The Motor Accidents Compensation Tribunal

Annual Report

2016/2017



## 

05 March 2018

The Hon. Elise Archer

10th Floor, Executive Building

15 Murray Street

HOBART TAS 7000

Dear Minister

**MOTOR ACCIDENTS TRIBUNAL - ANNUAL REPORT 2016/2017**

Although there is no requirement under the *Motor Accidents (Liabilities & Compensation) Act* 1973 that the Motor Accidents Compensation Tribunal (the MACT) produce an annual report, I have taken the opportunity to do so now the MACT is administered by the Workers Rehabilitation & Compensation Tribunal. I attach my report which summarises the operation of the MACT during the financial year commencing 1 July 2016.

The report will be published on the MACT’s website in order to provide the general public with information as to the performance and exercise of the functions and powers of the MACT.

If you have any queries, please do not hesitate to contact me.

Yours sincerely

R. B. Webster

CHAIRPERSON

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# Overview

The Motor Accidents Compensation Tribunal (MACT) is an independent statutory tribunal established under the *Motor Accidents (Liabilities and Compensation) Act* 1973[[1]](#footnote-1) (the Act). The MACT’s function is to resolve or determine disputes between the Motor Accidents Insurance Board (MAIB) and any person with respect to the payment of no fault benefits under the Act and the *Motor Accidents (Liabilities and Compensation) Regulations* 2010 (the Regulations). The benefits which are payable are set out in Schedule 1 to the Regulations which is entitled Scheduled Benefits.

If the MAIB has determined[[2]](#footnote-2):

* a person is not to be treated as a person within a class of persons to whom scheduled benefits may be paid,
* a person is not to be paid a scheduled benefit,
* the amount of any scheduled benefit to be paid to a person,

or the MAIB:

* has refused or failed[[3]](#footnote-3) to make a payment of a scheduled benefit (medical account, funeral benefit, death benefit, disability allowance, disability benefit or counselling service),

then the person aggrieved by the MAIB’s determination, refusal or failure may refer[[4]](#footnote-4) that matter to the MACT. The referral is to be made within 14 days of receiving notice of the MAIB’s determination, refusal or failure or such further period as the MACT may, upon application, determine[[5]](#footnote-5).

The MAIB is also entitled to refer to the MACT any matter affecting:

* the right of a person to a scheduled benefit, or
* the amount of any scheduled benefit.

# Constitution of the MACT

Until amendments to the Act in 2015 the MACT was constituted by members who held the office of a judge, a magistrate or the Associate Judge[[6]](#footnote-6). The Chief Magistrate was the Chairperson of the MACT. For many years the Chief Commissioner and Commissioner of the Workers Rehabilitation and Compensation Tribunal (WRCT) were appointed temporary magistrates in order to perform the role of members of the MACT. The amendments to the Act in 2015 extended the categories of people qualified for appointment to a person who is an Australian lawyer of not less than 5 years’ standing as an Australian legal practitioner[[7]](#footnote-7).

Subsequently the Chief Commissioner, WRCT was appointed as the Chairperson and a member of the MACT and the Commissioner of the WRCT was appointed a member. The administration of the MACT was thereafter transferred to the WRCT.

The position of Commissioner WRCT was vacant between March 2016 and February 2017 and so there was only one member of the MACT during that period.

# Summary of Human Resources

The following table provides a summary of the number of Full Time Equivalent staff who are engaged in the work of the MACT as at 30 June each year. The MACT is supported by the WRCT and therefore utilises staff of the WRCT.

|  |  |  |
| --- | --- | --- |
|  | 30 June 2017 Actual | 2017  Budget |
| Full Time Equivalent Staff | 7.1 | 6.5 |

# Tribunal Accommodation

The MACT shares accommodation with the WRCT. There are currently four tribunals supported by the WRCT, being the Health Practitioners Tribunal, Motor Accidents Compensation Tribunal, Asbestos Compensation Tribunal and the Anti-Discrimination Tribunal. Signage at premises in both Hobart and Launceston reflect the colocation of these tribunals.

The MACT’s Hobart premises are located at Level 7, NAB House, 86 Collins Street, Hobart. These premises consist of staff accommodation (offices and work spaces), registry space, two hearing rooms, two conciliation rooms and two meeting rooms. In Launceston the Tribunals moved to new and improved premises at 1/111 St John Street in August 2015. Those premises consist of a hearing room, staff accommodation (offices and work spaces), conciliation and meeting rooms. If a conciliation is required of a matter where the claimant is based on the North West Coast then rooms at the Devonport Community & Health Services Centre at 23 Steele Street, Devonport are utilised. MACT staff are based in Hobart and travel as required to the North or North-West of the State.

Video conference facilities are available at the premises in Hobart and Launceston.

# Referrals to the Tribunal 2016/2017

The MACT received 18 referrals in the 2016/2017 financial year. Of those referrals, 7 were finalised in that financial year and 2 other referrals have been finalised since 1 July 2017.

# Conciliation

The MACT maintains conciliation as the primary method of resolving disputes. Insofar as is possible the WRCT has attempted to standardise the procedures applicable to all jurisdictions that it currently hosts. Upon receipt of a referral the MACT will conduct one or more pre-reference conferences by telephone or in person. During this stage directions will be given to ensure both parties take whatever steps are necessary to prepare their case. At the conclusion of this process the intention is that the issue to be determined is either highlighted or conceded and, if not conceded, then disputed facts are identified and medical opinion obtained. Then the matter will be referred to a conciliation conference. If a matter does not resolve at that stage it will be listed for an arbitrated hearing at the location closest to where the claimant resides.

# Appeals to the Supreme Court of Tasmania

There was one appeal to the Supreme Court in the 2016/2017 financial year. That appeal has been heard by Chief Justice Blow who has reserved his decision.

# Report on Financial Statement

The MACT does not have its own budget. Work it performs is recovered by the WRCT from the Department of Justice in accordance with an agreement between those entities on a fixed fee for service basis.

The sum of $11,250.00 was paid to the WRCT budget by the Department of Justice for services provided as the MACT during 2016-2017. This financial arrangement requires updating in order that there is a transparent accounting process to ensure that the WRCT (which is not funded by Consolidated Revenue) is not subsidising the operation of the MACT.

To that end the Department of Justice has engaged KPMG to conduct an audit of the funding and accounting of the various tribunals administered by the WRCT. The objective of the audit is to consider the application of and accounting for the funds provided to support the various activities of the tribunals overseen by the Chief Commissioner of the WRCT to ensure that those funds are being applied in compliance with current policies and legislative requirements of the various tribunals. The audit was due to commence in August 2017.

# Decisions of the Tribunal

Decisions of the Tribunal have been published on an ad hoc basis since 2012. This is when the former Chief Commissioner of the WRCT and former Commissioner of the WRCT took over responsibility for hearing referrals under the Act and Regulations from the Magistrates Court. I note nothing has been published since 2015 so this needs to be rectified. There are, however, a significant number of Tribunal determinations made prior to 2012 that are not published. These contain discussion of relevant principles that would serve as a valuable resource to not only legal practitioners and others with ongoing involvement in this jurisdiction but also to the community generally. All determinations of the Tribunal are in writing and are published on <http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/tas/TASMACT/>.

I am pleased to report that since the retirement, in October 2016, of the former Chairperson of the Tribunal, Stephen Carey, he has obtained funding from the Law Foundation to obtain and review copies of all Tribunal determinations made before 2015 for consideration as to whether or not they contain a discussion of relevant principles that would be of use to those who practise or appear in this jurisdiction. He is part of the way through this task and once the useful determinations have been isolated and reformatted they will be published on Austlii. I understand this project will be completed by the end of this calendar year. I thank Mr Carey for devising this project, seeking the funding and performing the necessary work. I also thank Eve Marriott for providing the administrative support for this project in her own time.

# Intent for 2017/2018

* Endeavour to update the service agreement between WRCT and the Department of Justice.
* Consider and discuss with the Department of Justice the results of the audit being conducted by KPMG. The result of that audit should be a transparent funding allocation to the WRCT for the service being provided in operating the MACT.
* In June 2017, the new version of the Civil Registry Management System (CRMS) was implemented. The integration of the MACT to this system is now being refined and this will hopefully rationalise any procedural differences that currently exist and ensure uniformity in the way matters from up to five jurisdictions are managed.
* Conduct the referrals with as little formality and technicality and with as much expedition as the requirements of the Act and the Regulations and a proper consideration of the matters to be resolved permit.

# Members of Tribunal & Staff

I express my appreciation to my staff for the work they have performed this year. They have been diligent and have displayed a professional manner in performing that work. I also thank them for the support and assistance they have given to me since my appointment. Finally, I express my appreciation for the many years of dedicated service provided by the former Chairperson, Stephen Carey who retired in October 2016.

R. Webster

Chairperson

1. s12 [↑](#footnote-ref-1)
2. s28(1) [↑](#footnote-ref-2)
3. s28(2)(b) [↑](#footnote-ref-3)
4. s28(2) [↑](#footnote-ref-4)
5. *Motor Accidents Compensation Tribunal Regulations* 2009; r4(3) [↑](#footnote-ref-5)
6. s12(2A); now s12(2A)(a) [↑](#footnote-ref-6)
7. s12(2A)(b) [↑](#footnote-ref-7)