOR THE CLAIMANTS WE INTERVIEWED, THE SITUATION LEADING INTO LODGING A DISPUTE MAY BE VERY CHALLENGING

- An **awful and emotional event** has happened
- The event has typically **not been caused by them**
- They're **still feeling effects** of the event
- The effects of the event can have a **financial impact** with reduced income
- They've already had a **dispute with their insurer**
- The idea of taking on an insurer (and potential employer) can be **emotionally challenging**
- There is extra **time required** to go through the process
- Having to **re-share the story** of awful events **can be challenging and emotionally taxing**
- At the same time, there can be **other events in their** life they're **still trying to manage** (e.g. having a baby, keeping up with mortgage repayments and cost of living pressures)
- With this context in mind, having **empathy with claimants** through the process is **very important**



“**My whole life was interrupted** by this... I was happy, healthy & well before this happened” (WC, Medical)

“It [the accident] was a **horrific experience** which will **stay with me forever**” (CTP, Legal)

“Accidents are something that you know... **it happens to you**” (CTP, Medical)

EMPATHY THROUGH THE DISPUTE PROCESS IS VERY IMPORTANT IN CREATING A POSITIVE EXPERIENCE

# A PSYCHOLOGICAL INJURY CAN EXACERBATE THE CHALLENGES

IN ADDITION TO CHALLENGES ALREADY FACED BY CLAIMANTS, A PSYCHOLOGICAL INJURY CAN MAKE LEADING INTO OR GOING THROUGH THE DISPUTE EXPERIENCE EVEN MORE CHALLENGING

- People are still **struggling to manage their mental health**
- Their mental health can be **impacting them directly in a range of challenging ways**, including nightmares, panic attacks, sleep loss, being tired, withdrawn and more
- It can have **negative knock-on effects**, such as impacting the quality of their relationships
- It can be **hard re-sharing their story**, as its **raises memories** of events that may have led to their current psychological injury
- It can be **hard to talk** openly about their **mental health with strangers** when it can feel very personal
- It can **feel like it's harder to prove** that one's had a **psychological injury** versus a physical injury
- The **dispute process** itself can **potentially add to their trauma**, especially if **not done well**



**“Hard thing to say to a stranger, I’m having panic attacks”** (WC, Medical)

**“It's not as clear cut as if it was a physical injury”** (WC, Medical)

**“I’m dealing with a mental condition at the same time and finding the whole process to be an extension of that traumatic incident”** (CTP, Legal)

**EMPATHY IS EVEN MORE IMPORTANT FOR PEOPLE GOING THROUGH THE PROCESS IF THEY HAVE A PSYCHOLOGICAL INJURY**

SECTION 3

# EXPERIENCE WITH DISPUTES & THE COMMISSION

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# OVERALL EXPERIENCE WITH THE DISPUTE JOURNEY

## OVERALL EXPERIENCE

There was a **mix of experiences**, both **positive and negative**.

On balance, most people interviewed had **some part of their experience which they felt could be improved**.

While most of the people we spoke with had unfavorable outcomes, even some who had favorable outcomes felt there were parts of their experience that could be improved.



### IMPACT ON PEOPLE WHEN PROCESS IS POSITIVE

- **Doesn't add additional trauma** to the experience
- **Have my story told** *"My side of the story was told"*
- Feel **heard and understood** *"It felt so good to be listened to"*
- Feel **validated** *"validates what's going in with me is real and I'm not crazy"*
- **Protects** the person from potential impacts of the dispute *"I'd either be in jail or unemployed...if they'd put these things against me"*
- Ultimately a perception of **justice**



### IMPACT ON PEOPLE WHEN PROCESS IS NEGATIVE

- People can **feel like giving up** or **actually give up** – this is when the costs (emotional, time, energy, health, finances) can feel like they outweigh the potential benefit
- People can **settle earlier** for a potentially less beneficial offer
- **People lose track where their dispute is it** *"I don't know, its in limbo"*
- **Feel like they're on trial**
- Can **negatively impact health**
- Can **add stress, anxiety and/or trauma to life**
- **Feel invalidated** *"Like being invalidated again, saying it didn't happen, it did"*

**A MIX OF EXPERIENCES, ON BALANCE MOST PEOPLE INTERVIEWED HAD SOME PART OF THEIR EXPERIENCE WHICH THEY FELT COULD BE IMPROVED**

# EXPERIENCE THEMES EXPLORED IN DEPTH THROUGH INTERVIEWS

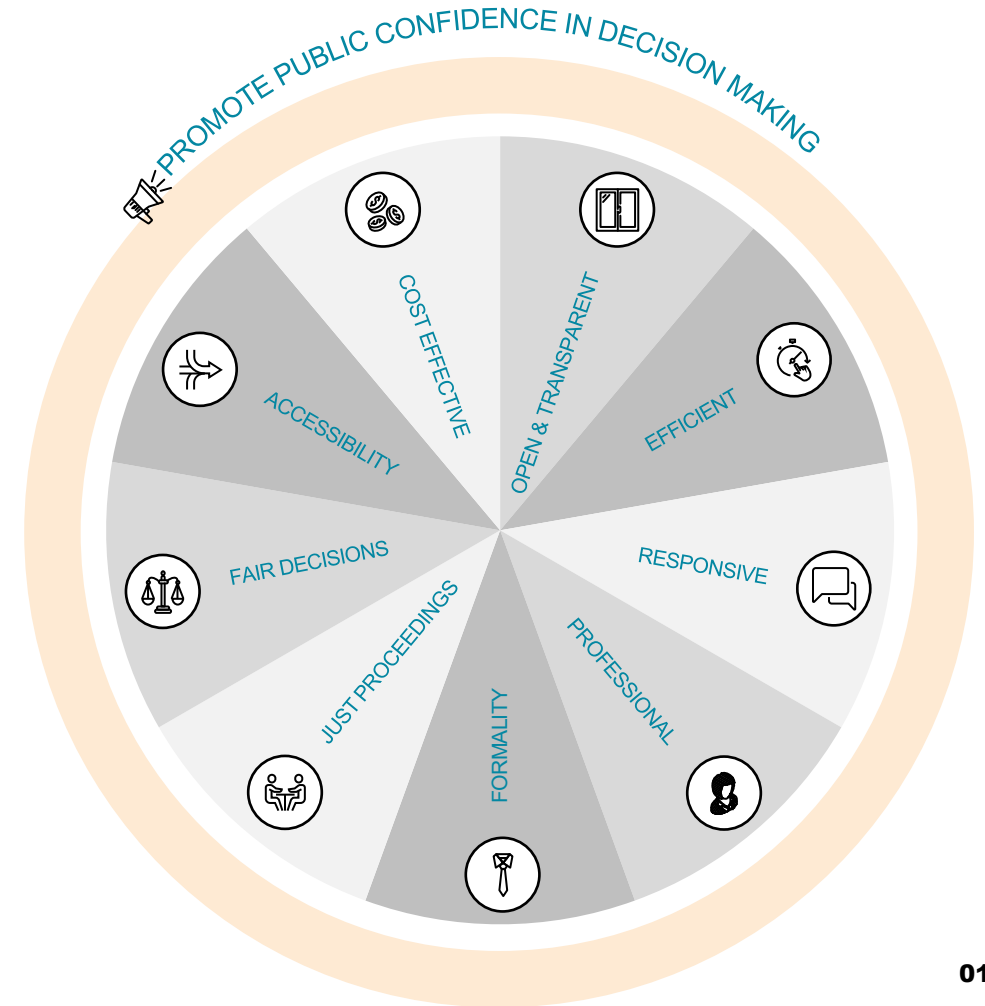
## PERSONAL INJURY COMMISSION ACT 2020 NO 18

The objects of this Act are as follows—

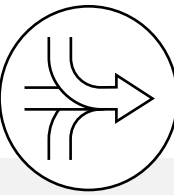
- (a) to establish an independent Personal Injury Commission of New South Wales to deal with certain matters under the workers compensation legislation and motor accidents legislation and provide a central registry for that purpose,
- (b) to ensure the Commission—
  - (i) is **accessible, professional and responsive to the needs of all of its users**, and
  - (ii) is **open and transparent about its processes**, and
  - (iii) **encourages early dispute resolution**,
- (c) to enable the Commission to **resolve the real issues in proceedings justly, quickly, cost effectively and with as little formality as possible**,
- (d) to ensure that the **decisions of the Commission are timely, fair**, consistent and of a high quality,
- (e) to **promote public confidence in the decision-making of the Commission and in the conduct of its members**,
- (f) to ensure that the Commission—
  - (i) publicises and disseminates information concerning its processes, and
  - (ii) establishes effective liaison and communication with interested parties concerning its processes and the role of the Commission,
- (g) to make appropriate use of the knowledge and experience of members and other decision-makers.

## THEMES EXPLORED DURING INTERVIEWS

Areas in **blue** text in Act on left, relate to the themes explored in more depth during the interviews on the right



# ACCESSIBILITY



## OVERVIEW

ACCESSIBILITY GENERALLY VIEWED POSITIVELY, DUE TO REMOTE CHANNELS FOR SESSIONS AND LAWYERS IN MANY CASES BEING PAID

## POSITIVE EXPERIENCES

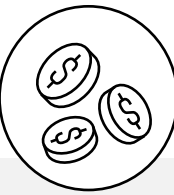
- **Access to a lawyer for free**, among those who are eligible within the Workers Compensation scheme\*  
*“That was fantastic, because I wouldn't have been able to afford it myself”*
- **Option to attend sessions remotely**, helped save time and money  
*“If at work, say Zoom call 1-3pm, and didn't have to leave work at half 11 to travel to find parking for hearing, minimal disruption today”*

## NEGATIVE EXPERIENCES

- **Lawyer wouldn't take case, on basis of 'no win, no pay'**, among CTP due to perceived low merits of winning
- **Lawyer not affordable**, when had to pay  
*“If I could afford a lawyer to defend me, I would have...It was not commercially feasible for them to defend me, so I did it myself”*
- **Option to also attend in person**, desired by some (in addition to option to attend remotely). A sense that attending in person may have made the process more human and their presence more impactful on the outcome

*\*ILARS, administered by the IRO, provides access to free, independent legal advice for eligible injured workers in the workers compensation scheme in circumstances where there is a disagreement with insurers regarding entitlements. ILARS is funded through the Workers Compensation Operational Fund. \*\* Funding for legal costs is available for certain dispute types under the CTP Scheme as a claims cost when a matter proceeds to dispute resolution in the Commission*

# COST EFFECTIVE



## OVERVIEW

GENERALLY VIEWED AS COST EFFECTIVE WITH LAWYERS IN MANY CASES BEING PAID FOR (WC WHERE ELIGIBLE, CTP VIA NO WIN, NO PAY IN MANY CASES), ALTHOUGH SOME CTP CLAIMANTS WERE UNABLE TO AFFORD A LAWYER WHEN THE MERITS OF THEIR CASE DIDN'T SEEM COMMERCIALY ATTRACTIVE TO, NO WIN, NO PAY LAWYERS. OTHER COSTS WERE SEEN AS NEGLIGIBLE.

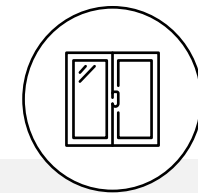
## POSITIVE EXPERIENCES

- **Access to a lawyer for free**, among those who are eligible within the Workers Compensation scheme\* was seen as very cost effective. Was also seen as cost effective among CTP claimants who used a lawyer via 'no win, no pay'
- **Option to attend sessions remotely**, helped save money in travel costs, as well as time off work
- **Other costs generally seen as negligible**, such as printing costs *"Didn't cost anything"*

## NEGATIVE EXPERIENCES

- **Unable to afford a lawyer**, among CTP who aren't able to use a 'no win, no pay' lawyer, due to the merits of winning seeming too low for the lawyer. For those we spoke with, who didn't use a lawyer for this reason, it was still cost effective in the sense they simply didn't pay for a lawyer's service

# OPEN & TRANSPARENT



## OVERVIEW

THERE IS A DESIRE TO BE MORE ENGAGED BY ENTITIES INVOLVED IN THE PROCESS, TO HAVE A BETTER UNDERSTANDING ABOUT WHAT TO EXPECT FROM THE PROCESS AS WELL AS THROUGHOUT THE PROCESS. THIS WILL HELP PEOPLE FEEL MORE IN CONTROL AND LESS ANXIOUS ABOUT WHAT'S GOING TO HAPPEN, AS WELL AS HELP THEM BEST PREPARE.

## POSITIVE EXPERIENCES



- **Good lawyers for the most part explain & guide**, helped make information and the process easier to understand and navigate *"I didn't really look up much information. I put all my trust into my solicitors. These guys get paid to do this"*
- **Staff at the Commission providing guidance and support**, at times *"Secretary helped guide me to the act, in preparation for the hearing"*
- **Portal, felt easy to use and enabled seeing everything in one place**, including the Commission and insurers points, providing a level of transparency *"Not feeling left in the dark...I could visualise everything happening.. it was good to see updates on the sort of processes which were happening...everything was completely transparent"*

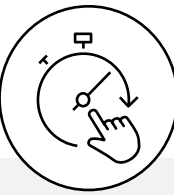
## NEGATIVE EXPERIENCES



- **Varying lawyer quality, and some don't explain everything. Some also do not have lawyers to help them and may feel a bit awkward asking**
- **Not as engaged around what to expect before process, including:**
  - **What to expect, when and how long the process might be, what powers the Commission has and decisions it can make** *"find out what's happened to other people. I can have an overview of what this process is going to, you know"*
  - **How to prepare and who to contact if need support** *"Is this the right person to ask, or should I just do a bit of research my myself"*
  - **Used word 'engaged' as recognise some information on website, but people aren't always seeing**
  - **Also balancing amount of content**, given it could feel overwhelming, so ideally in bite sized chunks
- **Not as informative as could be during process, including:**
  - **Not always explaining who will be in the sessions and why they need to be there** *"was anxious about who was there"*
  - **Not informing who to contact or what to do if internet on remote session goes down** *"If internet goes down, good if they had a note to say who to contact, what to do...I was feeling anxious"*
  - **Lack of explanation for delays** *"It wasn't communicated, why, things were being delayed like that. There was no explanation every time the date was changed"*
  - **Not always explaining what to expect during a session, to help best to prepare** *"My lawyer prepared me...then things came up I completely didn't expect"*
- **Legal jargon, can be at times difficult to understand** *"Everything I found was just jargon to me. It just didn't make much sense, obviously, I'd have to use my solicitor to interpret stuff and relay that information to me. But just to me that that was probably the number one barrier"*
- **English not as first language can make understanding more challenging** *"My first language is Spanish You don't know the meaning of some words or terms. And how are you going to take a decision without knowing the meaning of the emails or phone calls. The language is definitely a barrier...I think they must have more accommodation for different languages"*



# EFFICIENT



## OVERVIEW

MOST PEOPLE JUST WANT THE PROCESS TO END QUICKLY, SO THEY CAN RETURN TO THEIR EVERYDAY LIVES.

THE ACTUAL ASSESSMENT/SESSION DOESN'T TAKE LONG, BUT IT'S THE LEAD TIME FOR IT TO HAPPEN, THAT FEELS LIKE IT DRAGS ON, NEGATIVELY IMPACTING PEOPLE.

## POSITIVE EXPERIENCES

- **Actual assessments/sessions**, when they took place, were viewed as efficient

*“The teleconference was concise, focused on the individual and clear. The arbitrator was well prepared and as such there was no need to prolong the session”*

## NEGATIVE EXPERIENCES

- **Overall, too drawn out, for many**, with it not being unusual for the process to take over a year (although in some instances, the Covid period was noted as reason for the delay) *“already been dragging on for 3 years”, “it was just long, it was slow”, “It was a very long process, it was going on for ages”, “I just want this to finish”*
- **Long wait time to get to an assessments/session**, for many and to **reschedule** if needed to *“First contacted July 2021, then scheduled medical assessment May 2022, then moved to Nov 2022 when wasn’t able to make the May one...it took far too long”*
- **Impacts negatively**, when too drawn out, in a number of ways, including:
  - **Emotionally** *“it's kind of making you feel anxious and stressed”, “I was feeling quite disappointed and frustrated”*
  - Feeling like **giving up** or **settling for less** *“I was just so so tired from the whole process...My solicitor wanted me to keep going, and wanted me to go to the hearing, thinking that we'd get a better outcome. But at that point I was just over it, so I just accepted what he said”*
  - **May be assessing someone different to their original state** (although some with mental health challenges may not feel ready yet if too early) *“they would have seen a different person”*
- **Repeating information**, at times *“have someone that had to take an interview, and so I'd be saying almost the exact same thing again, and be like, can't you just talk to...also completed a 30 page work cover doc are not able to use that?”*
- **Not always having a single point of contact**, requiring more time to get people up to speed

# RESPONSIVE



## OVERVIEW

RESPONSIVENESS, IN SOME WAY RELATED TO EFFICIENCY, SAW MIXED EXPERIENCES AROUND LEVEL OF RESPONSIVENESS

## POSITIVE EXPERIENCES

- **Correspondence**, was generally seen as responsive  
*“The commission responded within a few days, 2 days to 3 days at most for a reply...The latest reply was the final decision, which understandably took 7-10 days.”, “Response time was fine”*

## NEGATIVE EXPERIENCES

- **Correspondence**, on occasions was also seen as slow and delaying the whole process  
*“But this. I can't do anything without their response. You know I have to wait for them, and we can't go any further because we were waiting for a reply. That is not happening”*  
*“My lawyer would write an email to them, and because they had too many cases she was waiting for emails. She would wait a few days, or maybe weeks. I don't remember. But it was slow. The process.”*

# PROFESSIONAL



## OVERVIEW

A RANGE OF FACTORS CONTRIBUTE TO PERCEPTION OF PROFESSIONALISM.  
WHILE GENERALLY VIEWED AS PROFESSIONAL, SOME AREAS OF DELIVERY COULD BE IMPROVED

## POSITIVE EXPERIENCES

- **Independent medical assessments** *“when you go to a doctor they were quite impartial...they were just professionals”*
- **Responsive** *“Very punctual with replies...very straight to point, dealt with professionally”*
- **Seeking to show care and understanding** *“He was very, very professional. kind and understanding that, you know we weren't all lawyers in there. They made sure that I understood what was going on”*
- **Going into the claim in more depth to seek justice** *“didn't have to look into it that far. Well, the claim is this, and you haven't met them requirements, but you know, right in real in depth”*

## NEGATIVE EXPERIENCES

- **Psychological medical assessments, where:**
  - **Felt some facts were misrepresented** *“Feel like they misrepresented parts of what I said in the report”*
  - **Felt like weren't independent** *“didn't feel like it was an independent exam”*
  - **Tone of questions that didn't always feel appropriate** *“One of them [medical professional] got really aggressive with me”*
- **Unresponsive**, on occasions was also seen as slow and delaying the whole process
- **Range of tech glitches**, including:
  - **Sound not working** *“he was asking me to check my system and check if I've done turned up the volume and things like that...but it was at it was at the medical examiners”*
  - **Not able to submit form online** *“Once I told them I could not launch the form online, I had to fill up this manual form which is a huge form...you're living in the 21<sup>st</sup> Century...everything is online”*
  - **Commission's internet dropping out during session** *“I was in the dark for about 20 mins”*

# FORMALITY



## OVERVIEW

GIVEN THE LEGAL CONTEXT, PEOPLE RECOGNISE IT'S A FINE BALANCE BETWEEN BEING FORMAL AND APPROACHABLE, YET MOST FELT THAT THE COMMISSION MANAGED TO LAND THIS RIGHT BALANCE

## POSITIVE EXPERIENCES

- **A general sense for the most part the right level of formality**  
*“Right level of formality in the final hearing”*  
*“Of course you want them to be compassionate, but they have to do their job”*
- **Assessor explaining objectives and steps clearly, gave a sense of good formality**  
*“I mean in terms of formality that was really communicating the outcome of the decision and explaining the next steps, which was clearly told”*
- **Not being too intimidating given legal context**  
*“He was very, very professional, kind and understanding that you know we weren't all lawyers in there”*

## NEGATIVE EXPERIENCES

- **Tone spoken sometimes felt too formal, and lacking care for the person** *“it was cold, it was very cold...very dry and very, very curt”*
- **Being around lawyers and people perceived as judges can at times feel a little intimidating for some**

# JUST PROCEEDINGS



## OVERVIEW

PROCEEDINGS GENERALLY PERCEIVED AS JUST, HOWEVER SOME WITH PSYCHOLOGICAL ASSESSMENTS FELT THEIR PROCEEDINGS WERE UNJUST.

## POSITIVE EXPERIENCES

- **The Commission's members/mediators generally seen as just in how they managed proceedings**

*"she was very professional and neutral in the way she communicated and did her job"*

- **Both sides of story are shared and heard**

*"I was happy to be told sh\*t, I didn't care because I knew I had been heard"*

- **Physical assessments generally seen as just**

*"when you go to a doctor they were quite impartial. They didn't tell me. Oh, try to be more injured, or it's more pain in here, so you can claim more money. They were just professionals"*

## NEGATIVE EXPERIENCES

- **Psychological assessments not always seen as just, reasons including:**

- **Felt some facts were misrepresented**

*"Feel like they misrepresented parts of what I said in the report"*

- **Focussing too much on past, rather than the present incident**

*"didn't feel like it was an independent exam...asked more questions from my past...than about the incident itself...my post natal depression was 30 years ago..."*

- **Generally felt that it was harder to prove a psychological injury**

*"it's not as clear cut as it is, if it's a physical injury"*

# FAIR DECISIONS



## OVERVIEW

DECISIONS GENERALLY PERCEIVED AS FAIR, DUE TO JUST PROCEEDINGS.

HOWEVER, SOME FELT THEIR PROCEEDINGS WERE NOT JUST AND THE DECISION UNFAIR. A FEW ALSO FELT THEIR INJURY, WHILE NOT MEETING THE DESIRED THRESHOLD FOR COMPENSATION, DESERVED TO, AS THEIR INJURY CONTINUED TO IMPACT THEIR LIFE AND WAS NOT CAUSED BY THEM.

## POSITIVE EXPERIENCES

- Proceedings that were just and followed the rules, for the most part, resulted in claimants seeing the decision as also fair

*“I was confident in the way everything was handled. It was just”, “How were they fair: Probably because they were just following the rules”*

- Decision focussed on more than just the technicalities but overall justice

*“the judge had actually went out of his way to come to a decision...I was technically wrong...but the insurer should have notified me and they didn’t”*

## NEGATIVE EXPERIENCES

- Some claimants (noted previously) with psychological injuries, felt their assessments were not just, and so the decision was unfair

*“whole lot of rubbish and bullsh\*t”*

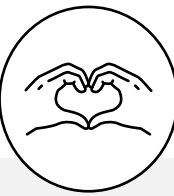
- Some felt that even if their assessment was just, that having an injury that still negatively impacted them, but that didn’t provide compensation seemed unfair simply because it didn’t meet the threshold. This included:

- **Physical injuries – minor** *“Understand that it’s not a major injury, but it’s effecting my life...they acknowledged that I’m injured but they don’t think its worth giving assistance...so I don’t understand that”*
- **Psychological injures – not reached 15%** *“System failed me...I was doing the right thing, making a living for myself...when injured I wasn’t protected by the commission or what should have been available to me”*

- **Ruling fair, but not extended as far as would have anticipated.** Related to timing of when specific payments should be made, which were then subsequently delayed, causing mental stress and financial hardship

# EMPATHY

WHILE OUTSIDE THE OBJECTS OF THE ACT, EMPATHY WAS OFTEN RAISED DURING INTERVIEWS. LEARNINGS ARE INCLUDED BELOW



## OVERVIEW

WHILE MEMBERS/MEDIATORS WERE GENERALLY VIEWED TO SHOW EMPATHY, SOME FELT THE PROCESS MADE THEM FEEL LIKE THEY WERE ON TRIAL. PSYCHOLOGICAL ASSESSMENTS AT TIMES SEEMED TO LACK EMPATHY.

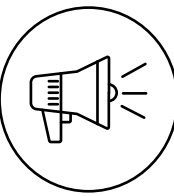
## POSITIVE EXPERIENCES

- **The commission's members/mediators generally showed empathy**, by their manner and words used *"I remember the judge said 'Now, if you feel uncomfortable anytime, please let us know'...made me feel safe"*
- **Option to attend sessions remotely, also enabled the ability to be in a familiar & potentially more supportive environment** *"I could have my husband there to support me, I felt comfortable being in my should, I was still nervous, but it was good to have the familiar around you"*
- **Claimant having the option to not be, in person or in view, during the session, when feeling anxious about certain other people in the meeting** (e.g., their employer who's made allegations against them) *"They [lawyers] were like, No, no, you don't need to be there for that second one, because I said, I can't do that again. [They said] No, no, we've got your statement. We'll represent you. We can go through all of that [for you]. You just needed to physically be like on camera for the first one"*

## NEGATIVE EXPERIENCES

- **Claimants can sometimes feel like they're on trial.** Their view is that the process should be helping them, they've done nothing wrong, but the assessment makes them feel like they're guilty, having to prove themselves *"I'm genuinely injured, I should be looked after in this process, that was not the case at all... I was still feeling like I was in the wrong or just not given the benefit of the doubt", "And like almost questioning the validity of the incident"*
- **Psychological medical assessments, often lacked empathy**, including:
  - **Tone of questions** didn't always feel appropriate *"One of them [medical professional] got really aggressive with me"*
  - Questions at times felt **irrelevant** *"It's common sense...there was some stupid questions that were being asked"*
  - **Seeking to assess when claimant is unwell** (even if not feeling well via a physical injury) *"foot injury you are not able to participate the best of your capability in the medical assessment"*
- Lacking empathy through the process, along with a lengthy process **can add to trauma of the experience** for some *"I'm dealing with a mental condition at the same time, and finding the whole process to be an extension of that traumatic incident"*

# HOW DO PEOPLE'S EXPERIENCE IMPACT PROMOTING PUBLIC CONFIDENCE IN DECISION MAKING OF THE COMMISSION?



- Difficult for people to make a comment on behalf of the public, yet people can speak of their **own experience**
- There are some, who didn't feel the proceedings were just or the decision fair, and they're less likely to feel their experience would promote public confidence in decision making
- For others who felt their proceedings were just and decision fair, they felt their experience would promote public confidence in the decision making of the commission
- While there may be confidence around decision making, other aspects such as **lower delivery for efficiency** (particularly time taken to go through experience) and **empathy** (causing emotional strain on people) can **at times overshadow the more positive aspects of fair proceedings and a fair decision**
- Overall, there's still a clear sense that people value the commission and its role, and that things are generally better because of the Commission

"If it hadn't been for the commission, things would have been really bad" (WC, Legal)

"It was a **safety net** that I had to use. and I used it, and it **protected me**" (CTP, Medical)

**PUBLIC CONFIDENCE IN DECISION MAKING BY THE COMMISSION IS MAINLY DRIVEN BY JUST PROCEEDINGS AND A FAIR DECISION. HOWEVER, THESE POSITIVE ASPECTS, CAN SOMETIMES BE OVERSHADOWED BY OTHER ASPECTS OF THE EXPERIENCE THAT AREN'T FELT TO BE DELIVERED AS WELL**



SECTION 4

# PEN PORTRAITS

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# PEN PORTRAITS\* (1/2)



Name	Rosalie
Scheme / Dispute	WC / Medical
Outcome	Unfavourable
Experience	Negative

## EXPERIENCE

- Rosalie witnessed a person attempting suicide at work
- It started affecting her mental health and she tried to make a claim
- Her own medical assessment (organised by her lawyer) was ~1.5 hrs and very thorough. The insurer's assessment was ~25 mins, less thorough and instead focussed on her post natal depression she experienced many decades ago. There were also comments made during the insurer's assessment she felt weren't relevant, such as her hair being dyed black
- A dispute rose about the extent her mental health was caused by witnessing the recent attempted suicide and the event many decades ago
- The dispute was taken to the Commission and Rosalie had another assessment ~45 mins, where she also felt a lot of time was focussed again on her past and not the present incident
- The Commission's report indicated her psychological injury was ~19%, where ~4-5% was deducted due to her post natal depression, which put her under the threshold for the insurer to pay her
- Rosalie felt there was too much focus on the past incident, which she felt hadn't impacted her for many years. Before the incident she didn't need therapy or medication, and now she did. With so much focus on the past, she felt the Commission's assessment was unjust and the decision unfair
- Rosalie's life has been completely changed, with night terrors, panic attacks, unable to sleep and more. She feels that she hasn't caused this, and it will effect her for life. With no compensation from the insurer she also feels the system has let her down



Name	Francis
Scheme / Dispute	CTP / Legal
Outcome	Favourable
Experience	Positive

## EXPERIENCE

- Francis was hit by a lorry truck while working
- His injury resulted in him being unable to do his regular work duties for a period of time
- The insurer agreed to pay him for 26 weeks, then without notice stopped paying at 13 weeks
- The reason given was he hadn't submitted his medical certificate in the appropriate timeframe. Francis was upset as he felt he still had an injury that was clearly impacting him, that wasn't caused by him, and that he simply hadn't met the submission timeframe
- The insurer said if he wanted to dispute their decision, he could go to the Commission
- Francis raised the dispute with the Commission, without a lawyer, as he felt he couldn't afford one
- Going to the Commission's website, he lodged his dispute, and was also in contact with a person at the Commission that helped guide him to the relevant section of the act related to his case, which he found supportive and helpful
- All correspondence was conducted via the Commission's online portal, which he found kept everything in one place, provided transparency (as both the insurer and the Commission corresponded there). With the Commission present in this communication chain, he also felt this made the insurer respond more quickly and clearly
- A hearing was set, both sides presented their cases. Francis had a favourable outcome. But what he thought was fair and just, was that despite the Commission saying Francis was technically in the wrong (he hadn't submitted in time), the insurer hadn't informed him to submit within a given timeframe (their duty), and so had to pay him the 26 weeks
- Francis felt that the Commission wasn't just ticking boxes focussing on technicalities, and that was real justice

# PEN PORTRAITS\* (2/2)



Name	<b>Peter</b>
Scheme / Dispute	<b>CTP / Medical</b>
Outcome	<b>Unfavourable</b>
Experience	<b>Negative</b>

## EXPERIENCE

- Peter witnessed a car hit a person and take their life
- It effected his mental health and still does
- The insurer disputed the extent the incident has impacted his mental health
- Peter couldn't afford a lawyer and 'no win, no pay' lawyers wouldn't support him as they felt the merits of his case didn't warrant a good chance of commercial return
- Peter went to the Commission on his own. There was a glitch on the website submission, so he had to complete a very long lodgement manually
- It took more than 6 months to have a medical assessment booked in. He then had a foot injury and felt upset that the Commission asked him to do the medical assessment still then. He managed to then have it rescheduled to a different time, which was more than 6 months away again. He felt it all took too long.
- Finally, when the assessment came, he felt the assessor asked him questions that weren't relevant at all. When the report came out, he felt that there were parts that misrepresented what he'd said. The outcome was also unfavourable for him
- Peter feels the proceedings weren't just and the decision unfair. He feels that he did nothing wrong to receive his psychological injury, and that without a pay out from the insurer, the system has let him down



Name	<b>Lachlan</b>
Scheme / Dispute	<b>CTP / Medical</b>
Outcome	<b>Favourable</b>
Experience	<b>Mixed</b>

## EXPERIENCE

- Lachlan experienced workplace bullying by his employer, including false allegations about his behaviour in the workplace, which he believed were completely false
- He completed a very long work cover document outlining what happened for work cover purposes
- Meanwhile his insurer did not agree to meet his claim
- The ramifications of the allegations were very serious, so he went to the Commission
- Supported by lawyers, who he found very helpful in guiding in him through the process, and showing care by saying he didn't need to attend the second hearing where his employer would be present, the Commission eventually ruled in his favour
- Lachlan was relieved, but found the whole process long, drawn out, tiring, and often felt anxious. He regularly had to repeat his story over and over again, and wondered why he had to do this, and why people also couldn't just reference his WorkCover document (even though he knew it was a separate entity)
- During the hearing, his internet also dropped out for reasonable amount of time, which had him very anxious, thinking it was his internet, but it was the Commission's as it turned out
- If it wasn't for the love and support of his wife, he probably would have given up on a number of occasions, despite the serious ramifications of the allegations, as the whole process felt too hard
- Lachlan is very thankful to the Commission for their role and support, he views them as important, but would never want to go through the process again

SECTION 5

# EXECUTIVE SUMMARY

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# EXECUTIVE SUMMARY

## 1 MACRO LEARNINGS

- As most claimants will be **new to the dispute process**, there's a desire to be **better engaged about what to expect about the process and during the process**
- Leading into the claim and during the claim, it can be a **very challenging time for claimants**, especially for those with **psychological injuries**. **Empathy** through the dispute process is **very important** in creating a positive experience

## 2 OVERALL EXPERIENCE

- There was a **mix of positive and negative experiences** overall. On balance **most people interviewed had some part of their experience which they felt could be improved** (even among some that had favourable dispute outcomes)
- Across the themes, **accessibility, cost effective** and **formality** are generally **delivering well**
- Key areas with **more negative experiences** are around **efficient** and **open & transparent**. **Empathy** also came up as an area with more negative experiences
- As **just proceedings and fair decisions carry a weight** around confidence in decisions, there are points here **worth also looking at, given there are some areas to improve**

## 3 SUMMARY OF EXPERIENCE ACROSS THEMES

MORE POSITIVE EXPERIENCES



MORE NEGATIVE EXPERIENCES

<b>Accessibility</b>	Generally viewed positively, due to remote channels for sessions and lawyers in many cases being paid for
<b>Cost Effective</b>	Generally viewed as cost effective with lawyers in many cases being paid for (WC among those eligible, CTP via 'no win, no pay' in many cases), yet some CTP unable to afford lawyer if unable to do 'no win, no pay'. Other costs were seen as negligible
<b>Formality</b>	Given the legal context, people recognise it's a fine balance between being formal and approachable, yet most felt that the commission managed to land this right balance
<b>Just Proceedings</b>	Generally perceived as just, however some with psychological assessments felt their proceedings were unjust
<b>Fair Decisions</b>	Generally perceived as fair, due to just proceedings. Yet some felt their decision was unfair. A few also felt their injury, while not meeting the desired threshold for compensation, deserved to, as it continued to impact them
<b>Professional</b>	A range of factors contribute to perception of professionalism. While generally viewed as professional, some areas of delivery could be improved
<b>Responsiveness</b>	Mixed experiences around level of responsiveness
<b>Open &amp; transparent</b>	There's a desire to be more engaged by entities involved in the process, to have a better understanding about what to expect from the process as well as throughout the process
<b>Empathy</b>	While members/mediators were generally viewed to show empathy, some felt the process made them feel like they were on trial. Psychological assessments at times also seemed to lack empathy
<b>Efficient</b>	The actual assessment/session doesn't take long, but it's the lead time for it to happen, that feels like it drags on, negatively impacting people



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