

Department of Labour
TE TARI MAHI



PERSONAL GRIEVANCE MEDIATIONS CONDUCTED AT THE DEPARTMENT OF LABOUR: A SNAPSHOT

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EXECUTIVE SUMMARY

The purpose of this report is to examine personal grievances mediated at the Department of Labour, the characteristics of the parties and factors affecting the outcome of these mediations. This information should enable the Department of Labour to provide more effective advice on the policy framework surrounding personal grievances.

This report is based on returns from 312 mediations conducted during the five weeks between 17th July and 18th August 2006. The overall response rate was 86%. The survey was conducted in a way that would not enable the identification of any parties.

The most common issues leading to personal grievance claims during this time were allegations of unjustified dismissal, unjustifiable action, constructive dismissal and redundancy.¹

The typical profile of an applicant was a New Zealand European over 25 years of age who worked full time on a permanent contract, and had been in the employment relationship for between 1-4 years at the time of the mediation.

Maori applicants and those from small and medium sized organisations were over-represented in the survey numbers compared with their numbers in the overall population.

Sixty two percent of personal grievances were settled at mediation and of these 51% resulted in financial settlements. The most common settlement amount was over \$2000 and up to \$5000 (24.9%). Other common components of settlement included certificates of service, legal costs, references, and resignation.

Most applicants (88.8%) and more than half of the respondents (60.7%) used some form of representation, with lawyers being the most common representative for both. Applicants represented by a lawyer received a higher financial component of settlement than those using other forms of representation. However, the level of settlement is likely to be affected by the level of an applicant's salary or wages.

Small and medium sized organisations (those with fewer than 20 employees) in the sample were more likely to have personal grievance claims taken against them within the first 1-6 months of an applicant's employment. Conversely, larger organisations of fifty or more employees were more likely to have personal grievances taken against them when the applicant had been employed for more than one year.

Large organisations of 100 or more employees were more likely to have personal grievances of unjustifiable action taken against them, while small organisations were more likely to face unjustified dismissal claims.

¹ These terms, as used in this report, are defined in Appendix C.

Claims of unjustifiable action were more likely to be made by employees employed for five years or more, and personal grievances of unjustified dismissal were more likely to be made by applicants employed for nine months or less.

INTRODUCTION AND OBJECTIVES

Introduction

The Department of Labour wishes to build its knowledge about the nature of employment relationship problems and in particular, the nature of personal grievances. This survey aims to provide the Department with an initial understanding of the relationships between factors that influence mediations carried out to resolve personal grievances with the view to informing future policy development and research in this area.

In accordance with the provisions of section 148(6)(b) of the Employment Relations Act 2000, the data collection was organised in such a way as to maintain confidentiality of parties.

Objectives

The overall objective of this research is to provide a better understanding of who attends the Department of Labour mediation services for resolution of personal grievances, and what their associated problems and settlements are.

Specific objectives of this research, as outlined in the Terms of Reference (TOR), were:

- To contribute to scoping the monitoring data needs for Policy to feed into Workplace Services business review process and ongoing development of the department's internal information systems,
- To provide information to support policy development and in particular to respond to the Employment Relations (Probationary Employment) Amendment Bill,
- To provide a searchable database to help inform future policy questions.

METHOD

The method used for this research involved the use of a brief questionnaire, using largely predetermined categories for answers. This questionnaire was filled in by mediators, gathering information about the applicants and their personal grievances. The questionnaire was intended to provide a snapshot of who is bringing disputes related to personal grievances to mediation and what are the issues and settlements involved. To reduce the intrusion on mediator's workloads, the questionnaire needed to be short and straightforward to fill in. For confidentiality reasons, questionnaires had to minimise the possibility that individuals could be identified and parties were informed that the information would only be made available in aggregated form.

Questionnaire design

The questionnaire asks about the applicants' employment relationship and their employer; representation; the outcome of the mediation; and demographic information. In developing the questionnaire decisions about categories were made based on both stakeholder feedback and standard Government classifications and categories.

The Australia and New Zealand Standard Industrial Classification (New Zealand Version) 1996 (ANZSIC 1996²) was used for the question on industry groups as this was consistent with how industry groups are classified in 'WorkInfo' the Department's data collection system.

The Statistics New Zealand standard for ethnicity data collection³ was used at level one. Although it would have been ideal to have used level two, due to space constraints and a desire to capture some ethnicity data a decision was made to proceed with level one. Mediators asked applicants what ethnic groups they identified with and recorded it on the questionnaires. If they were unable to get this information from the applicant they were asked to leave it blank. For organisation size, the Ministry of Economic Development definitions were followed for small, medium and large enterprises⁴.

An initial draft was developed and reviewed with the chief mediator and other team members. A revised draft was emailed to all mediators, by the chief mediator, for comment and feedback. This feedback was incorporated into subsequent drafts. A final draft was pre-tested with a group of four mediators at the Wellington mediation service. Their feedback was incorporated into the final questionnaire which consisted of two sides of one piece of paper (Appendix A).

A one page guide to filling in the questionnaire, plus an additional guide to filling in question 14 on industry groups (as requested by some mediators) was

² <http://www.stats.govt.nz/statistical-methods/classifications/anzsic-nz-version-1996.htm>, accessed 2/6/06

³ <http://www.stats.govt.nz/statistical-methods/classifications/ethnicity-standard-class-2005.htm>, accessed 6/6/06

⁴ http://www.med.govt.nz/templates/multipageDocumentPage_2814.aspx, accessed 6/6/06

distributed to the relevant Mediation Support Officers (MSOs) in each service the week prior to the survey start date.

Sample

All mediators in the seven mediation services nationally were asked to complete the questionnaire for each person with a personal grievance arriving at a mediation they mediated over a four week period. This was to ensure adequate representation from all sectors of society and industry groups and would provide a snapshot of information about personal grievances.

Each questionnaire was coded with a unique identifier to be used to check the accuracy of the data entry.

It became apparent during the course of the fieldwork that the numbers of completed questionnaires were fewer than expected. On discussion with the seven services it was discovered that several mediators were either on annual leave, sick leave or, in the case of one, on training. Furthermore, one of the larger mediation services was temporarily under its normal staffing level and, combined with other factors, had only 6 – 7 mediators available during the period covered, compared to an optimum of 13. A decision was made to extend the survey fieldwork for a further week to boost response numbers.

Ethics

The information gathered in the questionnaire was potentially sensitive due to the confidential nature of the mediations and the resulting settlements. The questionnaire was anonymous with no names or personal identifiers gathered. All information disseminated about the survey stressed this fact and also that all data gathered would be aggregated to look at trends only. Completed questionnaires were stored in a locked cabinet during the fieldwork and analysis period, and will be stored confidentially and kept under supervision for three years, according to the Department of Labour Storage and Disposal Policy.

Survey limitations

Ideally data would be captured over a full year to give a complete picture of the nature of personal grievances and the people who initiate them. Gathering data for five weeks only may not capture the full range of fluctuations in the workforce that occur in a year, such as variations in seasonal work.

The survey is not able to capture in-depth information about the employment relationship between the applicant and respondent, and the barriers to settlement. The questionnaire was designed to be brief and to capture some basic data about who is taking personal grievances and the associated issues and settlements. It is hoped that the results of this survey will feed into further research questions, including exploring the relationships involved in mediation, in the future.

RESULTS

Response rate

Thirty one mediators filled in 312 questionnaires between 17th July and 18th August 2006. Although the services were asked to keep a record of how many disputes related to potential personal grievances were mediated in their service during the period of data collection, it became apparent that this was not a straightforward task for a number of reasons. This included such situations whereby a mediation may be recorded in the paper diary and WorkInfo as a 'personal grievance', but when the mediator actually meets with the applicant and respondent for the mediation it may turn out not to be related to a personal grievance. Also several services said that mediation appointments are put in their diaries but do not necessarily distinguish what type of mediation it is. There seems to be no mechanism for adjusting data collection to capture this and varying consistency with how this information is collected.

One of the mediation services was unable to keep a tally of how many disputes related to potential personal grievances went through their service during the data collection process, so the response rate has been calculated for the remaining six services only. Therefore, the approximate number of disputes related to potential personal grievances mediated during this period in the seven services was 261. The response rate was calculated by comparing these two figures, and was approximately 86% (for regional breakdowns see Appendix B). There is no reason to believe that the personal grievance mediations not included in this survey differed in any systematic way with those incorporated in this study.

The following frequency tables give information about personal grievance issues, applicants' profile, information about the applicants' employment relationship, their organisation size and industry, representation involved during the mediation and settlement components. Regional subsets have not been analysed for the purposes of this report but the raw data is held in the access database for future analysis.

Personal grievance type

The most common type of disputes related to potential personal grievance was unjustified dismissal (47.3%), followed by unjustifiable action (24.3%) and constructive dismissal (15.3%)⁵. Some applicants had more than one issue that gave rise to an alleged personal grievance.

⁵ Note that constructive dismissal or a redundancy claims are usually both types of unjustified dismissal.

Table 1: Alleged action leading to personal grievance claims between 17th July and 18th August 2006

Type of personal grievance	Number	Percentage
Unjustified dismissal	148	47.3%
Unjustifiable action	76	24.3%
Constructive dismissal	48	15.3%
Redundancy	41	13.1%
Discrimination	6	1.9%
Harassment	5	1.6%
Duress	1	0.3%
Other	46	14.7%

The 'other' category included wage issues (10), employment relationship problems (7); bullying (4); holiday pay issues (4); and dispute settlement issues (2).

Applicant profile

Mediators were requested to ask applicants their answers to the demographic questions as, due to the often difficult nature of mediations, it was deemed inappropriate to ask applicants to fill in a section of a questionnaire. If there was difficulty obtaining this information, mediators were asked to leave these questions blank.

The categories of young people were expanded to three sets of ages due to the interest in youth as a potentially vulnerable population group who may be affected by the Employment Relations (Probationary Employment) Amendment Bill. Forty three percent of applicants were in the 40-65 year age group (c.f. Household Labour Force Survey (HLFS)⁶ 2005 - 49%), followed by 37.1% in the 25 to 40 age group (cf 32%). Sixteen percent of applicants were in the 14-25 age group (cf 16%).

Table 2: Age of Applicant

Age	Number	Percentage
14-17 yrs	5	1.6%
Over 17 and up to 20 yrs	13	4.2%
Over 20 and up to 25 yrs	32	10.2%
Over 25 and up to 40 yrs	116	37.1%
Over 40 and up to 65 yrs	135	43.1%
Over 65 yrs	2	0.6%
No response	10	3.2%

There were almost equal numbers of female (150) and male (156) applicants seeking mediation related to potential personal grievances during the five weeks of the survey. This compares with HLFS 2005 data of 46% females and 54% males.

⁶ The Household Labour Force Survey (HLFS) is the official measure of employment, unemployment and labour force participation in New Zealand.

Table 3: Sex of Applicant (n=312)

Sex	Number	Percentage
Female	150	47.90%
Male	156	49.80%
Unknown	6	1.90%

The majority of applicants were of New Zealand European ethnicity (62%), followed by New Zealand Maori (16.3%). The HLFS 2005 data on ethnicity is all European 79% (cf with combination of two European categories below of 71.6%), Maori 9%, Pacific 4%, and 'other' which includes Asian and Middle Eastern, Latin American and African, as 8%. Fewer than five applicants chose more than one ethnic group and due to the small number these were analysed as the 'other' group.

Table 4: Ethnic group(s) of Applicant

Ethnic group	Number	Percentage
NZ European	194	62.0%
NZ Maori	51	16.3%
Other European	30	9.6%
Pacific Peoples	10	3.2%
Asian	8	2.6%
Middle Eastern/Latin American/African	5	1.6%
Other	6	1.9%
No response	9	2.9%

Profile of organisation applicant employed by

Ministry of Economic Development definitions of business or enterprise size are small 1-5 employees, medium 6-19 employees and large, as 20 or more employees. In terms of the survey the results show 45 (14.4%) worked in small enterprises, 82 (26.2%) in medium-sized enterprises, and 173 (55.2%) in large enterprises. This compares with HLFS 2005 data on number of employees in organisations where 11% work in organisations where there are between 1-5 employees, 19% in organisations between 6-19 employees, 14% in organisations of between 20 and 49 employees, 9% between 50-99 employees, and 47% work in organisations of over 100 employees.

Table 5: Number of employees in the organisation applicant is employed by

No of employees	Number	Percentage
Between 1 and 5	45	14.4%
Between 6 and 19	82	26.2%
Between 20 and 49	43	13.7%
Between 50 and 99	31	9.9%
Between 100 and 499	48	15.3%
500 or more employees	51	16.3%
No response	13	4.2%

As mentioned previously, the questionnaire included ANZSIC level two categories for industry classifications. However due to small numbers in some categories

these were collapsed into level one for the purposes of analysis. Due to the limited data collection period the survey does not capture variations in seasonal work which occurs in many industries, particularly over the summer months.

Table 6: Industry group of organisation applicant employed by

Industry group	Number	Percentage
Construction	38	12.1%
Retail Trade	37	11.8%
Health and Community Care Services	36	11.5%
Manufacturing	36	11.5%
Accommodation, Cafes and Restaurants	25	8.0%
Education	21	6.7%
Transport and Storage	20	6.4%
Property and Business Services	20	6.4%
Personal and Other Services	15	4.8%
Agriculture, Forestry, and Fishing	14	4.5%
Government Administration and Defence	11	3.5%
Finance and Insurance	9	2.9%
Communications Services	7	2.2%
Wholesale Trade	6	1.9%
Cultural and Recreational Services	4	1.3%
Electricity, Gas, and Water Supply	2	0.6%
Mining	1	0.3%
No response	11	3.5%

Applicant's terms of employment

The majority of applicants (260/83%) were employed on permanent contracts. However due to the limited data collection period variations in seasonal work and likely differing terms of employment would not be captured in these results.

Table 7: Applicant's terms of employment

Terms of employment	Number
No response	3
In dispute	31
Other	14
Fixed Term	31
Permanent	260

The largest group of applicants had been employed between 1-4 years (37.4%) with their employer. Sixty eight (22%) had been employed between 0-6 months.

Table 8: Length of time applicant employed by employer (n=312)

Length of time	Number	Percentage
0-3 months	31	9.90%
4-6 months	37	11.80%
7-9 months	24	7.70%
10-12 months	29	9.30%
1-4 years	117	37.40%
5-9 years	35	11.20%
10 or more years	34	10.90%
No response	6	1.90%

Table 9 shows that the majority of applicants (82.4%) worked full time. However the data is limited to the collection period of July 17th until August 18th and has not captured a wide range of seasonal work that occurs in the summer months during which numbers of part time and casual work are likely to increase.

Table 9: Applicant's hours of work (n=312)

Hours	Number
No response	10
Casual	6
Part time	39
Full time	258

Representation

Mediators were asked to record whether representation was used for the personal grievance and what type. The following results show that 88.8% of applicants and 60.7% of respondents had representation.

Table 10: Applicant and Respondent representation at personal grievance mediation

Represented	Applicant	Respondent
Yes	278	190
No	31	111
No response	2	10

Table 11, below, shows that the most common form of representation was a lawyer, for both applicants (43.5%) and respondents (40.3%). Applicants also favoured a union representative (22.4%) and an employment advocate (20.1%). The second most common form of representation for respondents was an advocate (16%).

For applicants, the 'other' category included their current employer (1) and an unemployed workers rights group (1). For respondents, the 'other' category included human resources representative (6), in-house legal representative (2), company's accountant (1), school trustees association (1) and the Employers and Manufacturers Association (1).

Table 11: Type of representation used by applicants and respondents

Type of Representation	Applicant	Respondent
Union	70	6
Lawyer	136	126
Employer Advocate	63	50
Family/friend	5	5
Other	3	11

Settlement

Mediators were asked to record whether a settlement was reached at the conclusion of the mediation. One hundred and ninety six personal grievances (62%) were settled at mediation with a further 5.1% partially settled.

Table 12: Settlement of personal grievance at conclusion of mediation

Settlement	Number
No response	16
Outcome unknown	11
Partially settled	16
Not Settled	74
Settled	196

Table 13, below, shows that in 51% of mediations some type of financial compensation was agreed. The most common settlement amount was over \$2000 and up to \$5000 (24.9%). Note that Table 16 summarises the amount of wages agreed at settlement. In many settlements agreed at mediation, no distinction is made between general financial compensation and compensation for wages in arrears. This means that Table 13 is likely to include compensation agreed for wages in arrears and any other financial settlement.

Mediations showing 'no response' for financial compensation were, in general, those personal grievances either not settled or only partially settled.

Table 13: Financial compensation at settlement

Amount	Number	Percentage
Nil	56	17.9%
Up to \$500	4	1.3%
Over \$500 and up to \$1000	18	5.8%
Over \$1000 and up to \$2000	18	5.8%
Over \$2000 and up to \$5000	78	24.9%
Over \$5000 and up to \$10,000	30	9.6%
Over \$10,000 and up to \$30,000	13	4.2%
Over \$30,000 and up to \$50,000	1	0.3%
Over \$50,000	1	0.3%
No response	93	29.7%

The most common types of settlement components were certificates of service (18.2%), legal costs (15%), references (14.7%) and resignation (12.5%).⁷

Table 14: Other components of settlement

Other Components	Number
Apology	27
Cert. of Service	57
Legal Costs	47
Notice	4
Reference	46
Reinstatement	4
Resignation	39
Wages	23
Other	76

The 'other' components of settlement (Table 15 below) covered a range of agreed actions, costs, and understandings between the applicant and respondent depending on the individual circumstances of the personal grievance. The following table gives a broad grouping of the different types of agreements.

Table 15: Other agreements at settlement

Broad type of agreement	Number
Return of property	4
Holiday pay	4
Not to speak ill of each other	8
Monetary allowances, costs, payments	15
Other agreements	29

Of the 23 (7.3%) personal grievances that resulted in an agreement that specified compensation for payment of wages, the following table gives a breakdown of the amounts, with seven falling into the \$0 - \$1000 category, and 10 between >\$1000 and \$5000.

Compensation for payment of wages (Table 16) and compensation for legal costs (Table 17) may also be included within the general financial settlement figures (Table 13). Although the incidence of compensation for wages in arrears may appear low – in fact, in many cases it has been included within a general financial settlement.

⁷ Note that settlements could include several elements.

Table 16: Amount of wages agreed at settlement

Amount of wages	Number
0-\$1000	7
>\$1000 - \$2000	3
>\$2000 - \$3000	4
>\$3000 - \$5000	3
>\$5000 - \$10,000	1
>\$10,000 - \$15,000	1
>\$15,000 - \$20,000	1
>\$20,000 - \$30,000	1

Of the 47 (15%) of legal costs agreed and specified as part of the settlement, the largest proportion (19) were in the >\$1000 - \$2000 category. Almost all legal costs agreed were between \$0 and \$5000.

Table 17: Amount of legal costs agreed at mediation

Amount of costs	Number
0-\$1000	7
>\$1000 - \$2000	19
>\$2000 - \$3000	9
>\$3000 - \$5000	7
>\$5000 - \$10,000	2
>\$10,000 - \$15,000	1

Correlation analysis

A correlation analysis was undertaken to explore whether there were any relationships of significance between variables, with the following results.

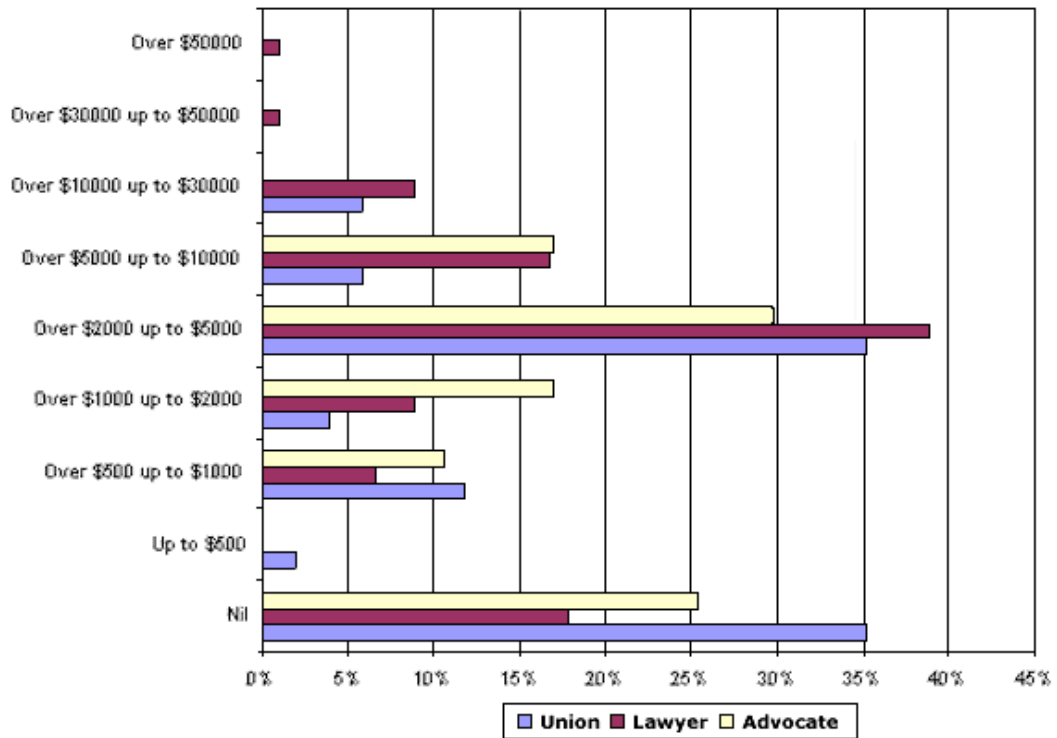
The data was tested to determine whether there was any relationship between representation and the probability of reaching a settlement⁸. There was no significant relationship between whether the applicant was represented and the likelihood of settlement. This finding of no relationship with representation holds for each of the individual types of representation.

However, results show that there is a significant relationship between the type of representation and the amount of settlement, with applicants represented by a lawyer receiving compensation that was higher by a statistically significant amount than those represented by employment advocates or unions⁹. However, the level of settlement is likely to be affected by the level of an applicant's salary or wages.

⁸ Kruskal-Wallis p=.0.100

⁹ Kruskal-Wallis p=0.01

Figure 1: Compensation by Representation



Length of service and compensation

The data shows only a weak relationship between length of service and financial compensation settlements, but a strong relationship between the amount of compensation and wage payouts where both types of payouts were made. However there was only a small group of mediations (10) where settlements included both types of payouts.

Size of organisation and length of service

There was a significant relationship between the size of organisation and the length of service when the dispute reached mediation. Small and medium sized organisations had a higher proportion of personal grievance claims taken against them within the first 1-6 months of employment. Conversely, large organisations of 50 or more employees showed a higher proportion of personal grievance claims taken against them where the length of employment was longer than one year.

Size of organisation, type of personal grievance and length of service

Larger organisations of 100 or more employees were significantly more likely to have personal grievances of unjustifiable action brought against them, while small organisations were more likely to face unjustified dismissal claims. Consistent with this finding, claims of unjustifiable action were significantly more likely to be made by employees employed for five years or more, and personal grievances of unjustified dismissal were more likely to be made by employees employed for nine months or less.

Type of dispute and terms of employment

There was no significant relationship between the type of personal grievance dispute and the terms of employment.

Influences on the amount of compensation at settlement

Under multi regression analysis the following factors had the greatest amount of influence on the levels of compensation agreed at mediation:

- Applicants who had a lawyer had higher amounts of compensation agreed at mediation;
- Respondents who had representation (particularly by an association or union) paid out lower amounts of compensation; and
- Personal grievances related to redundancies resulted in higher amounts of compensation.

However even combining all of these factors explains less than one fifth of the variation in compensation.

Table 18: Compensation - Multiple Regression

	Explanatory power
Employee has Lawyer	0.059
Employer uses Association	0.044
Employer represented	0.033
Redundancy	0.027
Random variation	0.837

DISCUSSION

The following brief discussion responds to the four key objectives of the research as outlined in the terms of reference, namely information to inform policy, ongoing data monitoring, a database for future analysis, and comparisons with departmental information systems. A short discussion on areas for future research completes this section.

The nature of personal grievances

The survey data gives an interesting snapshot into the types of disputes related to personal grievances which mediation services mediate, who takes them, and the associated representation and settlements. However, the data is limited due to the brief data collection period and the results must read in this light. Data collected over a full year would give a more accurate picture of personal grievance issues.

A typical profile of an applicant was of European ethnicity and over 25 years of age. The over 25 and up to 40 year old applicants were slightly over represented and over 40 and up to 65 year old applicants were slightly under represented in the data. In terms of ethnicity, Maori applicants were over represented (16.3% cf HLFS 9%) and European applicants were slightly under represented.

Nearly half of the personal grievances in the survey were unjustified dismissals with more applicants from small organisations taking personal grievances of unjustified dismissal. On the other hand more applicants from large organisations took action for personal grievances of unjustifiable action.

More applicants in the survey were employed in large organisations (173) than in small and medium sized organisations, which reflects general workforce data. However, the proportion of applicants who came from small and particularly medium sized organisations during the survey period was higher than their proportion of all employees.

Most survey applicants were permanent employees working full time. Whether any different patterns would emerge looking at temporary or part-time employees could be explored in a future research project.

A large group of survey applicants (117 or 37.4%) had been employed with their employer for between 1 and 4 years. More personal grievances in small businesses were taken at an earlier stage in the applicant's employment relationship (0-6 months). Conversely, more were taken at a later point (between 1-4 years) in large businesses.

Lawyers were favoured by both applicants and respondents as representation. Furthermore applicants who engaged lawyers as their representative received higher amounts of financial compensation at settlement. However, it should be noted that the level of financial settlement is likely to be affected by the level of an applicant's salary or wages. Approximately a third of these received legal costs, of which most were under \$5000, as part of the settlement.

The value of mediation is evident in the survey results that show that 62% of personal grievances were settled, with a further 5.1% partially settled. This avoids the use of resources involved in having a case taken to the Employment Relations Authority or the Employment Court. The high percentage of settlements also highlights the benefits of having a trained intermediary to get the two parties to come to an agreement.

Of those personal grievances that were settled, 51% agreed on financial compensation. In most cases, financial compensation of between \$2000 and \$5000 was agreed. There is clearly an element of creativity involved in coming to agreement on the components of settlement. As well as the obvious options of an apology, a reference, a certificate of service or a resignation, there was a wide range of other agreements reached which reflects the variety of employment contexts and individual diversity.

Database for future policy questions

As a result of the survey there is an Access database holding the raw data of 312 completed questionnaires in the areas relevant to the questions asked. This is accessible to help inform future policy questions but is, however, limited due to the relatively small numbers, as discussed elsewhere in the report. It would be preferable for data to be collected all year round to provide a more accurate picture of personal grievances and their associated issues and settlements.

Future research

This survey data indicated that there may be significant relationships between some of the variables and personal grievances. Future research would be useful to explore these in more detail. The following briefly outlines some relationships that may be of interest and possible reasons for their significance.

- Maori were over-represented in the data compared with their overall proportion in the population. Further investigation, probably of a qualitative nature, may be able to identify reasons for this.
- The relationship between the size of the organisation and type of personal grievance needs further investigation. There are many possible explanations for the findings of differences in types of grievance by size of company, some of which have very different implications for policy.
- Survey applicants from small and medium sized organisations were over-represented in the data compared with the total workforce. Once again, the reasons for this discrepancy need further research as the plausible explanations have very different implications for policy.
- The relationship between the size of the applicant's organisation and how long they have been employed with the organisation when taking a personal grievance appears to be significant in these survey results. Results showed more personal grievances in small organisations are taken at an earlier stage in the applicant's employment relationship. Further research may illuminate this relationship.
- Further research may build a better understanding of the reasons for the higher level of financial settlements where lawyers are involved.

APPENDIX A: THE SURVEY FORM

Mediation (Personal Grievances) survey 17 July to 11 August 2006

Please fill in one of these forms for each Personal Grievance you mediate for the survey dates. Your assistance with this survey is appreciated.

1. Personal Grievance requiring mediation

Constructive Dismissal
Discrimination
Duress
Harassment
Redundancy
Unjustifiable action
Unjustified Dismissal
Other (please state)

2. How many employees are in the organisation that the Applicant is employed by?

between 1-5 employees
between 6 and 19 employees
between 20 and 49 employees
between 50 and 99 employees
between 100 and 499 employees
500 or more employees

3. Are the Terms of Employment?

Fixed term
Permanent
Independent contractor
Other (please state)

4. Length of time Applicant employed by this employer? (Tick one only)

Months

0-3
4-6
7-9
10-12

Years

1-4
5-9
10 or more

5. Does the Applicant work?

Full time

Part time
On a casual basis

6. Did the Applicant have representation?

Yes
No

Respondent have representation?

Yes
No

7. If yes to question 6, was the representative:

Applicant

Union Representative
Lawyer/Barrister/Solicitor
Employment Advocate
Family/friend
Other (please state)

Respondent

Union Representative
Lawyer/Barrister/Solicitor
Employment Advocate
Family/friend
Other (please state)

8. Was this dispute settled with an agreement at this meeting?

Yes
Partially settled
No
Don't know

9. Compensation agreed at settlement?

Nil
Up to \$500
Over \$500 and up to \$1000
Over \$1000 and up to \$2000
Over \$2000 and up to \$5000
Over \$5,000 and up to \$10,000
Over \$10,000 and up to \$30,000
Over \$30,000 and up to \$50,000
Over \$50,000

10. Other components of the settlement? (Please tick all that apply)

Apology
Certificate of Service
Legal costs (state amount)

Notice
Reference
Reinstatement
Resignation
Wages (state amount)
Other (please state)

Demographic information

11. Is the Applicant

Male
Female

12. Within which age group is the Applicant?

15-17 years
Over 17 and up to 20 years
Over 20 and up to 25 years
Over 25 and up to 40 years
Over 40 and up to 65 years
Over 65 years

13. What ethnic group is the Applicant?

NZ European
Other European
NZ Maori
Pacific Peoples
Asian
Middle Eastern/Latin American/African
Other (please state)

14. Industry group: Please tick the box that most closely represents the Applicants workplace industry group

Accommodation, Cafes and Restaurants

Accommodation
Cafes and Restaurants
Clubs (Hospitality)
Pubs, Taverns and Bars

Agriculture, Forestry and Fishing

Agriculture
Commercial Fishing
Forestry and Logging
Hunting and Trapping
Services to Agriculture, Forestry, and Fishing

Communication Services

Postal and Courier
Telecommunications

Construction

Construction Trade Services
General Construction

Cultural and Recreational Services

Libraries, Museums and the Arts
Motion Picture, Radio and Television Services
Sport and Recreation

Education

Adult, Community and Other Education
Preschool and School Education
Tertiary Education

Electricity, Gas and Water Supply

Electricity and Gas Supply
Water Supply, Sewerage and Drainage Services

Finance and Insurance

Finance
Insurance
Services to Finance and Insurance

Government Administration and Defence

Defence
Foreign Government Representation
Central Government Administration
Local Government Administration
Justice

Health and Community Services

Child Care Services
Community Care Services
Hospitals and Nursing Homes
Medical and Dental Services
Other Health Services
Veterinary Services

Manufacturing

Food, Beverage and Tobacco
Meat/ meat product processing and manufacturing
Machinery and Equipment Manufacturing
Metal Product Manufacturing
Non-Metallic Mineral Product Manufacturing
Other Manufacturing
Petroleum, Coal, Chemical and Associated Product
Manufacturing
Printing, Publishing and Recorded Media

Textile, Clothing, Footwear & Leather Manufacturing
Wood and Paper Product Manufacturing

Mining

Coal Mining
Metal Ore Mining
Oil and Gas Extraction
Other Mining
Services to Mining

Personal and Other Services

Interest Groups
Personal Services
Public Order and Safety Services
Private Households Employing Staff

Property and Business Services

Business Services
Property Services

Retail Trade

Food Retailing
Motor Vehicle Retailing and Services
Personal and Household Good Retailing

Transport and Storage

Air and Space Transport
Other Transport
Rail Transport
Road Transport
Services to Transport
Storage
Water Transport

Wholesale Trade

Basic Material Wholesaling
Machinery and Motor Vehicle Wholesaling
Personal and Household Good Wholesaling

APPENDIX B: REGIONAL BREAKDOWN OF NUMBERS OF QUESTIONNAIRES RETURNED AND RESPONSE RATES

Auckland

7 Mediators

Total of 51 questionnaires returned

Unable to provide number of PG's mediated during data collection period so no response rate calculation possible.

Hamilton

5 Mediators

Total of 35 questionnaires returned

Response rate: 97%

Napier

2 Mediators

Total of 43 questionnaires returned

Response rate: 98%

Palmerston North

3 Mediators

Total of 35 questionnaires returned

Response rate: 80%

Wellington

6 Mediators

Total of 75 questionnaires returned

Response rate: 84%

Christchurch

6 Mediators

Total of 60 questionnaires returned

Response rate: 85%

Dunedin

3 Mediators

Total of 13 questionnaires returned

Response rate 72%

APPENDIX C: DEFINITIONS OF COMMON PROBLEMS LEADING TO PERSONAL GRIEVANCE CLAIMS

For the purpose of the report descriptions of the most common problems leading to the personal grievance claims mediated by the Department during the survey are set out below.

Unjustified dismissal

If an employer decides to dismiss an employee, there must be a good reason for a dismissal and the dismissal must be carried out fairly. If not, the dismissal may be unjustified.

Unjustified action

A decision or action made by an employer that disadvantages an employee's employment.

Constructive dismissal

If a decision or action that an employer makes is not fair and reasonable and effectively forces an employee to resign, the resignation may be a constructive dismissal. A constructive dismissal is a type of unjustified dismissal.

Redundancy

This happens when a position filled by an employee is no longer needed, or the employer has made a genuine decision for commercial reasons to discontinue employment. If a redundancy is not based on one of these factors or the correct process is not followed, an employee may challenge the redundancy on the grounds that the dismissal was unjustified. An employee could also possibly bring a claim of unjustified disadvantage, based on actions that occurred during the redundancy process.