



CURTIN UNIVERSITY, PERTH WESTERN AUSTRALIA

SCHOOL OF BUSINESS LAW

*Workers' Compensation  
Conciliation and Review:  
A Survey of Legal  
Practitioner Attitudes*

Robert Guthrie

WORKING PAPER SERIES

96.03

September 1996



ISSN: 1321-7828  
ISBN: 1 86342 565 9

September 1996

Workers' Compensation Conciliation and Review: A Survey  
of Legal Practitioner Attitudes

By

Robert Guthrie  
Senior Lecturer  
School of Business Law  
Curtin University of Technology



ISSN: 1321-7828  
ISBN: 1 86342 565 9

**WORKERS' COMPENSATION CONCILIATION AND REVIEW:  
A SURVEY OF LEGAL PRACTITIONER ATTITUDES**

**Abstract**

In June the 1995 Dispute Resolution Review Committee (the Committee) of the Workers' Compensation and Rehabilitation Commission (the Commission) published a report entitled 1995 Review of Dispute Resolution. (WorkCover Review) The WorkCover Review had been prompted by the recommendations contained in the Report of the Standing Committee on Legislation in Relation to the Workers' Compensation and Rehabilitation Amendment Act 1993. Recommendation 9 of that report provided;

*"That the Government commission an independent review of the Workers' Compensation and Rehabilitation Act 1981 as amended by the Amendment Act at the expiration of 12 months from the date upon which Part IIIA was proclaimed and that the report be tabled in the Parliament no later than 15 months after such proclamation date."* (my emphasis)

In order to satisfy that recommendation a sub-committee of the Commission was established comprising of representatives from the Insurance Council of Australia, Trades and Labour Council of Western Australia, Chamber of Commerce and Industry and the Commission. The Commission is the administrator of the current dispute resolution system and is often a party to proceeding in workers compensation matters. No representative of Law Society of Western Australia was part of the Committee although the Law Society made submissions to the Committee.

This paper relates to the results obtained from a questionnaire completed by legal practitioners, which surveyed the practitioners attitudes to the current system. The Committee did not survey legal practitioners as users of the dispute resolution system. The results of this survey, which show a strong level of discontent with the system, contrast with the finding of the Committee.

**WORKERS' COMPENSATION CONCILIATION AND REVIEW:  
A SURVEY OF LEGAL PRACTITIONER ATTITUDES**

**1. INTRODUCTION**

Since March 1994, as a consequence of amendments to the *Workers' Compensation and Rehabilitation Act 1981* (WA) (the Act) legal practitioners have been almost completely excluded from the workers' compensation jurisdiction. The three stage dispute resolution process now operating in that jurisdiction, provides in the first instance, for the parties to attend a conciliation meeting. Section 84Q(2) of the Act excludes legal practitioners from representing parties at conciliation other than where all parties agree to the attendance of legal practitioners and where the conciliation officer also agrees.

In the event that the parties do not reach agreement at conciliation or where the parties are otherwise unsatisfied with the conciliation they are entitled to seek a review. At review, legal practitioners are entitled to attend on behalf of the parties, but only where it is established that there is an issue of law. (See Section 84ZE).

A right of appeal exists from the decision of the Review Officer to a Compensation Magistrate on a question of law. There is an unrestricted right of legal practitioners to attend before the Compensation Magistrate.

Despite representations made by the Law Society of Western Australia (Law Society) in mid-1993 and during the course of the parliamentary process in late 1993, the current Government was resolute in its determination to reduce the role of lawyers in the workers' compensation jurisdiction. The rationale given for reducing the role of lawyers was, to increase the rate of dispute resolution and reduce the costs of disputes.

In December 1995 a survey was distributed to Law Society members practising in the workers' compensation jurisdiction and the results of the survey were collected and analysed by the Curtin University Computing Centre. The survey was prepared by the writer and considered by members of the Law Society Personal Injuries Committee.

The survey was in two parts, Part One dealing with aspects of the workload of legal practitioners in the jurisdiction and their attitudes to changes in the legislation and in particular to changes to the rights of parties to have legal representation. Part Two surveyed the attitudes of legal practitioners to the necessary attributes of Conciliation Officers.

## 2. OBJECTIVES

The objectives of the survey were as follows;

1. To establish whether or not there had been any change in the workload of legal practitioners as a consequence of the amendments.
2. To ascertain the attitude of legal practitioners to the reduced rights of appearance in the jurisdiction.
3. To elicit reasons (if any) why practitioners consider representation should be unrestricted, (if that be the finding).
4. To consider the role of insurers, trade unions and employers in the new dispute resolution system.
5. To consider which attributes legal practitioners regard as essential for a Conciliation Officer.

These objectives were consistent with the changes to the legislation which had the following effects:

1. Reduced the right of legal practitioners to appear in the jurisdiction.
2. Did not specify the qualifications and skills required of conciliation officers.

3. In practice, led to the appointment of Conciliation and Review Officers who, in most cases were not legal practitioners.
4. Resulted in changes to cost structures restricting the right to costs.

### 3. METHODOLOGY

The survey was circulated through Law Society to firms known to practice in the area of workers' compensation. Firms were requested to provide responses to a series of questions. Practitioners who most frequently visited the jurisdiction were requested to complete the questionnaires. 36 firms responded to the questionnaire. Whilst this appears to be a small sample, it arguably represents responses of 36 specialist firms, and given the reasonably small number of firms which practice consistently in the jurisdiction, the rate of response is considered strong and a reasonably good indicator of practitioners attitudes in this jurisdiction.<sup>1</sup>

Part One of the questionnaire required the respondents to provide answers to questions by indicating whether the respondent disagreed, had no opinion, agreed or did not know about the subject matter. Part Two of the questionnaire required the respondent to consider whether the stated attributes of a Conciliation Officer were regarded as very important, important, of doubtful importance or not regarded as important by the respondent. The respondent to this part could also indicate that they held no opinion on the matter. A copy of the questionnaire is attached as Appendix One.

---

<sup>1</sup> It is also the largest sample obtained from a number of surveys undertaken by the writer, being approximately twice the number of respondents to a similar survey distributed to Trade Unions and Insurers.

#### 4. RESPONDENT PROFILE

The survey did not ask the respondents to provide information in relation to the size of the firm or the age or sex of the respondent. The questionnaire was confidential although respondents could, if they chose, declare their identity. Most respondents did declare their identity and it would therefore be possible to correlate responses with firm sizes in most cases. Respondents were, however, asked to indicate whether their work base was primarily for workers or primarily for insurers. Of the 36 respondents 29 indicated that their work was primarily for workers and 7 indicated that their work was primarily for insurers.

In Western Australia there are 18 insurers who hold licences to insure for workers' compensation purposes. Of those 18 the State Government Insurance Office (SGIO) secures approximately 50% of the insurance market and the claims work for SGIO is predominantly referred to the Crown Solicitor's Office. In broad terms the remaining 50% of the market is covered by 17 private insurers whose legal work is farmed out to a number of private practitioners. The response rate indicating that 7 of the respondents acted predominantly for insurers is a good rate of response, given that, a number of insurers occupy less than 1% of the insurance market. Some legal practitioners would therefore act for a number of smaller insurers. Obtaining responses from 7 "insurer's solicitors" probably represents at least half of the "insurer's solicitors" available and on that basis is a strong response.

It is also likely that since the amendments to the Act a number of "worker's solicitors" have withdrawn from the field. In particular those practitioners who did not have a trade union base. However, on the other hand, there is some evidence to suggest (having considered the survey results) that some practitioners, without a trade union base, have in fact, increased their workload because there is no longer the strong attachment of trade union members to previous "trade union firms".

## 5. SURVEY RESULTS

### 5.1 Work Load Reduction

For ease of discussion the questions administered are dealt with in clusters. The first three questions attempted to deal with the issue of whether practitioners were spending more time or less time in processing workers' compensation claims. Of the 36 respondents, nearly 60% of the sample, indicated they were spending less time in processing claims. Approximately one third of respondents indicated they were spending more time processing claims and attributed this to a variety of reasons. Two thirds of those who indicated that they were spending more time processing claims attributed this to the fact that injury claims were taking more time to deal with. A similar proportion considered the claims were taking more time to process because workers were not properly documenting their claims. Likewise, two thirds of those who considered the claims were taking longer to process considered that this was due to employers not properly documenting claims. Most practitioners who considered that they were spending more time processing claims, did not attribute this to a rise in claims or to a rise in the complexity of the claims. It is possible to conclude that of those practitioners who have indicated they are spending more time on claims, the general reason attributed to this increase in time is the poor documentation of claims. Other reasons given for an increase in workload included;

- (there is ) "no discovery procedure- (leading to) adjournments and ambush"
- (there is a need to) "ascertain common law thresholds"
- "for weekly payments and statutory allowances you are spending more time with conciliation and review. Previously you could jump straight in with an interlocutory application for a quick determination"
- "explaining the conciliation and review process "(twice mentioned)
- "worker has not investigated or developed his/her claim to meet the requirements of the Act."



- "Conciliation stage is a useless and frustrating exercise as the worker is not allowed to have legal representation, the Conciliation Officers are not legally trained and no proper records are kept to show what exactly was discussed and concluded at conciliation."
- "Conciliation stage is a waste of time . Conciliation officers don't know what they are talking about-more difficult to settle claims "

These comments suggest that practitioners are frustrated because they cannot represent their clients at conciliation, and further, because they have to explain the processes of conciliation in detail so that the client can attend in person.

The Act requires that a worker who makes a claim for compensation must, in general terms, make the claim in writing. (See Section 84I of the Act). The claim once made, is forwarded to the employer and the Act places an obligation on the employer (if privately insured) to forward the claim to its insurer. (See Section 57 of the Act). For a number of reasons, for example language difficulties, or poor literacy,<sup>2</sup> the documentation of claims by workers may be poorly attended to and as a consequence, the ability of a worker to claim and the time taken to resolve any dispute, may be affected.

Of those practitioners who indicated that there was less time to process claims (60% of respondents) the most popular reason given for this was, the fact that workers are doing more of the work to initiate and pursue claims for compensation. Over half of the practitioners who indicated a lighter work

---

<sup>2</sup> These matters have been canvassed extensively in studies conducted in other states, in particular New South Wales. See for example Clapham, C. Schofield, T. and Alcorso, C. (1993) Managing the Work Injury of Women from Non-English Speaking Backgrounds. A report for the National Women's Consultative Council Occasional Paper No 4 January 1993. Similar findings were obtained in a South Australian study, McMenemy, A. (1993) Migrant Women and Occupational Injury-The Challenge. Working Women's Centre Adelaide March 1993. Both reports highlight the difficulties for non-English speaking claimants in the workers compensation system.

load attributed this to the fact of less paper work. Another popular reason for the decline in work load was the fact that insurers were doing more of the work on claims. These responses are consistent again with the projected consequences of the amendments. That is, that workers will be required to perform more of the basic claims work themselves and that because of limits in legal representation, insurers through their claims officers will be putting more effort into the administration of claims and representation of employers. Other reasons given for the decline in time spent on claims were;

- "there are less claims coming through"(mentioned three times)
- "lawyers are excluded from the process"
- "costs are not recoverable - Insurers and WorkCover do not encourage workers to get legal advice"
- "clients are not going to lawyers"(mentioned twice)

## 5.2 Attendance At Work Cover Directorate

The Workers' Compensation Board was abolished in March 1994 and since that time the resolution of disputes has been handled by the WorkCover Directorate. The Directorate facilitates a two stage dispute resolution process consisting of Conciliation Officers in the first instance and Review Officers to follow. 50% of respondents indicated that they had attended conciliation hearings. This figure suggests a somewhat higher attendance of legal practitioners than that portrayed by WorkCover and reported by the Government through the press.<sup>3</sup> A higher proportion of practitioners (75%) had attended review hearings. This reflects the fact that legal practitioners are entitled to appear where it is established that there is an issue of law, or where both parties agree to the attendance of practitioners. Two thirds of respondents indicated that they attended conciliation or review at least once a month. Practitioners familiar with the jurisdiction will be aware that those busy in this area would attend the jurisdiction almost daily for preliminary hearings, pre-trial conferences and trials, so that, attendance at only

---

<sup>3</sup> O'Malley, S (1995) New compo procedures win praise West Australian June 30

approximately once per month is a considerable reduction in the appearance of legal practitioners in the jurisdiction.

Practitioners were asked to consider whether they were spending more or less time at the Directorate than they would have spent before the Workers' Compensation Board. Over half the respondents considered that they were spending less time before the Directorate than before the Workers' Compensation Board and only 20% of respondents considered they were spending more time before the Directorate than before the Board. In attempting to quantify the reduction in time spent in attending the jurisdiction, 18 valid responses were obtained. Of those responses, 70% indicated a 50% reduction in the time spent by them at the Board. 7 respondents were able to quantify that they had increased the time spent in the Directorate over the time spent at the Board and of those responses 42% indicated that they were spending 50% more time before the Directorate than before the Board.

One can conclude, that there has been, in some cases, a significant down turn in the work performed by legal practitioners in this jurisdiction, both in the amount of claims handled and the time spent resolving disputes in conciliation or review. This result is consistent with the WorkCover Review<sup>4</sup>. That Review indicated that 65.7% of workers were representing themselves, under the pervious system probably only about 10% of workers would be appear in person<sup>5</sup>.

### 5.3 Post Conciliation Work

Practitioners were asked to indicate whether they were providing opinions or assistance and advice following conciliation. 91% of the 35 valid responses indicated that they were providing opinions following conciliation. Nearly

---

<sup>4</sup> Workers Compensation and Rehabilitation Commission 1995 Review of Dispute Resolution June 16 1995 p 35-36

<sup>5</sup> This is the writer's estimate based on 15 years of experience in the jurisdiction.

50% were providing advice on every case that they received instructions to progress the matter from conciliation to review. In just over 50% of the cases practitioners were paid for each opinion whereas in just over 25% of the cases a retainer system was in place for the provision of opinions.

These results suggest that whilst the work of practitioners has been reduced in this jurisdiction, particularly as consequence of the restriction of the rights of representation at conciliation, the use of practitioners to provide opinions for ongoing claims has been maintained at a fairly strong rate. The fact that 75% of respondents have attended at review suggests that there are many opportunities to elicit a question of law for argument at review.

#### 5.4 Results of Conciliation and Review

The Act now provides that the conciliation and review process must be performed in a manner which is fair, just, economical, informal and quick. (See Section 3(d) of the Act). Practitioners were asked to indicate whether they thought these characteristics were present in the current system. Over 65% of practitioners considered that the results of the conciliation and review process were neither fair nor just. In each case, only 8.6% of respondents agreed that the process was fair and just.

The process of conciliation and review is not subject to the rules of evidence. The process of review, being more formal, requires that the Review Officer act generally in accordance with the rules of natural justice<sup>6</sup>. The conciliation process is generally a closed process and there is no way for an objective, quantifiable measure to be made of the fairness or justness of this process. The results obtained from these two questions suggest however, that most practitioners who have experienced conciliation are unhappy with the process.

---

<sup>6</sup> Guthrie R (1995) Procedure and Evidence under the Workers Compensation and Rehabilitation Act 1981 Curtin University of Technology School of Business Law Working Paper series

Nearly 50% of respondents considered that the conciliation and review processes were economical although a substantial proportion (37%) disagreed with this proposition. 74.3% of respondents agreed that the conciliation and review process was informal but a fairly high proportion (20%) had no opinion on the matter. 40% of respondents disagreed that the conciliation and review process was quick but 45.7% of respondents considered that the conciliation and review process was quick.

These results suggest that, lawyers have particular sensitivities to the questions of fairness and justness. Lawyers acknowledged that the current system is informal. It may be that the lack of formality has some correlation with the practitioners perception of fairness and justness. There is no clear result as to whether the conciliation and review process is quick. Anecdotal information provided in the survey cites instances where the conciliation process was unnecessary or in fact provoked prolonged litigation which would probably have been settled informally outside of conciliation and review.

### **5.5 Legal Representation At Conciliation and Review**

Practitioners were asked whether they thought it was appropriate for workers to be represented at conciliation. An overwhelming 85% of respondents indicated that they thought workers should be represented at conciliation. Respondents were then asked to indicate of the following, which factors they thought was a factor which was relevant to that opinion;

- a) Workers should not be disadvantaged.
- b) The worker may not understand proceedings.
- c) The worker may not have sufficient English skills.
- d) Young workers have insufficient knowledge of the proceedings.
- e) Women are disadvantaged.
- f) Insurance claims officers are experienced in the process.
- g) Conciliation review processes are stressful upon workers.

- h) As a matter of natural justice workers should have representation.

Of the above factors 80% of respondents agreed that these were reasons why workers should be provided with legal representation. In relation to the question of whether or not women were disadvantaged by the process, nearly 42% of practitioners agreed that women were disadvantaged, but nearly the same percentage had either no opinion or disagreed that women were disadvantaged by the conciliation and review process.

Other reasons given for workers requiring legal representation were;

- "Workers are threatened with termination of payments and (therefore) deals without knowing the prospect of the insurer successfully implementing the threat. Workers are unable to articulate the strengths of their claim."
- ".....(workers )are unable to decide what evidence to obtain and produce"
- "A lawyer can save time and money by ascertaining beforehand what the issues in dispute are and how they need to be proved."
- "Workers tend to believe the view of Conciliator concerning a claim and these views are often wrong or inaccurate."
- "Conciliation Officers are focussed on compromise rather than the merits of the claim"

Only 8 respondents considered that workers should not be legally represented at conciliation. A number of factors were suggested as bearing upon this opinion, including:

- a) Representation would make proceedings slower.
- b) Representation would make proceedings more expensive.
- c) Representation would make proceedings more complicated.
- d) Representation would make settlement more difficult.
- e) Representation would make it more difficult for workers to put a case.
- f) Representation would increase the preparation required.

The responses to these factors were evenly spread and inconclusive.

The overwhelming conclusion is that legal practitioners consider that workers should be represented at conciliation review. The compelling arguments for legal representation have been unable to sway the Government from introducing the restricted rights to representation.

Lawyers have been unable to expunge the perception of self interest despite evidence in the WorkCover Review<sup>7</sup> showing that over 50% of workers considered they were disadvantaged by not having legal representation at conciliation. 47.6% of the workers in that survey indicated that they had insufficient experience or knowledge of the system and felt intimidated.

#### **5.6 Referral to Practitioners For Further Action**

Over 60% of respondents indicated that cases would be referred to them if conciliation was unsuccessful. The following factors were suggested as reasons why matters would be referred to practitioners following conciliation. In each case over 70% of respondents agreed that these were factors why the matter was referred. They include;

- a) The review process was more complex.
- b) Matters of law arise at review.
- c) Witnesses were required at review.
- d) There was more likelihood of the matter involving common law.
- e) The matter involved payment of a lump sum.

The general trend appears to be that, at review, a matter is likely to be more complex and require the skills of a practitioner to organise the process. The skills of a review officer are therefore of some significance, given that there is a greater likelihood of legal representation at review and the general opinion

---

<sup>7</sup> Workers Compensation and Rehabilitation Commission 1995 Review of Dispute Resolution June 16 1995 p 22-24

seems to be that the review process is likely to be of some complexity. One respondent noted, that insurers were likely to refer the matter to a legal practitioner at the review stage because "the forensic process of cross-examination and presentation of submissions is seen by some claims officers as unreasonably onerous".

#### **5.7 Flow On Effects to Trade Unions and Insurers**

Practitioners were asked to consider whether the changes in dispute resolution process would have effect upon the work load of trade unions and insurers. 40% of respondents considered that the system created more work for trade unions and 62.9% considered that trade union officials would need more training in the system. Again nearly 60% of respondents considered that a trade unions may need a claims officer to deal with Workers' Compensation claims. 60% of respondents considered that insurers would have more work under the current system and approximately 70% considered that employers and insurers would need additional training to cope with the new system.

100% of those who responded considered that workers were unhappy to go to conciliation without legal assistance and 85% considered that workers wanted lawyers to help. 95% of practitioners perceived that workers with stress claims were scared of the dispute resolution process. 90% of respondents considered that the claims process was in some cases too much trouble for workers. An even higher 95% considered that migrants would have trouble with the paperwork required to complete a claim.

These perceptions may to some extent be self serving and would be useful to compare with community perceptions of the need for lawyers in the conciliation process. As previously noted, the Work Cover Review suggests that over half of the workers who attended conciliation thought they were disadvantaged in not having a legal practitioner. This tends to support the perception of legal practitioners in the jurisdiction that the process of conciliation may be a difficult and fearful experience for workers.



## 5.8 Qualities of a Conciliation Officer

Part Two of the survey required legal practitioners to consider the attributes which might be necessary for a competent conciliation officer. In general terms respondents were asked to consider the personal attributes of the conciliation officer such as physical fitness, age, political affiliation, sex, nationality, marital status and religion. Respondents had to indicate whether or not they thought these attributes were important, of doubtful importance, or of no importance. Respondents were also entitled to indicate that they had no opinion on the matter. In general terms, legal practitioners did not consider that any of the above personal attributes were important aspects of the conciliators characteristics. At least 70% of the respondents considered that these attributes were of doubtful importance or not important at all. Nearly 35% of respondents thought that the conciliators age was either important or very important, but apart from that factor, none of the other personal characteristics were significant.

Respondents were then asked to consider the knowledge and experience characteristics of a conciliation officer. These included knowledge of compensation problems, compensation law, trade union matters, insurance matters, psychology, and mediation training. All respondents consider that a knowledge of compensation issues and compensation law was very important or an important characteristic of a conciliation officer. Over 50% of respondents considered that a knowledge of trade union matters was important, but approximately 77% of respondents considered that a knowledge of insurance matters was important. Mediation training was an essential characteristic with 100% of respondents considering it to be important or very important. A knowledge of psychology drew an ambivalent response with approximately 50% of practitioners considering it important, with the balance forming no opinion or considering it of doubtful experience.

Respondents were required to consider the experience and background of a conciliation officer and were asked to assess whether industry, management, labour, government negotiation and mediation experience were important. 76% of practitioners considered that experience in industry was important or very important, but management experience was not regarded as essential, with approximately 46% considering management experience to be important or very important. A similar ambivalence was detected in practitioners attitude to labour experience with only 47% considering this an essential characteristic. On the other hand, nearly 75% of practitioners considered that government experience was of doubtful or no importance to a conciliation officer. Active negotiation experience was regarded highly with 91% of practitioners considering this an important or very important requirement.

A similar view was taken as to court mediation experience showing that 97% of practitioners considered that this was a valuable characteristic.

A related specific question was as to whether or not the conciliation officer should be legally qualified. 72% of practitioners considered this was important or very important with the remainder holding no opinion or considering it not to be important.

Finally respondents were asked to consider a host of personal characteristics such as trustworthiness, fairness and impartiality, general reliability, patience and understanding, ability to grasp ideas, ability to listen, tact and persuasiveness, self control, dignity and respect, intelligence, co-operative attitude, sense of humour, firmness of action, originality of ideas, sympathy and modesty. The general result to these personal attributes was that legal practitioners on the whole considered them to be very important or important characteristics. Interestingly, not all legal practitioners considered it was necessary for the conciliation officer to have a sense of humour.

A picture of the ideal conciliator emerges from the opinions elicited in Part Two of the survey. Legal practitioners believe that conciliators should be legally qualified persons with training in mediation and negotiation,

experience in industry and to be familiar with compensation laws and issues. Personal characteristics should include a range of matters foremost being a sense of fairness and impartiality, trustworthiness, reliability and an ability to grasp ideas. The virtuous conciliation officer should be patient and understanding, a good listener, tactful and persuasive and able to maintain self control with dignity and respect.

It is interesting to reflect that the Act does not set out any qualifying requirements for a conciliation or review officer. It is not necessary for those officers to be legal practitioners nor for them to have mediation skills. Currently, only one of the active review officers is a legal practitioner, the balance being drawn from trade unions and insurers representatives.

Conciliators consist of a variety of former trade union officials, past Workers' Compensation Board members, former crown and court bureaucrats and insurers representatives.

Mediation training for Conciliation and Review Officers has been undertaken following appointment and in addition Conciliation and Review Officers have received some instruction on the rules of evidence and procedure.

## 6. CONCLUSIONS

The results of the survey show that legal practitioners have in general terms suffered a significant down turn in the amount of work available to them out of the Workers' Compensation jurisdiction. Practitioners believe strongly that workers should be represented in this jurisdiction for a variety of reasons. The evidence from the survey suggests that whilst practitioners are less likely to attend conciliation (for obvious reasons) there is more likely to be representation of workers at review. Review hearings are likely to be more complex. There is a real prospect that because workers and employers are to some extent required to complete or take responsibility for more paperwork, that a certain amount of unravelling takes place after conciliation and before review. There is potential for vital issues not to be aired at conciliation and

the general perception by legal practitioners of the conciliation and review system is that it lacks fairness and may in some circumstances be unjust. There is some debate as to whether or not this new system is cheaper than the previous system.

Most practitioners consider that conciliation officers should be legally qualified and should have a range of attributes consistent with the kinds of issues that they are required to determine. It is noteworthy that a number of conciliation officers were appointed without compensation issues and law experience and the bulk of conciliation and review officers do not hold legal qualifications.

Open ended responses asking practitioners for details of the positive and negative features of the system drew mainly negative responses such as;

- "Lack of ability of legal practitioners to get in before a Conciliation or Review Officer , therefore advise is given on limited grounds"
- "Applicants are likely to be disadvantaged if they pursue matters to Review without a legal or an experienced union representative."
- "Even if both sides are properly represented, matters proceed to a Review without proper preparation as to the issues, relevant documents , relevant witnesses etc"
- "The Review Officers lack of legal training and have no ability to consider and assess difficult factual problems and have a poor knowledge of the law"
- "Inability to redeem claims - no finality"
- "Political interference with the dispute resolution process"
- "No identification of the issues"
- "Conciliation and Review Officers are driven by statistics"
- "No appeal on question of fact"
- "No jurisdiction over insurer/employer disputes"
- "Increase of junior clerks handling claims"
- "Conciliation and Review Officer speak to doctors without telling the worker"
- "Workers are disadvantaged by not being familiar with procedures"

- "Medical panel reports are often vague and without findings of fact"  
"The Conciliation Officers are spending too much time with insurer representatives"
- "Decisions are made based on untested evidence"
- "Frequent breaches of natural justice"
- "Many workers are intimidated by the fact that insurers are represented by trained officers and frequently accompanied by an employer who initially becomes involved even though they may only be used as a witness in due course at review. This is intimidating for workers"
- "Discourages workers from claiming due to the expense (legal advise) and confusion in not being able to be represented"

There were few positive responses to the current system. Most positive responses acknowledged the current system was probably quicker and perhaps in some cases cheaper than the previous system.

This survey represents a portion only of a broader survey conducted. Self insurers, Private insurers and trade union officials have answered a similar survey and it will be useful for further research to compare the attitudes of these other groups. The results of this survey contrast to the results of the 1995 Review of Dispute Resolution in that there is not the degree of enthusiasm for the procedural aspects of conciliation and review. Legal Practitioners who are sensitive to the issues of fairness and natural justice, see the lack of these features as a weakness in the current system.

**Appendix one**

**Questionnaire administered to Legal Practitioners**

PRACTITIONERS SURVEY

**Survey of Legal Practitioner attitudes in relation to the activities of the Directorate of Conciliation and Review**

This survey is best answered by the legal practitioner in your office handling compensation matters on a regular basis. The survey should take about 10-15 minute to complete. Your responses to the survey are confidential.

Since the commencement of the Conciliation and Review system in March 1994:

Q1) **Have you been required to spend more time to dealing claims?**

(Please circle the appropriate number)

Yes 1 (go to question 2)

No 2 (go to question 3)

Don't know 3

Q2) If **Yes** to (Q1) above please indicate whether any of the following reasons apply:

(Please circle the appropriate response)

**More time is spent on claims because;**

	Disagree	No opinion	Agree	Don't know
There are more claims	1	2	3	4
The claims are more complex	1	2	3	4

**More time is spent on claims because;**

	No Disagree	No opinion	Agree	Don't know
The claims are not properly documented by the employer/insurer	1	2	3	4
The claims are not properly documented by the worker	1	2	3	4
There are more claims for "diseases" and these claims take more time.	1	2	3	4
"Injury" claims are taking more time.	1	2	3	4

Other Reasons for spending more time on claims .....

Q3) If **No** to (Q1) above please indicate whether any of the following reasons apply:

(Please circle the appropriate response)

**Less time is spent on claims because**

	Disagree	No opinion	Agree	Don't know
The insurers are doing some of the work	1	2	3	4
The workers are doing some of the work	1	2	3	4
There is less paper work	1	2	3	4

Other reasons spending less time on claims.....



**Q4) Have you been required to attend Conciliation hearings?**  
(Please circle the appropriate number)

Yes 1

No 2

**Q5) Have you been required to attend Review (including preliminary hearings) hearings?**  
(Please circle the appropriate number)

Yes 1

No 2

**Q6) If Yes to (Q4) or (Q5) how often per week/month do you attend for a Conciliation or Review (including preliminary review hearings)?**  
(Please circle the appropriate number)

Every day 1

Once a week 2

More than once a week 3

Once a month 4

Don't know 5

**Q7) If Yes to (Q4) or (Q5) is the time spent at Conciliation or Review more or less than the time previously spent at the Workers Compensation Board**  
(Please circle the appropriate number)

More 1 (go to question 8)

Less 2 (go to question 9)

About the same 3

Don't know 4

Q8) **If more time is spent at Conciliation and Review than at the Workers Compensation Board indicate approximately how much more time is spent**

10%	1
20%	2
30%	3
40%	4
50% or more	5

Q9) **If less time is spent at Conciliation and Review than at the Workers Compensation Board indicate approximately how much less time is spent.**

10%	1
20%	2
30%	3
40%	4
50% or more	5

Q10) **Do workers or insurers ever seek an opinion from you before they attend either a Conciliation or Review?**

(Please circle the appropriate number)

Never	1	(go to question 11)
Sometimes	2	
Always	3	
Don't know	4	

Q11) If **Yes** to (Q10) how often is an opinion sought (please estimate);

(Please circle the appropriate number)

One in ten cases	1
One in five cases	2
In every case	3
Don't know	4

Q12) If your opinion is sought is this paid for under;

(Please circle the appropriate number)

A retainer system	1
Payment for each opinion	2
Some other method of payment	3
Don't know	4

Q13) Do you regard the results achieved at Conciliation and Review as being;

(Please circle the appropriate response)

	Disagree	No opinion	Agree	Don't know
Fair	1	2	3	4
Just	1	2	3	4
Economical	1	2	3	4
Informal	1	2	3	4
Quick	1	2	3	4

**Q14) Do you think that the worker should be legally represented at Conciliation?**

(Please circle the appropriate number)

- Yes 1 (go to question 15)  
 No 2 (go to question 16)  
 No opinion 3

**Q15) If Yes to (Q14) above please indicate whether any of the following reasons apply**

(Please circle the appropriate response)

**Workers should be legally represented because;**

	Disagree	No opinion	Agree	Don't know
The worker should not be disadvantaged	1	2	3	4
The worker may not understand.	1	2	3	4
The worker may not have sufficient English language skills.	1	2	3	4
Younger workers do not have the knowledge to deal with a claim	1	2	3	4
Women are at a disadvantage	1	2	3	4
Insurance claims officers have experience and workers may not have any experience	1	2	3	4

	Disagree	No opinion	Agree	Don't know
The Conciliation and Review process can be stressful and it may be hard for workers with stress claims to represent themselves without a trained advocate	1	2	3	4

As a matter of natural justice a worker should be entitled to have a legally trained advocate to represent them	1	2	3	4
---	---	---	---	---

Other reasons(please specify).....

Q16) If **No** to (Q14) above please indicate whether any of the following reasons apply:

(Please circle the appropriate number)

**Workers should not be legally represented because;**

	Disagree	No opinion	Agree	Don't know
It would make the proceedings slower	1	2	3	4
It would make the proceedings more expensive	1	2	3	4
It would make the proceedings more complicated	1	2	3	4
It would make the settlement of claims more difficult	1	2	3	4

**Workers should not be legally represented because;**

	Disagree	No opinion	Agree	Don't know
It would make it more difficult for the worker to put her/his case	1	2	3	4
It would increase the amount of preparation required	1	2	3	4

Other reasons(please specify).....

**Q17) If the case is not satisfactorily disposed of at Conciliation do the workers or insurers normally refer the matter to a you?**

(Please circle the appropriate number)

Yes 1 (go to question 18)

No 2 (go to question 19)

**Q18) If Yes to (Q17) please indicate whether any of the following reasons apply**

(Please circle the appropriate number)

**Workers and insurers do refer the case to a lawyer because;**

	Disagree	No opinion	Agree	Don't know
At Review the case will be more complex	1	2	3	4

**Workers and insurers do refer the case to a lawyer because;**

	Disagree	No opinion	Agree	Don't know
At Review a matter of law will arise and the worker will have a lawyer	1	2	3	4
At Review there will be a need for witnesses to give evidence and a lawyer will be able to arrange this best	1	2	3	4
The matter involves some common law proceedings and this is best handled by lawyers	1	2	3	4
The matter involves payment of a lump sum/redemption and this is best handled by lawyers	1	2	3	4

Other reasons(please specify).....

Q19) If **No** to (Q17) please indicate whether any of the following reasons apply  
(Please circle the appropriate number)

**Workers and insurers do not refer the case to a lawyer because;**

	Disagree	No opinion	Agree	Don't know
There is no need because the workers and/or insurers sufficient expertise to handle the claim.	1	2	3	4

**Workers and insurers do not refer the case to a lawyer because;**

	Disagree	No opinion	Agree	Don't know
Lawyers will not be allowed because the review officers have indicated that legal representation is not necessary	1	2	3	4
Lawyers will increase the costs	1	2	3	4
Lawyers will take too much time	1	2	3	4
Lawyers will make the matter more complicated and make the case harder to finalise	1	2	3	4

**Q20) Do you think that more information is required before a claim is approved than was necessary prior to the changes in the dispute resolution process?**

(Please circle the appropriate number)

- Yes 1 (go to question 20)
- No 2 (go to question 21)
- Don't know 3



**Q21) If Yes to (Q20) above why do you think that more information is required?**

(Please circle the appropriate response)

	Disagree	No opinion	Agree	Don't know
The claims are more complex	1	2	3	4
The workers are not providing enough information	1	2	3	4
The employers are not providing enough information	1	2	3	4
The law is more complex	1	2	3	4
Conciliation and Review Officers require more information	1	2	3	4
We require more information because we do not use lawyers as much as before	1	2	3	4
Other Reasons.....				

**Q22) If No to (Q20) above why do you think that less information is required**

(Please circle the appropriate response)

	Disagree	No opinion	Agree	Don't know
The claims are less complex	1	2	3	4
The workers are providing more information	1	2	3	4
The employers are providing more information	1	2	3	4
The law is less complex	1	2	3	4
Conciliation and Review Officers require less information	1	2	3	4
We require less information because workers/employers insurers are providing more information	1	2	3	4

Other Reasons.....

**Q23) My work is primarily for workers**

(please circle the appropriate answer)

- Yes 1
- No 2

**Q24) My work is primarily for insurers**

(please circle the appropriate answer)

Yes 1

No 2

**Q25) Do you think that the current system.....**

(Please circle the appropriate response)

	Disagree	No opinion	Agree	Don't know
Creates more work for unions	1	2	3	4
Makes it necessary for union officials to obtain training in the area.	1	2	3	4
Creates a need for a claims officers in unions	1	2	3	4
Creates more work for insurers	1	2	3	4
Makes it necessary for insurers/employers to obtain training in the area.	1	2	3	4

**Q26) Do you think that the current system encourages workers to claim compensation?**

Yes 1 (go to question 27 )

No 2 (go to question 28)

Don't Know 3

**Q27) If Yes to (Q26), why do you think that claims are encouraged?**

	Disagree	No opinion	Agree	Don't know
It is cheaper	1	2	3	4
It is quicker	1	2	3	4
It is less complicated	1	2	3	4
It is fairer	1	2	3	4

Other reasons.....

**Q28) If No to (Q26), why do you think that claims are not encouraged?**

	Disagree	No opinion	Agree	Don't know
Workers are not happy to go to conciliation unassisted	1	2	3	4
Workers want lawyers to help	1	2	3	4
Workers with stress claims are scared of the process	1	2	3	4
Its too much trouble for workers	1	2	3	4
Migrant workers have trouble with the paperwork	1	2	3	4

Other reasons.....

**Finally**

**What in your opinion are the positive features if any of the new system.**

**What in your opinion are the negative features if any of the new system**

## Qualities of an Ideal Conciliation Officer in Workers Compensation claims

Please indicate (by placing a circle around the appropriate number) what you regard as the relevant attributes of a Conciliation Officer for workers compensation matters.

### Biographical Attributes

	Very Important	Important	No Opinion	Doubtful Importance	Not Important
Physical Fitness	1	2	3	4	5
Age	1	2	3	4	5
Political Affiliation	1	2	3	4	5
Sex	1	2	3	4	5
Nationality	1	2	3	4	5
Marital Status	1	2	3	4	5
Religion	1	2	3	4	5

### Education and Experience

	Very Important	Important	No Opinion	Doubtful Importance	Not Important
Knowledge of workers compensation problems/issues	1	2	3	4	5
Knowledge of workers compensation law	1	2	3	4	5
Knowledge of Trade Union matters	1	2	3	4	5
Knowledge of Insurance matters	1	2	3	4	5
Knowledge of Psychology	1	2	3	4	5

	Very Important	Important	No Opinion	Doubtful Importance	Not Important
Conciliation/ Mediation Training	1	2	3	4	5
Experience in Industry	1	2	3	4	5
Active management experience	1	2	3	4	5
Active labour experience	1	2	3	4	5
Active government experience	1	2	3	4	5
Active negotiation experience	1	2	3	4	5
Education	1	2	3	4	5
Prior court or mediation experience	1	2	3	4	5
Qualifications as a legal practitioner	1	2	3	4	5

**Personality Traits**

	Very Important	Important	No Opinion	Doubtful Importance	Not Important
Honesty and integrity	1	2	3	4	5
Trustworthy	1	2	3	4	5
Fairness and Impartiality	1	2	3	4	5
General reliability	1	2	3	4	5
Patience and persistence	1	2	3	4	5
Ability to grasp ideas	1	2	3	4	5
Ability to be a good listener	1	2	3	4	5

	Very Important	Important	No Opinion	Doubtful Importance	Not Important
Tact and persuasiveness	1	2	3	4	5
Self control	1	2	3	4	5
Dignity and respect	1	2	3	4	5
Intelligence	1	2	3	4	5
Co-operative attitude	1	2	3	4	5
Sense of Humour	1	2	3	4	5
Firmness of action	1	2	3	4	5
Originality of ideas	1	2	3	4	5
Sympathetic	1	2	3	4	5
Modesty	1	2	3	4	5