

INDEPENDENT REVIEW OF ACCLAIM OTAGO'S REPORT INTO ACCIDENT COMPENSATION DISPUTE RESOLUTION

Government response to the Miriam Dean QC report

Foreword

It is important that ACC clients have access to fair, effective and timely dispute resolution processes. In July 2015, advocacy group Acclaim Otago (Inc) (Acclaim) released a report into accident compensation dispute resolution processes. Acclaim's report identified four issues (being heard, access to the law, access to evidence and access to representation) as the "likely causes of current inefficiencies in the dispute resolution system."

Following the release of Acclaim's report the Minister for ACC 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).

The Independent Review's report recognises the considerable work that both ACC and FairWay have already undertaken to improve the dispute resolution system. However, there is more work to be done and the Government's response to the Independent Review's recommendations will ensure that momentum is continued.

The Independent Review examined the validity of the issues raised by Acclaim. It found that some (though not all) of the concerns raised by Acclaim were valid and recommends a number of possible improvements to existing practice.

The table below sets out the Independent Review's recommendations and the action that will be taken in response to each recommendation.

| REPORT RECOMMENDATION | ACCEPTED/ NOT ACCEPTED | NEXT STEPS | TARGET DATE | LEAD AGENCY |
|--|-------------------------------|---|---|--------------------|
| 1. ACC explores ways to better collect and analyse data about claims and disputes | Accepted | <ul style="list-style-type: none"> Work is underway to improve data collection as part ACC's Transformation Programme. | To be implemented as part of ACC's Shaping our Future Transformation Programme. The Transformation Programme is expected to be completed within 5 years | ACC |
| 2. FairWay develops and publishes guidelines setting out an improved review process (broadly by tracking and triaging) | Accepted | <ul style="list-style-type: none"> Fairway has commenced work on this recommendation and is consulting with ACC lawyers and advocates, ACC and MBIE. Funding issues will be identified and addressed. | December 2016 | FairWay |
| 3. The Ministry of Business, Innovation and Employment, | Accepted | <ul style="list-style-type: none"> Ministers will consider advice on ownership change and | Initial decisions by December | MBIE/ Treasury |

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|---|--|---|---|-------------|
| ACC and FairWay consider how best to address problems, perceived or otherwise, with FairWay's independence | | assess a range of options to enhance the actual and perceived independence of FairWay. | 2016 | |
| 4. The Government increases review costs – and by more than just inflation – to ensure claimants receive a meaningful contribution to review costs | Accepted. Immediate adjustment agreed. | <ul style="list-style-type: none"> • MBIE will publically consult on the Injury Prevention (Review Costs and Appeals) Regulations 2002. | Consultation on the Injury Prevention (Review Costs and Appeals) Regulations 2002 will commence on 3 October 2016 to be complete by 31 October 2016 | MBIE |
| 5. ACC considers ways to accelerate and improve its settlement processes, including exploring settlement of appeals as early as the process allows, better tracking of settlement data at all stages, the possible adoption of a public settlement policy (in outline form only) and adoption of a formal model litigant policy | Accepted in principle | <ul style="list-style-type: none"> • ACC has agreed to formalise its existing model litigant approach. • Instead of adopting a public settlement policy, ACC fully supports increasing the transparency (e.g. retrospectively publish settlement data) of ACC's approach to settlement. | Initial action completed by December 2016 | ACC |
| 6. The New Zealand Legal Information Institute (NZLII) is funded to provide a primer enabling users of its website to search accident compensation law and cases more easily | Accepted | <ul style="list-style-type: none"> • The NZLII has been commissioned by ACC to develop the primer or similar tool. | Initial decisions by December 2016 | ACC |
| 7. The NZLII updates its website, with help from ACC and/or | Accepted | <ul style="list-style-type: none"> • ACC will work with the Ministry of Justice to see that this work | Initial decisions by December | ACC |

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|---|------------------------|---|---|-------------|
| the Ministry of Justice, to include all High Court and Court of Appeal accident compensation decisions | | is progressed. | 2016 | |
| 8. FairWay publishes a selection of (anonymised) review decisions by subject matter and/or case summaries of relevant decisions and other guidance material | Accepted in principle | <ul style="list-style-type: none"> • ACC will work with FairWay on this recommendation, however further work will be required to ensure decisions are effectively anonymised. • Work is underway by FairWay for developing a process for publishing review decisions on its websites. Further funding would be required for this additional resource. • Funding issues will be identified and addressed. | This work is expected to take approximately 12 weeks | FairWay |
| 9. FairWay provides a “submission builder” on its website to help claimants prepare submissions for review hearings | Accepted | <ul style="list-style-type: none"> • ACC will work with FairWay on this recommendation. • Funding issues will be identified and addressed. | FairWay estimates it will take 6 weeks to scope and cost the task of providing a ‘submission builder’ and a further 12 weeks to design and publish it | FairWay |
| 10. ACC and FairWay consider other ways (such as more graphics and video content) to explain easily to claimants how dispute resolution processes work (and in ACC’s case, also how it decides particular claims) | Accepted | <ul style="list-style-type: none"> • An instructive video on the review process is underway for publication on the FairWay website. • ACC and FairWay will discuss further ways to communicate how the dispute resolution process works. | The instructive video is expected to be completed in early September 2016 | FairWay |
| 11. The Ministry of Business, Innovation and Employment | Accepted | <ul style="list-style-type: none"> • Further work from ACC and MBIE, with FairWay’s | Initial decisions by December | MBIE/ ACC |

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|---|------------------------|--|--|------------------------------|
| and/or ACC consider creating a visual map to help claimants navigate their way around the various accident compensation Acts and regulations | | assistance, is required to develop a visual map. | 2016 | |
| 12. The District Court considers how it can best help claimants representing themselves to easily search for relevant cases | Accepted | <ul style="list-style-type: none"> The District Court has undertaken to consider how it can best help claimants representing themselves to easily search for relevant cases. | Initial decisions by December 2016 | District Court |
| 13. ACC convenes a working group to address the policy and process-related problems with accessing medical evidence | Accepted | <ul style="list-style-type: none"> ACC will convene and facilitate a working group with key stakeholders to discuss the range of medical evidence issues. | Initial action completed by December 2016, depending on availability of key stakeholders | ACC |
| 14. Consideration be given to District Court judges having the ability to commission an expert medical report for claimants who are unable to do so where appropriate | Accepted | <ul style="list-style-type: none"> Further work will assess how to address this recommendation, including how costs could be met. | Initial decisions by December 2016 | Ministry of Justice |
| 15. Reviewers and District Court judges consider directing experts, where appropriate, to confer and identify where they agree and disagree on medical issues | Accepted | <ul style="list-style-type: none"> FairWay will consider this recommendation when the guidelines on the review process are drafted as this applies to reviewers. Further work will be undertaken with the Ministry of Justice and the Judiciary, including how costs could be met. | Initial decisions by December 2016 | FairWay/ Ministry of Justice |

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| 16. ACC consider increasing funding to existing free advocacy services | Accepted | <p>These two recommendations will be managed together</p> <ul style="list-style-type: none"> • ACC has committed to more advocacy funding • ACC intends to invest more funding in advocacy service provision for ACC clients and will investigate the feasibility of identified options. • ACC will work closely with relevant organisations, to workshop options for improving the availability (and quality) of advocacy services. | Initial action completed by December 2016, depending on availability of key parties | ACC |
| 17. ACC considers funding a free nationwide advocacy service modelled broadly on the Health and Disability Commission Advocacy Service | Accepted in principle | | | |
| 18. ACC more widely promotes organisations (existing and new) offering advocacy services on its website and in other guidance material | Accepted in principle | <ul style="list-style-type: none"> • Once the work in recommendations 16 and 17 is undertaken, ACC will promote advocacy services. | To be determined once recommendations 16 and 17 are further underway | ACC |
| 19. Relevant participants in the accident compensation area explore initiatives to encourage more lawyers into this field of work | Accepted | <ul style="list-style-type: none"> • ACC will provide support to the agency leading this work. | Initial decisions by December 2016 | MBIE will work with external agencies to determine who is best placed to carry out this work |
| 20. Consideration be given to the District Court's proposal that it have the power to appoint counsel to represent claimants in those exceptional cases where justice and efficiency require it | Accepted | <ul style="list-style-type: none"> • MBIE will work with Ministry of Justice to determine if support could be provide in addition to existing services (Amicus) in a way that respect individual rights for self-representation. | Initial decisions by December 2016 | MBIE |

Appendix 3

Revised Cost Scale - Injury Prevention (Review Costs and Appeals) Regulations 2002

| Injury Prevention (Review Costs and Appeals) Regulations 2002 | | |
|--|-------------------|---|
| | <i>Status Quo</i> | <i>Increase all categories by 14.9%</i> |
| Specialist reports | 935.54 | 1074.94 |
| Non-specialist reports | | |
| - first report | 467.77 | 537.47 |
| - 2 or more reports | 701.65 | 806.20 |
| At the following rates: | | |
| - 1st hour or part of preparation | 175.41 | 201.55 |
| - 2nd hour of preparation | 43.85 per 15 mins | 50.38 per 15mins |
| - 3rd hour of preparation | 29.23 per 15 mins | 33.59 per 15 mins |
| Preparation and lodging of application for review | 116.94 | 134.36 |
| Participation in case conference | 58.47 | 67.18 |
| Other preparation of case for review | 350.83 | 403.10 |
| Appearing at hearing on behalf of applicants | 350.83 | 403.10 |
| 1 st hour or part of a hearing | 175.41 | 201.55 |
| 2 nd hour of hearing | 29.23 per 15 mins | 33.59 per 15 mins |
| - 3 rd hour of hearing | 14.62 per 15 mins | 16.80 per 15 mins |
| - Other expenses | 584.71 | 671.83 |
| - For transport | 153.33 | 176.18 |
| For private transport ¹ | 0.29 per km | 0.29 per km |

¹ The per kilometre rate is unchanged so that it aligns with the rate used in the current regulations for ancillary services.





Consultation on Changes to the Review Costs Regulations

**Seeking your views on a general increase in payments in
the Injury Prevention (Review Costs and Appeals)
Regulations 2002**

We are consulting on a proposal to increase the regulated costs in the Injury Prevention (Review Costs and Appeals) Regulations 2002 by 14.9 per cent.

Submissions are due by 5.00 pm on 31 October 2016 (see page 4 for details)

The payments made under the Injury Prevention (Review Costs and Appeals) Regulations 2002 would increase by 14.9 per cent for costs incurred for an independent statutory review. These Regulations can be viewed at:

<http://legislation.govt.nz/regulation/public/2002/0081/latest/DLM117426.html>

Introduction

Clients of ACC can claim costs they incurred during a review under the Accident Compensation Act 2001. These costs must be awarded to the clients if the review decision is made fully or partly in favour of the clients. If not fully or partly successful, a client may also be awarded costs if the reviewer considers that the case has been reasonably brought. Such costs are paid by ACC directly to the clients upon the direction of the reviewer. These payments are there to provide support to clients.

The Injury Prevention (Review Costs and Appeals) Regulations 2002 (the Regulations) prescribe the maximum amount that can be paid to ACC clients for costs incurred for an independent statutory review. The intent of the Regulations is not to absorb the full costs of claimants upfront but to maintain a margin of individual responsibility, with payment following costs incurred. This is important to address the risk of excessive litigation and cost inflation.

In 2014/15 roughly \$2 million was paid to clients in 2841 cases¹ at an average of \$710 per claim.

The Regulations have not been substantively reviewed since 2002. The two adjustments since then were for an inflation increase in 2008 and a GST increase in 2010. We want to ensure that the Regulations make a meaningful contribution to clients to access the statutory dispute resolution processes.

Over the years we have heard from stakeholders who are concerned that the prescribed costs are no longer in line with inflation and do not provide adequate support for clients, especially for more complex cases. There is also concern about the limited number of specialists and legal professionals providing services to ACC clients, which can potentially increase the costs of their services.

We believe these are valid concerns. The recent Independent Review of the Acclaim Otago report into the accident compensation dispute resolution system has confirmed that there are shortfalls in some areas, especially around costs of medical evidence. However, current data does not allow us to accurately measure potential shortfalls

¹ Costs paid may be related to the cases completed in previous years, rather than those in the current year. 6280 reviews were completed in 2014/15.

against underlying cost drivers, or to assess where to direct resources as a priority across categories.

Work is underway to better understand the nature and extent of the issues and to inform assessment for substantive changes to the regulations. The proposals in this paper are limited to an inflation adjustment of the costs only.

It is important to ensure that any further changes are considered as part of a larger package so that the dispute resolution process will work better as a whole. However, we believe that it is both expedient and necessary to make inflation adjustments to the review costs to deliver better support to clients.

Question 1

What do you think of the current scale of regulated costs, bearing in mind that it is not intended to cover the full cost in a review?

Are there particular areas where increased support is necessary?

Do you have any data that will help us to establish the extent of the shortfall more clearly?

Purposes of Regulatory Change

The purpose of the proposal is to:

- Support access to medical, legal and other resources, taking into consideration resources available to ACC
- Ensure assistance to claimants is financially sustainable
- Provide the right incentives for all parties.

Question 2

Do you agree with the objectives identified here?

Inflation Adjustment

We propose to increase the regulated costs by 14.9%, based on the Consumer Price Index increase from the first quarter of 2008 to the first quarter of 2016. The per-hour rate for legal services will also be aligned with that for medical professionals. However, the per km rate for vehicle travel will remain at 29 cents.

It is envisaged that any regulatory change will be implemented in 2017.

The table below lists the new scale of costs:

Table 1: Scale of costs under the Regulations

| Injury Prevention (Review Costs and Appeals) Regulations 2002 | | |
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| Non-specialist reports | | |
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Preliminary analysis

The proposed increases will enhance access to medical, legal and other resources for clients. Some upfront costs will still fall on clients themselves, for reasons discussed previously. There may be a small risk that prices may increase and offset the inflation adjustment.

Assuming an increase in case volume by 5% and no change in the complexity of cases, the proposed inflation adjustment is estimated to cost an additional \$415,931 per year. However this estimate will increase if either case volume or complexity changes.

The weighing of options is essentially a matter of balancing better support to clients with the financial cost and incentives effects of such proposals.

Question 3

Is there another option(s) you would like to suggest?

Are there any other changes needed?

How to give feedback

Your feedback is sought on the proposed regulation change. If you would like to have your views taken into consideration, please respond on the separate submission form. If you need additional pages, please add them to the form.

Where to send your submission

Email: ACregs@mbie.govt.nz

Post:

The Manager
Accident Compensation Policy
Ministry of Business, Innovation, and Employment
PO Box 1473
Wellington, 6140

Closing date for submissions

Submissions must be received by 5pm **31 October 2016**.

Official Information Act

The Ministry of Business, Innovation and Employment and ACC are subject to the Official Information Act 1982, which means that your submission may be made available to those seeking information under that Act.