

Chair, Cabinet Social Policy Committee

## **Response to the Independent Review of Acclaim Otago's report into Accident Compensation Dispute Resolution Processes**

### **Proposal**

1. I am proposing a response to an Independent Review of Acclaim Otago's report into Accident Compensation Dispute Resolution Processes comprising:
  - a. public release of the Independent Review report by the Ministry of Business Innovation and Employment as well as this paper to maintain public confidence in the dispute resolution system
  - b. initiatives by ACC and FairWay to further improve dispute resolution practices and enhance the transparency of the dispute resolution system
  - c. consultation on increasing the costs payable to ACC clients in review cases.
2. Given the above proposed response, I recommend that the report back on whether to establish an Accident Compensation Appeal Tribunal be deferred until the first quarter of 2019.

### **Executive summary**

3. In December 2015, I asked the Ministry of Business, Innovation and Employment (MBIE) to commission an Independent Review of a report into Accident Compensation Dispute Resolution Processes (the Independent Review) issued by advocacy group Acclaim Otago.
4. The Independent Review rejects a number of the criticisms levelled by Acclaim Otago, more particularly those directed at the Courts. At the same time it confirms that there are valid concerns in the four broad areas that were identified in Acclaim's report, namely:
  - a. being heard
  - b. access to the law
  - c. access to evidence
  - d. access to representation.
5. The Independent Review's key findings and recommendations are summarised in this paper.
6. The majority of these recommendations relate to operational processes of ACC and FairWay. Both entities have agreed that improvements can and should be made on many concerns raised by the Independent Review. I am pleased that both entities are already making some progress, for example, in the success of the alternative dispute resolution process.
7. However, ACC considers that further work is required to fully understand the implications of some of the recommendations, for example, funding a free national advocacy service

to assist claimants to steer their way through dispute processes. It also considers alternative options may better address some issues raised by the Independent Review, for instance, that ACC consider making public their processes to reconsider and settle claims (in outline form only).

8. I expect ACC, FairWay and MBIE to work with other agencies and stakeholders such as the medical sector, to fully address operational issues in a timely fashion.
9. I propose that the Independent Review's report be released publicly by MBIE and that ACC and FairWay will develop initiatives to further improve dispute resolution processes.
10. The Independent Review also recommends increasing the regulated amount of clients' costs associated with the review process that can be reimbursed. The review costs were last adjusted for inflation in 2008 and have not been substantively reviewed since 2002.
11. I propose to consult publicly on an increase of 14.9% to align the review costs with increases in inflation since 2008. A draft consultation document is attached.
12. More work is necessary to consider the need and impact of an increase beyond the inflation adjustment proposed here. I have directed officials to seek expert input and engage more directly with stakeholders to address current gaps in analysis. This will progress alongside broader responses to the Independent Review as a coherent package.
13. Cabinet has previously agreed to establish a stand-alone Tribunal to hear accident compensation cases instead of the District Court [SOC Min (14) 7/3 refers]. This decision was deferred to allow for consultation with stakeholders with a report-back date of June 2016 [SOC Min (15) 13/3 refers].
14. I recommend a further deferral of the decision on the proposed Tribunal until the first quarter of 2019. Significant improvements can be, and are being, made to the existing process following the Independent Review. It would therefore be premature to consider whether or not to establish the proposed Tribunal at this time.

## **Background**

15. It is vital that the system for challenging ACC decisions is fair, robust, timely and cost-effective. This is particularly important given that people contesting decisions often include some of our most vulnerable New Zealanders, who may still be recovering from injuries.
16. ACC has put significant effort into early dispute resolution over the past year, including a pilot programme aimed at resolving disputes before they go to a review hearing. This saw resolution rates increase from 14 per cent to 38 per cent at participating branches, and has since been rolled out nationwide.
17. While there are many reasons that claims may be declined, including no entitlement to cover under the law, it is important that people who wish to challenge ACC decisions have access to fair, effective and timely processes. In 2014 we agreed to establish a stand-alone Accident Compensation Appeal Tribunal (the Tribunal) to hear accident compensation cases rather than these cases going to the District Court [SOC Min (14) 7/3 refers].
18. The decision on the Tribunal was then deferred to take into account the work ACC has been doing to resolve disputes early on, to consider different options for dealing with accident compensation appeals, as well as to allow for targeted consultation with key

stakeholders.

19. I am proposing that the decision on the proposed Tribunal be further deferred for three years. A major factor in proposing the establishment of the Tribunal was to reduce the time taken to hear and consider accident compensation disputes. There has recently been significant progress made to reduce the number of accident compensation appeals progressing to the District Courts as well as a reduction in the time taken to hear the appeals. Deferring the Tribunal will allow for further reduction in numbers as well as any improvements arising from the Independent Review to be bedded in, which may also reduce the need for a tribunal.
20. In July 2015, advocacy group Acclaim Otago (Inc) (Acclaim) released a report into accident compensation dispute resolution processes. The report's authors concluded that "the current system does not provide access to justice" and identified the following four issues as the "likely causes of current inefficiencies in the dispute resolution system":
  - a. being heard
  - b. access to the law
  - c. access to evidence
  - d. access to representation.
21. A second report into the accident compensation dispute resolution system is scheduled to be released by Acclaim later this year.
22. Following the release of Acclaim's first report I asked the Ministry of Business, Innovation and Employment (MBIE) to commission an independent review of the report to determine the validity of the concerns raised. MBIE commissioned Miriam R Dean CNZM QC to undertake this review (the Independent Review). A full copy of the Independent Review's report is attached as appendix 1.
23. I believe that in order to achieve a system for contesting ACC decisions that delivers fair outcomes for New Zealanders, it is necessary to do the work to ensure that we have such a system. After carefully considering Acclaim's report I decided it would be prudent and timely to examine the accident compensation dispute resolution system, which is why I asked MBIE to commission the Independent Review.
24. The Independent Review was carried out earlier this year over several months and followed a robust and investigative process. The Independent Review is based on extensive interviews with ACC clients, lawyers and advocates, medical organisations and specialists and other key stakeholders (such as disabled persons organisations), as well as ACC, FairWay Resolution and other officials.<sup>1</sup> In addition to the many interviews conducted, the Independent Review also considered a range of written material which contributed to assessing the validity of the findings in Acclaim's report.
25. The scope of the Independent Review was confined to reviewing the validity of the four accident compensation dispute resolution issues raised by Acclaim's report and to make any recommendations for policy, operational or legislative changes to the *Accident Compensation Act 2001* (the AC Act), and regulations made under the AC Act.
26. The Independent Review did not touch on the proposed Tribunal; however, as noted above, the implementation of the recommendations made by the Independent Review may contribute to further reducing the need for a tribunal. In addition, the consideration

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<sup>1</sup> FairWay Resolution is a Crown company contracted by ACC to conduct independent statutory reviews.

of wider civil dispute resolution issues such as civil legal aid provided through the Ministry of Justice and availability of judicial resources, were beyond the scope of the Independent Review.

### **Summary of the Independent Review's findings**

27. As part of the broader publicity surrounding this response, I propose that MBIE publically release the Independent Review report.
28. The Independent Review confirms that there are valid concerns raised by Acclaim, but also addresses a number of areas where it did not find concerns to be valid, particularly in terms of access to the law. Releasing the Independent Review report will therefore help to maintain public confidence in the dispute resolution system, and the Government's commitment to transparency and continuous improvement of the Accident Compensation Scheme.
29. The Independent Review's recommendations mostly relate to operational processes of ACC and FairWay, and are summarised below against the four themes.

#### *Being heard*

30. The Independent Review describes the theme 'being heard' as clients feeling that they have not had competent and impartial decision-makers genuinely listen to their stories – they do not feel they have "had their day in court". Problems with the current review process which lead to clients having this view often relate to a perceived lack of independence of FairWay.
31. FairWay reviewers are legally required to act independently; however, the Independent Review found that clients often do not understand how FairWay can be independent when ACC is the contracting entity and sets FairWay's time and cost performance measures.
32. Other problems which contribute to clients feeling that they have not been heard are process-related, ranging from a 'one-size-fits-all' approach to disputes (whether a simple claim for physiotherapy to a complex claim for elective surgery), inconsistency in the way reviewers approach review hearings (some are investigative, others adversarial), limited case management and the limited hearing time (one hour) that leaves claimants feeling their side of the story has not been heard.
33. I note that FairWay is already taking steps to address concerns related to their provision of review services and I am satisfied (as was the Independent Review) that despite perceptions, FairWay reviewers act independently of ACC. However, independence (real and perceived) is an essential attribute of a dispute resolution system and there are a number of areas where improvements could be made to strengthen FairWay's independence. It is my expectation that MBIE, ACC and FairWay will work together to explore ways to address this issue.
34. To further address these concerns, the Independent Review recommends:
  - a. FairWay develops and publishes guidelines setting out an improved review process
  - b. MBIE, ACC and FairWay consider how best to address problems, perceived or otherwise, with FairWay's independence.
35. The Independent Review also recommended an increase to review costs (the amount that clients can be reimbursed for costs associated with a review) as current review costs are set at a level that many clients believe would not enable them to afford to apply for,

or continue with, a review. I have addressed this recommendation below at paragraph 71, and note that I am seeking approval in this paper to consult on increasing the review costs payable to ACC clients.

#### *Access to the law*

36. The Independent Review found that inadequate access to legal resources (case law and review decisions, along with the complexity of the legislation and guidance material) is a barrier to clients (particularly those who represent themselves) having a full understanding of the law. I acknowledge the Independent Review's findings that there is a need to help claimants navigate through the dispute resolution system, given the complexity of the legislation as well as ACC's processes.
37. In order to improve access to information on dispute resolution processes, the Independent Review recommends:
- a. FairWay publishes a selection of (anonymised) review decisions by subject matter and/or case summaries of relevant decisions and other guidance material and considers providing a "submission builder" on its website to help claimants prepare submissions for review hearings. Presently none of the lessons to be learned from the 6,000 decisions a year are identified and disseminated for educational and prevention purposes.
  - b. ACC and FairWay consider ways (such as more graphics and video content) to explain easily to claimants how dispute resolution processes work
  - c. MBIE and/or ACC consider creating a visual map to help claimants navigate their way around the various accident compensation acts and regulations.
38. Acclaim's report raised the following further issues around access to the law:
- it is of concern that judges make no reference to the AC Act or case law in their judgments
  - ACC modify its policies only in response to decisions by the High Court, never to those by a District Court.
39. The Independent Review did not find either of these concerns to be valid for the following reasons:
- Judges are being encouraged to write judgments for lay people and therefore may be avoiding quoting lengthy extracts from the AC Act or case law. Judges must make their decisions taking into account the AC Act and the fact that the AC Act, or a particular section of the AC Act, is not referred to is incidental.
  - ACC notes that the statement that policies are only modified in response to decisions by the High Court is incorrect. ACC may amend its policies for a number of reasons, including in response to District Court decisions where they are not fact-dependent and have precedent value.

#### *Access to medical evidence*

40. The Independent Review agreed with the findings in Acclaim's report that access to medical evidence (and other associated problems) is a very valid concern. This view was almost universally shared by groups who were interviewed during the Independent Review, including ACC. Examples of problems which the Independent Review identified include the lack of available medical experts to help claimants challenge ACC decisions (many are contracted to ACC), a lack of dialogue between experts to resolve issues early and avoid costly disputes, inconsistency in ACC medical assessments, variable quality in ACC expert reports and long delays for clients who do manage to engage a specialist.

41. The Independent Review noted the scope of the problem of access to medical evidence went beyond the role of the Independent Review; the problem is, by nature, very complex due to the role of medical evidence in deciding disputes as well as earlier decisions on cover and entitlements. The Independent Review recommends that ACC convenes a working group (with an independent chair) to address the policy and process problems with accessing medical evidence in the interests of both claimants, and ACC (and ultimately the ACC scheme).
42. I acknowledge the Independent Review's recommendation to convene a working group and note that ACC already has various projects and initiatives underway to respond to these concerns (for example, a medical expert panel for complex cases). However, better access to medical evidence for clients is not an issue that can be solved by ACC on its own. It is appropriate that ACC work with other agencies and the medical sector to find solutions. Also, as the Independent Review noted, this would be one way of helping foster greater dialogue and collaboration between all participants in the sector to achieve the scheme's aims – dialogue and collaboration is currently not as good as it could be.

#### *Access to representation*

43. The Independent Review found that lack of representation is a barrier to claimants seeking to challenge ACC decisions. The barrier exists because of a considerable imbalance in the resources ACC has access to compared with those available to clients, particularly in an area of law where the demand for expert legal services often exceeds supply. Very few lawyers practice in the area (less than 1%).
44. The Independent Review recommends that ACC consider:
- a. increasing funding to existing free advocacy services to expand (currently ACC funds two small – essentially one person advocate – services: one telephone based and one an arm of the CTU).<sup>2</sup>
  - b. funding a free nationwide advocacy service modelled broadly on the Health and Disability Commission Advocacy Service (which has 23 offices around the country helping consumers resolve complaints about health and disability services (90% of cases are successfully resolved)).
45. It is clear that more quality advocacy services would not only be good for claimants but also for ACC. The Independent Review found that positive outcomes often emerge when clients are assisted by good lawyers or advocates:
- claims without merit are withdrawn before review hearings
  - reviews are settled before any hearing
  - if a hearing proceeds, it runs more smoothly all of which results in lower costs for ACC.
46. The Independent Review notes that establishing such a service would require careful examination of scope, criteria to qualify for funding, training and oversight. The Independent Review was inclined to the view that such advocacy services should be restricted to the pre-review stage (i.e. advocates would not appear at hearings). A staged approach – beginning with possible pilot services – is one option identified by the Independent Review.

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<sup>2</sup> The Act specifically provides for ACC to provide resources to assist those organisations providing advocacy services for claimants.

47. I am aware of the common theme throughout the Independent Review's report regarding the perception of bias or a lack of independence when ACC contracts for services. ACC paying for advocacy services, even if commissioned by a third party, may raise similar perception issues. Although the Independent Review notes that, despite ACC's funding and oversight of the existing two free advocacy services, there appeared to be no perception of compromised independence as abounds with the review process. Nonetheless careful consideration of how services could be provided and funded will be necessary.

### **Proposed response to the Independent Review**

48. I am proposing a response to the Independent Review comprising:

- a. public release of the Independent Review report and this paper to maintain public confidence in the disputes resolution system
- b. publicity of initiatives by ACC and Fairway, for example, to standardise best practices, improve the review process, and improve transparency of dispute resolution
- c. consultation to increase the review costs payable to ACC clients in a review case.

49. A proposed response to the Independent Review addressing the individual recommendations and setting out the next steps is attached as appendix 2.

### *ACC initiatives to address issues identified by the Independent Review*

50. I am pleased to see that the Independent Review acknowledges the notable progress that ACC has already made in improving the dispute resolution system, for example, the success of the alternative dispute resolution process.

51. The ACC board has considered the recommendations set out in the Independent Review and has provided me with a response.

52. A number of the Independent Review's recommendations are already being carried out by ACC, for example, improving the collection and analysis of data relating to dispute resolution.

53. In addition to the implementation of the recommendations that are currently underway, ACC has agreed to begin working on the implementation of the following recommendations:

- a. formalising ACC's existing model litigant approach by adopting a model litigant policy
- b. working with MBIE and FairWay to consider ways to address perceived problems with FairWay's independence
- c. reviewing and updating the training manual for ACC advocates
- d. improving the collection of data on disputes resolved in the clients' favour at the administrative review stage.

54. ACC is committed to improving the quality and availability of advocacy services for ACC clients. ACC will work closely with relevant organisations, including advocates and lawyers to workshop options (including those provided in the Independent Review for example, establishment of an independent advocacy service) for improving the availability (and quality) of advocacy services.

55. ACC intends to invest more funding in advocacy service provision for ACC clients and will investigate the feasibility of identified options. However, as there is a lack of quality frameworks and standards for advocates more broadly (i.e. not just for ACC-related matters), ACC would support the advocacy and legal sector engaging meaningfully to ensure the competency of available advocates.
56. ACC will convene and facilitate a working group with key stakeholders to discuss the range of medical evidence issues. ACC is committed to working closely with a range of stakeholders to discuss the medical evidence issues raised in the Independent Review and to explore possible solutions – some of which lie beyond ACC.
57. Stakeholder groups are likely to include medical groups, lawyers and advocates, Acclaim, and MBIE. Up to four meetings may be required to cover the issues raised.
58. The Independent Review recommended that ACC consider, as some government agencies do, making public (but in outline form only) its settlement policy and processes. Such a policy could dispel perceptions ACC is unwilling to settle and pinpoint what a claimant needs to do to get a favourable outcome, such as providing an expert medical report and not waiting until the review or appeal stage to do so with increased costs for all participants.
59. ACC considers the publication of a settlement policy, even in outline form, would result in settlement decisions being potentially judicially reviewable – a litigation risk that is undesirable and could negate the potential costs savings this recommendation seeks to achieve. However, ACC fully supports the publication of information that will assist with dispelling perceptions ACC is unwilling to settle and agrees greater accessibility of information about ACC's existing settlement processes would contribute to this.
60. To enhance transparency, ACC could also retrospectively publish settlement data about, for example, the numbers and type of settlements in a given period. ACC will consider whether this data could also be used to highlight particular factors, such as the availability of supporting medical evidence, that have been taken into account in past settlement decisions.
61. It is my expectation that agencies will work collaboratively to improve dispute resolution processes. ACC has committed to working with FairWay and MBIE on the progression of the agreed recommendations.

*FairWay initiatives to address issues identified by the Independent Review*

62. I have also received FairWay's response to the Independent Review's recommendations. I am pleased to note that FairWay is supportive of the recommendations that directly relate to their services as well as the Independent Review's findings in regard to the accident compensation dispute resolution system in general.
63. Some of the Independent Review's recommendations are already being implemented by FairWay (for example improving case management processes) as part of its Service Delivery Improvement Programme. The Independent Review acknowledges this, however it considers that further improvement remains necessary and recommends FairWay develop and publish guidelines setting out an improved review process.
64. FairWay considers that the Independent Review's recommendation that MBIE, ACC and FairWay consider how best to address the perceived problem of FairWay's independence as being of primary importance. Officials have provided advice to the Minister for ACC on a range of systemic options that would likely improve FairWay's

independent commercial operation, including ownership change. FairWay's board has engaged external consultants to evaluate the case for a change of ownership.

65. While FairWay acknowledges that they have not yet had sufficient opportunity to consider how the recommendations will be implemented, they note that they are willing to work collaboratively with ACC and other agencies on the design of the recommended improvements. I am fully supportive of this collaborative approach to service design as the result will be a more streamlined and connected dispute resolution system.

### **Review costs payable to ACC clients in a review case**

66. The *Injury Prevention (Review Costs and Appeals) Regulations 2002* (the Review Costs Regulations) set out the maximum (including maximum hourly rates) that clients can be reimbursed for costs associated with a review, if the decision is wholly or partially in their favour, or if the reviewer considers the claim is reasonably brought.
67. The availability of review costs support the efficient, effective, and fair resolution of disputes. The review costs do not fully reimburse a client's expenses in order to strike a balance between compensating the client and addressing the risk of excessive or meritless litigation by ensuring there is individual incentive to minimise expenditure. However, if the non-reimbursed cost is too high, clients may be discouraged from using services in the first place, even if they can meet the upfront costs.
68. The Independent Review largely confirms the concerns set out in Acclaim's report that the current scale of maximum costs payable to clients for medical, legal and other expenses (for example travel) is too low. The Independent Review recommends that the scale be 'increased – and by more than just inflation to ensure claimants receive a meaningful contribution to review costs'. While increased costs will fall on ACC, the Independent Review notes that review numbers should drop significantly if ACC gets behind its new alternative dispute resolution processes, while more robust review decisions will result in fewer District Court appeals (where costs are much greater).

#### *Review costs regulations have not kept pace with inflation*

69. Review costs were adjusted in 2008 for inflation and have not been reviewed substantively since 2002. It is likely that the value has been eroded during this time.
70. The Independent Review did not validate the claim that the review costs awarded were only 12.5% to 30% of the actual costs of clients. However, it does note some areas where there are apparent shortfalls and recommends that consideration be given to increasing costs available at review beyond an inflation adjustment.
71. As a first step, I am proposing an initial inflation adjustment for each cost level. However a more substantive review will be postponed to be progressed alongside the wider response to the Independent Review (which will include, for example, the possible establishment of a medical working group) as discussed in paragraph 80 to 82 below, as additional work is required.
72. It is important to note that an inflation adjustment is an approximate measure, and may not capture the true costs of the services underpinning the Review Costs Regulations. This risk will be addressed as part of the more substantive review.

#### *Public consultation on increasing review costs against inflation*

73. I seek Cabinet's agreement to consult on increasing review costs by 14.9% in line with the Consumer Price Index (CPI) increase from 1<sup>st</sup> quarter of 2008 to the 1<sup>st</sup> quarter 2016. The revised scale is included in appendix 3.

74. The proposed increase would improve access to medical, legal and other services to clients. This may in turn facilitate an earlier resolution of the dispute. There is a small risk of inducing providers to increase their prices.

*Inflation adjustment will have minor financial impact*

75. In the 2014-2015 financial year, reimbursements under the Review Costs Regulations cost ACC around \$2 million for 2,841 of the 6,280 reviews completed (just under half) at an average of \$710 per claim.
76. The inflation adjustment would increase the cost by \$415,931.69 per year assuming a 5% increase in volume of claims and no change in complexity. Costs may increase with a higher volume/complexity.
77. This increase would not have a discernible impact on levies, appropriation or Outstanding Claim Liabilities, or affect the wider health sector costs. Review costs are attributed to the account where review cases originate. Most of the costs will therefore fall on ACC's levied Accounts. The impact on the Non-Earner's Account is likely to be minor and could be met from within baselines.

*More work is required to consider increases beyond inflation*

78. The Independent Review identified some evidence that review costs may still fall short in the more complex cases, even if they are inflation adjusted, especially in medical costs. The Independent Review noted, for example, a specialist report (for example a psychiatric report) can cost up to \$2500 while non-specialist reports can also cost up to \$2000. The current maximum contributions for these reports are \$935.54 and \$467.77 respectively.
79. Initial analysis shows that, for a significant proportion of clients, the cost of reports were at or above the regulated payment scale in some areas. For example, 22% (218 out of 983) of claims reimbursed for specialist reports in 2014/15 (and 83% for other preparation of case for review) were at the maximum rates set by the Review Costs Regulations.
80. Available data does not capture the true costs or the underlying need of clients who did not utilise the services because the upfront or non-reimbursed portion would be too high. More work is necessary to improve the evidence base and design better options.
81. Costs can vary significantly within categories, for example, in different types of specialist reports and may affect client access to different extents. Price movements in particular areas are not necessarily reflected in broad measures such as CPI. A more substantive review can explore alternative cost measures, for example, service-component based costing to better target access barriers.
82. I have directed officials to seek expert input and engage more directly with stakeholders to address the current gaps in analysis. This work will progress alongside wider responses to the Independent Review, as a coherent package.

*Consultation on inflation adjustment of the review costs regulations*

83. Public consultation will run from 3 October 2016 to 31 October 2016. Key stakeholders, including, advocates, medical and legal professional bodies, will be contacted to seek their views.
84. The consultation document will accordingly make clear that the Review Costs Regulations are not intended to cover full costs of claimants so that expectations are appropriately managed. It will also clearly outline its own scope and draw attention to

other issues to be considered alongside wider responses to the Independent Review. The consultation paper is attached as appendix 4.

## **Proposal to defer the establishment of an Accident Compensation Appeal Tribunal**

85. Given the proposed response to the Independent Review, I recommend that the report back on whether to establish an Accident Compensation Appeal Tribunal (the Tribunal) be deferred until the first quarter of 2019.
86. As part of the broader accident compensation disputes resolution system, Cabinet agreed to establish a stand-alone Tribunal to hear accident compensation cases instead of the District Court [SOC Min (14) 7/3 refers]. Currently, appeals of review decisions are heard by the District Court.
87. This decision was deferred to allow for consultation with stakeholders [SOC Min (15) 13/3]. Cabinet directed that the matter be reported back in June 2016.
88. I recommend further deferring the decision on the proposed Tribunal until the first quarter of 2019 to allow for the implementation and realisation of the Independent Review's recommendations, along with the other improvements to the dispute resolution system that are currently under way.
89. Although the Independent Review did not touch on the proposal for the Tribunal (outside the terms of reference) it did note that there was wide agreement that any delays that still exist are not of an administrative nature related to District Court processes; but rather, because of the high number of claimants who represent themselves, the relatively high proportion of claimants, the mental or physical disability of claimants, the need to obtain medical evidence, too few lawyers practicing in the area and generally the greater time that needs to be devoted to case management and the hearing of accident compensation appeals.
90. Officials have concluded a targeted consultation on the proposed Tribunal and consider some initiatives underway are showing some of the benefits sought by the tribunal model. The majority of the responses received during the consultation did not support the establishment of the Tribunal.
91. The number of accident compensation appeals progressing to the District Court has decreased from 899 in 2010 to 422 in 2014. The downward trend should help reduce waiting time for the hearing of accident compensation appeals, and ease pressure on the courts. Some recent initiatives, such as the improvements to the alternative dispute resolution process, may help to cement the gains.
92. For cases that do progress to the District Court, guidelines for practice and procedure specific to accident compensation appeals are soon to be issued by the Chief District Court Judge. This is expected to provide greater consistency and certainty for all participants in appeals.
93. Improvements to the review process, including the proposed increase to review costs, can contribute to resolving cases at an earlier stage and reduce the number of cases reaching the Courts.
94. These developments collectively hold promise for reducing court volumes and providing more timely resolution of cases. It would therefore be premature to determine whether or not to establish the proposed Tribunal at this time.

### *Disestablishment of the historic Accident Compensation Appeal Authority*

95. As part of the proposal to establish the Tribunal, Cabinet agreed to disestablish the historic Accident Compensation Appeal Authority (the Authority) [SOC Min (14) 7/3 refers].
96. The Authority hears appeals under the repealed Accident Compensation Acts 1972 and 1982, rather than the District Courts. In general, if an injury occurs before 1992, the appeal is heard by the Authority. Before appealing to the Authority clients must apply for a review of ACC's decision, consistent with the process under the current AC Act.
97. I intend to progress this amendment through the upcoming Regulatory Systems Bill (Number 2). Maintaining the Authority adds complexity to the appeal and review process and fragments investment in dispute resolution. Having a central, consistent process of appeal will streamline the dispute resolution process making it easier for clients to navigate through the system.

### **Consultation**

98. ACC, Treasury, Ministry of Justice, Ministry of Social Development, Ministry of Health, Veterans' Affairs, Te Puni Kōkiri and the Ministry for Pacific Peoples have been consulted on this paper. The Ministry for Women was informed.
99. ACC indicates it supports inflation adjustment of review costs.
100. The Ministry of Justice supports the proposed deferral of the Cabinet report back on whether or not to establish a stand-alone Tribunal until 2019. If the current trends are sustained, a stand-alone tribunal may not be necessary. The proposed deferral period will enable the Ministry of Justice to assess this is the case.

### **Financial implications**

101. The financial implications for the recommendations from the Independent Review will be quantified in the next stage. However, it is likely the burden of any costs will fall on ACC rather than the justice sector.
102. Overall, increasing the amounts payable under the Review Cost Regulations for all categories by 14.9% will not increase costs materially for the levied accounts, the appropriation for the Non-Earner's Account, or the Outstanding Claim Liability.

### **Human rights**

103. The proposals contained in this paper do not raise issues of consistency under the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*.

### **Legislative implications**

104. If accepted, the proposals in this paper will require amendment of the Injury Prevention, Rehabilitation and Compensation (Review Costs and Appeals) Regulations 2002. It is expected that the new regulations will come into force in early 2017.

### **Regulatory impact analysis**

105. A regulatory impact statement is not required at this stage.

## Gender implications

106. These proposed changes are expected to be gender neutral.

## Disability perspective

107. The consultation proposal is positive for people with disabilities.

## Recommendations

The Minister for ACC recommends that the Cabinet Social Policy Committee:

1. **Note** that in July 2015 advocacy group Acclaim Otago (Inc) (Acclaim), released a report into accident compensation dispute resolution processes, concluding that “the current system does not provide access to justice”.
2. **Note** that the Minister for ACC asked the Ministry of Business, Innovation and Employment to commission an independent review to determine the validity of the concerns raised by Acclaim.
3. **Note** that the Independent Review of Accident Compensation Dispute Resolution Processes (the Independent Review) found:
  - 3.1. a number of the concerns raised by Acclaim not to be valid, particularly in terms of concerns relating to access to the law.
  - 3.2. there are valid concerns around some of the issues raised by Acclaim, and recommended a number of mostly operational improvements for ACC and FairWay.
4. **Agree** that the Minister for ACC issue a response to the Independent Review, comprising:
  - 4.1. public release of the Independent Review report by the Ministry of Business, Innovation and Employment as well as this paper to maintain public confidence in the disputes resolution system
  - 4.2. announcement of initiatives by ACC and FairWay that respond to the Independent Review’s recommendations
  - 4.3. consultation to increase the costs payable to ACC clients in a review case.
5. **Note** the proposed Government response to the Independent Review’s individual recommendations attached in appendix 2;
6. **Note** that the Minister for ACC will report back to Cabinet on the costs and implications of any further proposals arising from the Independent Review;
7. **Agree** to consult on increasing all costs by 14.9% (to align with general Consumer Price Index inflation);
8. **Note** that the proposed increase of 14.9% will not materially increase costs for levied accounts and appropriations or the Outstanding Claim Liabilities;
9. **Agree** to release the attached discussion document (appendix 4);
10. **Note** that the Minister for ACC will report back to Cabinet on the outcome of the consultation on the Injury Prevention (Review Costs and Appeals) Regulations 2002 in November 2016;
11. **Note** further work will look at substantive issues around the Injury Prevention (Review Costs and Appeals) Regulations 2002 beyond inflation, to be considered alongside wider

responses to the Independent Review;

12. **Defer** the report back on whether to establish an Accident Compensation Appeal Tribunal until the first quarter of 2019 to allow for implementation and realisation of the Independent Review's recommendations.