Submission to: (or Additional supporting information to support our submission)

The Ministry of Business, Innovation and Employment

Submissions of Talk – Meet - Resolve: Proposed amendments to the Accident Compensation (Review Costs and Appeals) Regulations 2002

A focus on regulations for Consensus-based dispute resolution processes (ADR)

From:

Talk-Meet-Resolve (Service of Clayton & Associates Limited)

0800 119 221

info@talkmeetresolve.co.nz

Level 2, Fraser House

160-162 Willis St

Wellington

talk meet resolve

Executive Summary

Talk – Meet – Resolve provides dispute resolution services to ACC and its clients. We are ACC's preferred provider of consensus-based dispute resolution services. Our vision is to transform the way people experience disputes in Aotearoa.

We strongly support the provision of an **objective** in the regulations and consider that the objective should be to provide **effective access to justice for people**.[1]

The focus of our submission is section 7 of the consultation document, and in particular the proposed new approach for consensus-based dispute resolution. We **support the proposed procedural changes** in diagram 2 and, in our view, this approach provides an opportunity to provide effective access to justice for people in disputes with ACC. Therefore, in partnership with ACC and other stakeholders, we can ensure that we meet the objectives of the regulations. We recommend adopting the legislative language in the Tertiary Education dispute resolution system.

Timeframes themselves are not the primary barrier due to the **timeliness of our service**. The deeming provision provides a legislative penalty for administrative delay. Care should be taken in deciding to extend the timeframe as this could lead to further administrative delay. We consider there is an opportunity for us to deliver our timely dispute resolution service[2] within the existing timeframes[3] with an option for parties to agree to extend this if required[4].

The **regulatory focus** should be removing the barriers to accessing **consensus-based services** and providing clear legislative guidance to ACC.

Costs incurred as a result of consensus-based resolution should be set out in a **guideline. This would be** used as a starting point in each case and agreed to by the parties during the initial part of our process and confirmed at the conclusion of the meeting.[5] We would be willing to lead the work developing this guideline for the consensus-based processes (or more widely). We explain in detail how such a guideline might operate based on a capped amount where representation costs take into account; the complexity of the case, the cost and type of representative and the tasks undertaken as part of the consensus-based process.

The **maximum costs to the cap** must be set the same as review (or higher)[6] and a process set out for dealing with exceptional cases.

Regulations must address **costs for consensus-based cases**. Specifically setting out a level of reimbursement for "consensus based" resolution or "conciliation" (as well as "reviews") in the regulations. This would make it clear to people considering their options (and representative advising them) that representative, evidential and other costs incurred during the process can be recovered.

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[1] United Nations Convention on the Rights of Persons with Disabilities, Art 13.
[2] Currently approximately 28 calendar days.
[3] 90 calendar days.
[4] One option is that part of agreeing to use our service is that the parties "stop the clock" on the 90-day review timeframe for the duration of the services, for example from the date that parties agree to attend our service to the closing of the case.
[5] We do not undertake any adjudication of costs issues. We consider that in the unlikely event parties cannot agree on costs, the review process is the appropriate avenue for a determination to be issued on costs.
[6] We note that the only empirical evidence for costs from consensus-based processes that is public is provided by Warren Forster in his submission to MBIE dated 27 March 2022.

Introduction

About the submitter

We provide dispute resolution services using a conciliation model and we operate this service under the name "Talk – Meet – Resolve" in two dispute resolution systems:

the accident compensation system[7] and

the tertiary education system.[8]

We also provide an adjudicative based service (Listen – Decide[9]) and resolve individual disputes on a commercial basis. Our service is designed to allow clients to request our service at any stage in their dispute resolution journey.[10] It is delivered in a person-centred way and includes a focus on systemic learning.

We worked with the Government Centre for Dispute Resolution[11] in the development and pilot stages of the GCDR standards and best practice and maturity improvement framework[12]. These involve nine standards and a number of key capability areas, and these are set out at Annex A to this submission. We raise these as many of the capability areas require specific consideration in relation to the regulations.

[7] https://talkmeetresolve.co.nz
[8] https://tedr.org.nz/talk-meet-resolve
[9] https://tedr.org.nz/listen-decide
[10] We can provide services prior to an adverse decision by ACC, after the decision and before a review application, after a review application and before a review hearing, or during the appeal process. The only conditions to use our service is that a claim has been lodged with ACC, there is an issue to resolved, and there is agreement between the person and ACC to use our service.
[11] https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/
[12] https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/dispute-resolution-tools-and-resources/aotearoa-best-practice-dispute-resolution-framework/

These include:

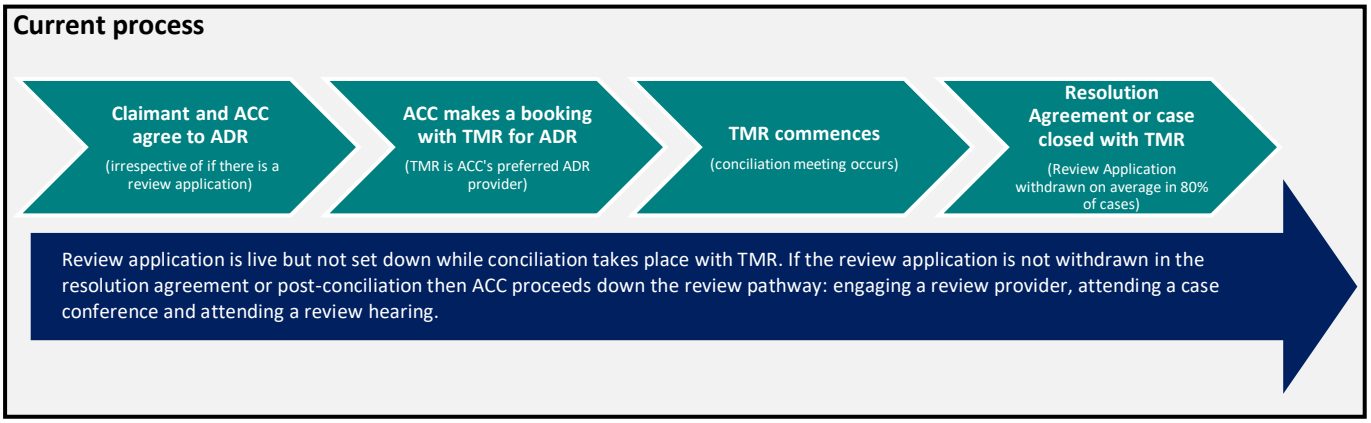
- Requirements to give effect to Te Tiriti (Standard 1)
- Early Resolution requirements (7.1)
- Facilitating access to our service, and understanding barriers and removing these (2.2)
- Ensuring equitable access (2.3)
- Mechanisms to identify and share insight, trends and systemic learnings (7.2),
- Coordination and collaboration with the sector (7.3)

Submission to Question 25

If the regulated timeframes are extended while clients are engaged in ADR, what effect do you think it will have on claimant's decisions to use ADR and the external review process? Please provide supporting information.

The consultation paper explains at paras 73 and 74, the Accident Compensation Corporation (ACC) processes for avoiding deemed review decisions for disputes that go to alternative dispute resolution (ADR).

The stated process is not an accurate reflection of the current state for disputes ACC refers to Talk – Meet – Resolve (TMR). A review provider is usually not engaged prior to ADR with TMR, and it is unusual for adjournment of reviews to occur with disputes that are referred to TMR.



We submit that an answer to this question needs consideration to access and timeliness of ACC's dispute resolution scheme.

Standard 2 of the GCDR Standards, requires the scheme to build awareness, facilitate access and ensure equitable access through the provision of support and assistance. Standard 6 requires that this be done in a timely manner. Access to justice does not just mean access to Court[13]. Access to justice goes beyond courts and lawyers. It incorporates everything people do to try to resolve the disputes they have, including accessing information and support to prevent, identify and resolve disputes. This broad view of access to justice recognises that many people resolve disputes without going to court and sometimes without seeking professional assistance. Access to justice means making sure that people are aware and have choice to use ADR.

[13] The idea of access to justice: reflections on New Zealand's accident compensation (or personal injury) system. Mijatov et al. 2016, https://wyaj.uwindsor.ca/index.php/wyaj/article/view/4852

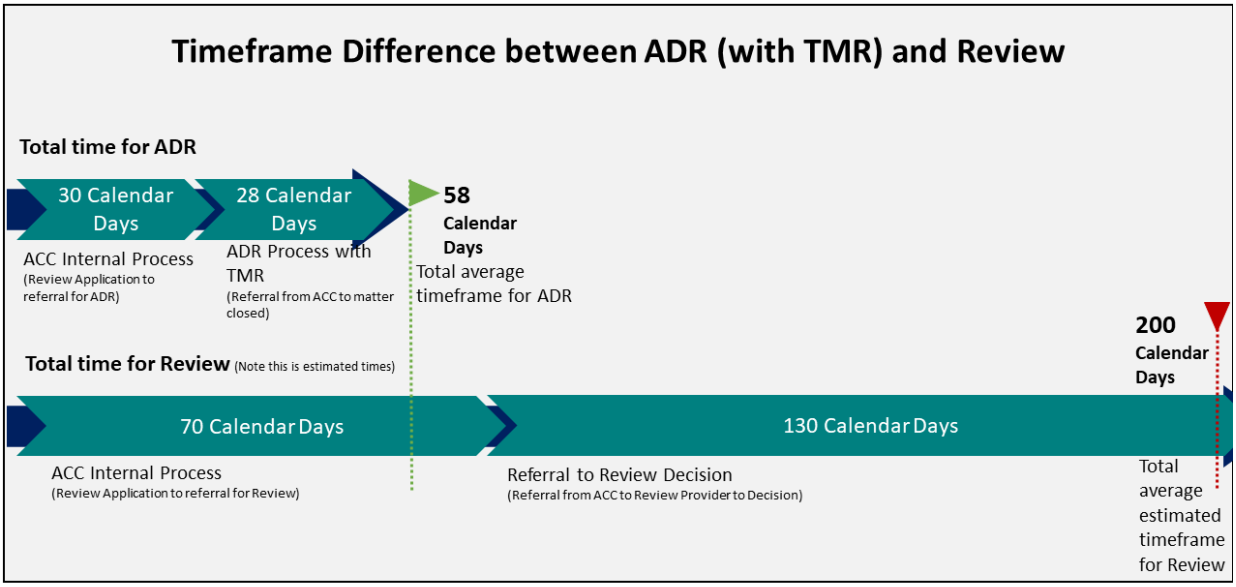
We support the proposed new linear approach for dispute resolution diagrammed in the Discussion Paper. This is on the assumption the diagram is promoting a model where ADR is the first step in the dispute resolution pathway. If, however, the diagram is proposing that ADR only be used prior to a review application being lodged, we would strongly disagree with such a proposal. This is because our data shows that ADR has a proven track record of timely resolution of review applications. ADR should be the preferred first step process whether or not a review application has been lodged.

The linear approach will also allow Standard 7 of the GCDR Framework to be met in the ACC DRS by promoting early resolution.

Timeframes for resolving disputes are a critical part of a successful dispute resolution pathway. Our professional experience is that the longer disputes continue, the more entrenched and exponentially protracted they become. The risk of additional or 'collateral' disputes or grievances arising also increases the longer the dispute remains unresolved.

Our data shows that current ADR resolution timeframes in **calendar days** take 58 days from lodgement of review to resolution. Our understanding is that current Review resolution timeframes in **calendar days** take approximately 200 days from lodgement of review to issuing a review decision.

ADR therefore takes, on average, one quarter of the time to reach resolution compared to the review process.



As seen from this diagram (immediately above) ACC's internal timeframes impact significantly on referral times to us and to Review providers. We have seen significant barriers to peoples' access to ADR caused by the internal process timeframes ACC has in place. These hinge on the 'deemed decision' timeframe and delays in getting cases to us[14]. We know for example that ACC spends on average about a month trying to resolve matters internally, prior to referring the case to us. This accounts for approximately 2/3 of the timeframes from the person lodging a review application to resolution. These internal processes can cause problems with the timeframes.

We consider that the current approach undermines accessibility requirements. We therefore support regulatory change that addresses this barrier. The 'ADR pathway' should not be impinged upon by the 'review pathway' and timeframes and vice versa also applies. There is good reason to have short and

[14] Section 146 of the Act requires, in effect, that a review hearing date is set no later than three months after the date a review application is lodged. Failure to do so results in a deemed decision in favour of the claimant.

well prescribed timeframes for review to ensure the integrity of that process. We also therefore submit caution in 'blending' of any of the timeframes and regulations for ADR and Review. They are separate approaches and should be treated as such. We consider that there is an opportunity for TMR to deliver our timely dispute resolution service within the existing scheme.

We propose regulations are introduced to allow adjustment of current timeframes where ADR is used as a dispute resolution pathway. This applies to both lodging a review application[15] and for setting a review hearing date[16].

We consider regulations could be made that allow the parties to agree to extend both timeframes if required. One option is that part of agreeing to use ADR is that the parties "stop the clock" on the three-month review timeframes[17] for the duration of the services, for example from the date the parties agree to attend ADR to the closing of the case[18].

While we support addressing the timeframe issue, it is not the only barrier for people accessing ADR. We survey our customers and on average 13% tell us that they had access issues to come to us. This percentage is made up of those people that do in fact 'get to ADR', there are still the many others that 'can't get to ADR'. The Reasons given are:

- they were not informed about ADR by ACC
- they had to initiate with ACC that ADR was an option
- ACC didn't agree to ADR

Access to TMR is through a referral from ACC after ACC and the claimant agree to use ADR. ACC agreeing to ADR is marginal. ACC receives around 500 to 800 review applications per month. What comes to ADR is dramatically variable averaging 25-60 referrals per month.

There is significant variance in ethnicity and access to ADR. Our data shows that Māori, Pasifika, and Asian people are least likely to access ADR.

Table 1: Ethnicity and access to ADR

European	81%
Māori	10%
Pasifika	3%
Asian	2%
Other	3%

[15] Section 135 requires a review application to be lodged within 3 months of a decision date. Section 135A makes provision for adjusting timeframes for ADR but no regulations have yet been introduced in response to this.

[16] See section 146.

[17] See sections 135 and 146.

[18] We note the requirement of s 135A, without any regulation to address this pursuant to s 328A could be perceived by some as creating a barrier. We consider any amendment to this, should not loose sigh of the fact that currently, we are still able to provide a service that, on average, is able to resolve disputes within 28 calendar days from referral.

There is also significant variance in age and access. Our data shows that those under the age of 40 are least likely to access ADR. We have also seen that people of female gender are less likely to use ADR than males.

People who have formal representation (advocate or legal representative) are more likely to access ADR with TMR.

TMR has collaborated with ACC and demonstrated the benefits of ADR. While there is always a place for determinative dispute resolution, the benefits of ADR should make this the preferred pathway for ACC. Some of the benefits that we have shown are:

- Efficiency

  Provides a very timely resolution for claimants without the need for case conferences, review hearing dates or waiting for a review decision, meaning that claimants are living in conflict for less time. If a customer is continuing their journey with ACC as a claimant, it means we can 'get back on track' and focus on their rehabilitation sooner. Our average time for claimants to have a resolution outcome is 28 days (less than a month). The average time for reviews is 130 days. A quicker timeframe reduces the cost impacts for ACC and the claimant.

  Our average time for resolution is 28 days.

- Effectiveness

  Outcomes reached thorough our service permeate wider than what would be achieved through a review decision. ADR allows everyone to be heard with an independent third party to assist in finding solutions – conciliators are experts in ACC and ACC law. Their experience, combined with their independence from ACC, is a trustworthy source of guidance for both the claimants and ACC. ADR promotes collaboration between ACC and claimants – we are working together to find the right solution instead of providing opposing views or "arguments" to a third party. It humanises the situation and shows that we are committed to resolving issues. Feedback we receive is that ADR has provided an opportunity to be heard, in an environment where people are comfortable in a way that addresses the actual problem. There is also no win-lose outcome as there is an agreed solution meaning it's a win-win for both ACC and the claimant. Currently over 90% of our outcomes reach a resolution. and 80% of our resolution agreements have the review withdrawn. For a review to be closed or withdrawn in less than 28 days rather than 130 days, must have significant positive impacts for ACC and claimants.

  98% of claimants are very satisfied with the ADR process at TMR.

  80% of ADR resolution agreements have the review withdrawn.

  Despite the benefits, the barriers to access remain. We submit that overcoming accessibility barriers is going to require systemic changes and/or legislative changes where ADR becomes the primary pathway to resolve an ACC dispute.

- Equity
  ADR can address equity in access to justice, far better than review particularly because collaboration can occur without impinging on the integrity of the review process. This can occur from an individual claimant level to systemic level changes. ADR enables collaboration and transparency, which in turn provide strategic learnings for improvement.

We draw attention to other schemes, such as the tertiary education dispute resolution rules[19], that have adopted models where consensus-based resolution occurs first before the determinative approach. Adoption of a similar approach should occur in the ACC scheme.

> *"The DRS operator must offer to use consensual methods unless, in the circumstances of the case unless there are good reasons not to offer to use them."*
>
> Part 1, 13(2) Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021

The State of Victoria in Australia has made changes to improve their workplace injury scheme where Minister for Workplace Safety Ingrid Stitt, stated: *"These reforms put workers at the centre of the dispute resolution process – empowering them to choose the best way to advance their claim to reach a fast and fair outcome and making sure no one falls through the cracks."* It is notable that we need to ensure ACC's claimants do not fall through the cracks of an inaccessible and inequitable justice system.

Currently the review isn't getting set-down or adjourned when at ADR with TMR, because of our timeliness, which allows ACC to still have time to then proceed to review if required. We therefore welcome changes to the regulations that will fully support an ADR pathway, which comes prior to review and that reduces or removes the barriers to access for people and ACC staff.

Submission to Question 26

Have you incurred costs as a result of undertaking ADR? What are these and did it impact on decisions to proceed with an external review?

TMR is contracted by ACC to provide ADR and our funding is from ACC through a set-fee structure[20]

We will answer this question through our experience and people's experiences in going through the ADR and review system.

The process for awarding costs is set-out in the ACC Act and the Regulations. There is currently no legislative or regulative structure in place for awarding costs associated with ADR. ACC have implemented a policy decision to apply the same amounts as set in the Regulations for ADR.

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[19] ***"The DRS operator must offer to use consensual methods unless, in the circumstances of the case, there are good reasons not to offer to use them."*** Part 1, 13(2) Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021
https://www.legislation.govt.nz/regulation/public/2021/0369/latest/whole.html#LMS563134

[20] This contract can be viewed on our website: Our ACC Relationship | Talk - Meet - Resolve | ACC Dispute Resolution (talkmeetresolve.co.nz)

We submit that costs and a cost structure need to be carefully considered to:

- ✓ ensure equity
- ✓ minimise the impacts of any inequity
- ✓ mature the scheme
- ✓ promote system level change to improve access to justice
- ✓ inflationary pressures that are not currently reflective of actual costs

These points all need to consider:

- **The Claimant (User of the Scheme)**
  People that represent themselves do incur costs. This can impact on their decision to continue to ADR. We have had people express that they 'can't do this anymore' (continue with the dispute), ACC has all the resources, and we can't compete with them. These statements are not new and are well recognised when one party is more fully resourced than another. When costs and decisions around costs impinge on the ability to obtain supporting medical evidence and access to justice, we have a very 'flawed' system. Claimants will also incur administration costs; just as formal representatives do. The system needs to consider such factors which can and do prevent access to justice. An example can be drawn in the costs associated with attending the meeting. A claimant that is recovered from a sprained ankle and wants to attend an in-person meeting may have significantly less costs and pressures to attend than a spinal-injured claimant that requires support persons. This same scenario could also apply in preparing their evidence to submit. There may be significantly more costs in compiling evidence for a spinal injury than for a sprained ankle claim.

- **The representative (the user of the scheme)**
  Please see below on complexity of the dispute.

- **Type of dispute**
  TMR receives referrals from ACC for ADR:
  - pre-review
  - with a 'live' review application
  - for Code of Claimants Rights issues
  - from the courts for ACC disputes at appeal where the Judge orders ADR

  The matters at dispute are varied but we have seen through data an increase in the complexity of matters being referred to us. We have a process for coding cases as standard or complex or exceptional. We would be prepared to share this information on a confidential basis if it would assist MBIE.

  Complex cases come with more costs for everyone and potentially, in the current system, leave people considerably out of pocket. Cases often take representatives more time to prepare the matter for ADR and they are at a considerable disadvantage both at the outset and then if complexity of the case increases.

  ADR, unlike review, brings benefit to the dispute in that the real 'heart' of the problem can be addressed. This may be that there are multiple issues to address including relationship issues between ACC and the claimant. This make ADR a much better approach for claimants and ACC as the 'real' problems can be resolved, unlike review where only the matter at review can be addressed. For example, weekly compensation often needs to address cover and there are often many other issues around medical assessments and fractured relationships with ACC. In ADR this can all be addressed and resolved through the one process whereas, at review, only

the weekly compensation decision can be decided. We submit that ADR disputes are more complex, and any cost structure needs to consider this.

There are currently review costs in the Regulations and none specified for ADR, so people have more of a chance in recuperating costs at review than for ADR.

Submission to Question 27

If a level of reimbursement for costs was to be included for ADR in the Regulations, what should be taken into consideration?

The scheme needs to mature and continue to mature, we respectfully submit that it has not done so in respect to ADR or costs.

We submit that Standard 2 of the GCDR Standards encompasses more than reimbursement of costs. We therefore submit that answer to this question needs consideration of:

> *Standard 2 of the GCDR Standards, requires the scheme to be properly resources, through the funding model, allocation and level of funding, competence, capacity building and growing maturity.*

- Access to justice
- Equity
- Efficiency
- Effectiveness
- The User (Claimant, representatives (formal and informal) of the Scheme
- The dispute (Simple and Complex cases pre review, live review, at appeal)
- An ADR Pathway (ADR shouldn't bear negative impacts from having a scheme that also has a review process and that adversarial process passings its flaws to the ADR pathway)
- Integrity of the review pathway (delineation between ADR and Review pathways)

To be involved in a dispute is stressful, even with all the benefits ADR brings, ADR alone cannot eliminate this stress. When the scheme compounds this stress for claimants and their representatives, in that they are not adequately compensated for the costs they have incurred, it is harder for the relationship to be restored with ACC. The impacts of inadequate reimbursement or no reimbursement, have more far-reaching consequences, psychologically, emotionally, and socio-economically.

As discussed earlier, ADR costs should address complexity of the case. We also submit that there are sometimes additional costs associated with the complexity. As an example, sometimes a second or third ADR meeting needs to occur and the costs that can be claimed under the regulations should make allowance for this.

Submission to Question 28

Would the inclusion of a level of reimbursement for ADR costs change your position on undertaking ADR in comparison to an external review?

We submit that from our experience and our data demonstrates that currently there exist many barriers to ADR. The ACC approach to using consensus-based services needs to mature and a whole-of system perspective lens needs to be applied. There is opportunity through section 328A of the ACC Act to set out a framework for ADR. We consider that this is required.

We submit that, 'yes', reimbursement for ADR costs would change peoples' position on undertaking ADR, as it is a current barrier, and it removes the inequity between review pathway and the ADR pathway.

We reiterate that cost is only one of the barriers to claimants and their representatives. A scheme that does not promote or even have a 'framework' for ADR is never going to be successful unless all the barriers are removed.

Submission to Question 22

Are there other costs, benefits or unintended consequences of the proposed changes that have not been considered in this document?

The prioritisation of ADR

The Discussion *Paper Proposed amendments to the Accident Compensation (Review Costs and Appeals) Regulations 2022*, dated March 2022 (the consultation paper) suggests a changing approach to ADR. We consider that it is appropriate to prioritise consensus-based dispute resolution for the following reasons:

- It better aligns with te ao Māori and tikanga based models than the existing review processes and this will assist in improving equity of access to justice and outcomes.
- It is provided in a person-centred way (rather than a "reviewer" centred way) and this improves agency and allows people to take an active part in the resolution of their dispute.
- The service is timely allowing cases to be resolved within, on average, 28 calendar days from referral to resolution.
- It is voluntary and agreement based, so those who are unable to reach agreement can still continue to access the review process.
- It has very high levels of satisfaction and maintains a net promotor score (NPS) of over +80.

The risk of perception of lack of transparency and system learning from disputes

It is also important to understand that there is a significant risk that is associated with this approach which must be incorporated into the regulatory system in that allegations could be made that requiring consensus-based methods as a first step could result in issues being "swept under the carpet" or simply "settlement factories". These types of argument are often raised as objections in access to justice literature in favour of courts (transparent and open justice) and against both consensus and adjudicative models of dispute resolution.

We recognise this and have developed three mechanisms to protect against this. The first is that the resolution agreements are not normally confidential. They are placed on a person's file and become

the official record of the conciliation. The second is that we have a process to identify and share insights and trends with stakeholders, for example, ACC, lawyers and advocates. The third is to publicly report on issues. We consider that this systemic learning will improve transparency and maintain public trust and confidence in our service. We use the first and second mechanisms in both ACC and Tertiary Education, however the third mechanism has been given legislative effect in the tertiary education system[21] through regulations but is missing from the ACC regulatory system.

We recommend including provisions in regulations to improve transparency and to avoid any perception developing that this approach would sweep systemic issues under the carpet or result in unmeritorious payments to simply stop disputes. We note that this approach will also allow us to meet the requirements under the GCDR frameworks and improve maturity of this sector.

Risks in relation to costs

The risks in relation to representative costs

A decision needs to be made about whether costs are set as a tariff (this is what people can expect to get regardless of the factors of the case) or a scale which sets out the type of representative.

A scale would consider:

- the type of cases (simple, standard and complex) and
- the tasks undertaken by the representative (lodging application, reading file, legal research,
- the preparation of case and client for the meeting).

If a scale is required, we consider that we have a role in the sector to collaborate on the development of this. We would be willing to work with stakeholders to produce a scale for consensus-based processes, based on these or other factors.

It must be remembered that the person-centred approach we operate does not require decisions and review applications in relation to specific issues before our service can be accessed. It is common for our meetings to address issues of cover and entitlement, or multiple covered injuries, or multiple entitlements, as well as relationship issues. In comparison, a reviewer's jurisdiction is limited only to the issues raised in the decision being challenged. Costs for conciliation may seem higher (on average) than review, however there are a number of factors that contribute to this, including the complexity of cases and the number of issues at conciliation.

If a cap with a scale or a tariff is put in place, it is essential that complex cases provide flexibility for costs. We only provide a consensus-based service, and any costs would need to be agreed by the parties. We note that in our first 1000 cases, we are not aware of any examples where parties did not agree on costs, and we consider the risk of this is low and can easily be managed.

The greatest risk is that the costs system is not effective in providing access to representation for people. As an operator of services, we decline to offer a definitive view of the rate that should be set, however we raise this risk as required by question 22.

[21] https://www.legislation.govt.nz/regulation/public/2021/0369/latest/LMS563163.html, https://www.legislation.govt.nz/regulation/public/2021/0369/latest/LMS563164.html

The risks in relation to medical evidence

There is a significant risk that increasing the expert evidence approach to $4,150 for one report only will not be effective at overcoming the barrier to expert evidence. The regulations must make it clear whether this is per report (as suggested by the calculation of the hourly rate by the number of hours) as is currently the case, or whether this is a total allowable for all reports in relation to a dispute.

We submit that in many cases, more than one report is required to resolve cover, or mixed disputes about cover and entitlements.

An independent process must be developed to improve accessibility and one option for this is an expert evidence trust proposed by other submitters. We note the GCDR standards require us to collaborate with others and creating accessible processes for expert evidence. We would like to improve maturity in relation to these standards.

The risks in relation to other costs

Prior to March 2020, we conducted the majority of cases face to face. We regularly travelled to regional areas to meet with clients at locations that are convenient to them as this improves the likelihood of them being able to put their best case forward.

Often people in rural communities incur costs in relation to travel. Travel costs for people using their own transport should be available at the appropriate rate of 79c/km.

We also consider it would assist people if clear indications were given in relation to cultural, accessibility or peer support and how this would be funded under this heading. Not doing so may cause disputes about what is the legislative intent.

Submission to Question 23

Do you think MBIE should conduct regular reviews of the maximum costs caps in the regulations?

Yes. We strongly agree that this should be reviewed annually. If the recommendation to implement a guideline committee to set the scale is established, this committee should also make recommendations to MBIE in relation to the maximum.

The most administratively efficient mechanism to do this is to provide for an annual inflation adjusted calculation (for example tied to the labour cost index for professionals) and then to have a three yearly review to ensure the rate is set at a level it provides for effective access to justice.

Conclusion

This discussion paper has asked us to comment specifically on costs and barriers associated with ACC dispute resolution pathways and more broadly about the place of ADR in the ACC scheme.

We have sought to provide you with insights to the current framework ACC applies in its dispute resolution scheme and our proposals to improve and innovate existing pathways to provide comprehensive access to justice for ACC clients.

We support many of the proposed changes and believe this is an appropriate juncture for ACC legislation (and regulations) to expressly imbed ADR in the dispute resolution pathway.

Over the past three years our service has proven a model whereby ACC clients and ACC have been able to achieve a client focussed, timely, equitable, efficient and cost-effective pathway for resolving disputes. The survey feedback from ACC clients and ACC staff has been overwhelmingly positive about the place and model of ADR service such that you can be confident in making it a central pillar of the way ACC engages with clients to resolve disputes.

Building trust and confidence in ACC's services and maintaining client relationships and engagement (notably with long-term injury clients) is critical to the ACC's ability to be successful in delivering its services.

Our responses to this discussion paper are intended to allow you to understand the factors that can bring ACC's dispute process in to line with the GCDR standards, provide better access to justice and improve and maintain engagement between ACC and its clients.

We would be happy to discuss these points further with you should you require.

Annex A

GCDR standards and capability areas – a framework for improving maturity

Standard 1: Consistent with Te Tiriti o Waitangi/ Treaty of Waitangi

1.1 Dispute Resolution Processes (Capability Area)

- 1.1.1 Awareness of Māori approaches to dispute resolution, incorporation of Te Ao Māori/Tikanga into DR processes
- 1.1.2 Consideration of Māori access in service design and delivery
- 1.1.3 Staff cultural capability and knowledge of Te Ao Māori
- 1.1.4 Processes to improve and retain cultural capability and knowledge of Te Ao Māori and tikanga Māori
- 1.1.5 Ensuring cultural safety of parties, participants, practitioners, and staff

1.2 Relationships with Māori (Capability Area)

- 1.2.1 Relationships and engagement with Māori/ Māori organisations to better their services for Māori users
- 1.2.2 Responsiveness of points of contact for Māori
- 1.2.3 Procurement - level of consideration of Māori in government procurement

1.3 Equitable outcomes (capability area)

- 1.3.1 Awareness of/ actions taken to address institutional racism/ structural discrimination and its impact upon affected groups
- 1.3.2 Action to mitigate/ address institutional racism/ structural discrimination and its impacts
- 1.3.3 Measurement activities are undertaken to understand effectiveness of services for Māori
- 1.3.4 Addressing disparities of access and outcomes for Māori

1.4 Māori-Crown relationship and Te Tiriti o Waitangi (capability area)

- 1.4.1 Understanding the importance of the Māori-Crown relationship and Te Tiriti o Waitangi
- 1.4.2 Understanding of their schemes relationship or obligations to the Te Tiriti o Waitangi and Māori-Crown relationship
- 1.4.3 Building and retaining organisational knowledge of Te Tiriti o Waitangi and Māori-Crown relationship

Standard 2: Accessible to all potential users

2.1 Build awareness (Capability area)

- 2.1.1 The extent to which & the ways in which the scheme engages in promotion/ awareness-raising activities.
- 2.1.2 The extent to which the scheme engages in the assessment of awareness of their scheme.
- 2.1.3 The extent to which & the ways in which the scheme provides information and resources

2.2 Facilitate access (capability area)

- 2.2.1 The extent to which the scheme understands the barriers to entry & provides support or resources to assist users to enter the scheme
- 2.2.2 To what extent are the application barriers addressed in scheme design
- 2.2.3 The extent to which the scheme ensures that users are directed to the correct place
- 2.2.4 The extent to which the scheme entry points are simplified & meet user needs

2.3 Equitable access (capability area)

- 2.3.1 The extent to which the scheme is aware of who is accessing it
- 2.3.2 The ways in which (if any) the scheme is ensuring equal access for different groups

2.4 Support and assistance (capability area)

- 2.4.1 Accommodating user needs in service design and delivery
- 2.4.2 Flexibility and responsiveness of service offerings e.g. online mediation, tikanga-based DR, etc.
- 2.4.3 Level of staff competency and training in relation to different user needs, and the systems in place to assess and support staff competency

Standard 3 – Impartial

3.1 Perceptions of users (capability area)

- 3.1.1 Understanding of users' views of impartiality
- 3.1.2 How feedback on users' views of impartiality is collected
- 3.1.3 How feedback on users' views of impartiality is used

3.2 Processes (capability area)

- 3.2.1 Publishing processes
- 3.2.2 Extent to which meeting procedural fairness requirements
- 3.2.3 Reasons provided for decisions

3.2.4 Assistance provided to parties

3.2.5 Quality controls

3.2.6 Availability of escalation pathways

3.3 Staff and practitioners (capability area)

3.3.1 Documented expectations of impartiality

3.3.2 Availability of training on impartiality

3.3.3 Availability of complaints processes

Standard 4 – Independent

4.1 Perceptions of users (capability area)

4.1.1 How feedback on users' views of independence is collected

4.1.2 Understanding of users' views of independence

4.1.3 How feedback on users' views of independence is used

4.2 Funding and Governance (capability area)

4.2.1 Independence of funding arrangements

4.2.2 Independence of governance arrangements

4.3 Processes (capability area)

4.3.1 Independence in the design and operation of processes

4.3.2 Cultural responsiveness of processes

4.4 Staff and Practitioners (capability area)

4.4.1 Process for selecting staff

4.4.2 Assignment of work

4.4.3 Policies and processes to protect staff

4.5 Conflicts of interest (capability area)

4.5.1 Policies and processes on conflict of interest

Standard 5 – Information about parties and disputes is used appropriately

5.1 Confidentiality (capability area)

5.1.1 Policies and practices on confidentiality

5.1.2 Transparency of policies and practices on confidentiality

5.2 Privacy (capability area)

5.2.1 Policies and practices on privacy

5.2.2 Transparency of policies and practices on confidentiality

5.3 Official Information Act (capability area)

5.3.1 Application of the Official Information Act 1982 (OIA)

Standard 6 – Timely

6.1 Consideration of timeliness in design and operation (capability area)

6.1.1 Consideration of timeliness in design

6.1.2 Consideration of timeliness in operation

6.2 Reducing delays (capability area)

6.2.1 Reducing preventable delays

6.3 Reasonable timeframes/limits (capability area)

6.3.1 Setting of timeframes/limits

6.3.2 Flexibility of timeframes/limits

6.3.3 Publication of timeframes/limits

6.4 Information about progress (capability area)

6.4.1 Systems of tracking progress

6.4.2 Access to information about progress

6.5 Monitoring, evaluation and reporting (capability area)

6.5.1 Collection of data on timeliness

6.5.2 Analysis of data on timeliness

6.5.3 Reporting of data on timeliness

Standard 7 – Promotes early resolution and supports prevention

7.1 Supporting early resolution (capability area)

7.1.1 Provision of information, resources or support to assist people to resolve disputes early and the extent to which these are being assessed

7.1.2 Processes in place to support early resolution of disputes

7.2 Data and Monitoring (capability area)

7.2.1 Data collection and monitoring practices

7.2.2 Mechanisms to identify trends, system issues or root causes and extent to which insights from these is shared

7.3 Sector Coordination (capability area)

7.3.1 Coordination and collaboration with relevant sector actors

7.3.2 Practices in place to gather and share insights with sector actors

Standard 8 – Properly resourced to carry out the service

8.1 Funding model (capability area)

8.1.1 Rationale for the funding model

8.1.2 Transparency of the funding arrangements

8.2 Allocation and Level of Funding (capability area)

8.2.1 Setting funding level

8.2.2 Allocation decisions

8.3 Competence (capability area)

8.3.1 Level of competence

8.3.2 Understanding competence requirements

8.3.3 Growing competence

8.4 Capacity Building (capability area)

8.4.1 Understanding of current capacity

8.4.2 Planning for future capacity

8.5 Growing Maturity (capability area)

8.5.1 Understanding of current maturity

8.5.2 Planning to maintain and grow maturity

Standard 9 – Accountable through monitoring and data stewardship

9.1 Data capability and data practices (capability area)

9.1.1 Resourcing - Roles

9.1.2 Data Collection, Storage

9.1.3 Use of Data to Support Decision-making

9.1.4 Maintenance of Datasets and Data Assets

9.1.5 Organisational Data Governance and Stewardship

9.1.6 Measuring performance

9.2 Availability, accessibility, and openness of data (capability area)

9.2.1 Data sharing/ access protocols

9.3 Trust - Partnership, Participation and Protection (capability area)

9.3.1 Partnership with Tāngata Whenua

9.3.2 Partnership with all

9.3.3 Engendering Te Ao Māori in data practices

9.3.4 Design of Data Systems

9.3.5 Privacy

9.3.6 Māori Data Sovereignty

9.3.7 Transparency of data practices - communicating to others

9.3.8 Measuring Trust – Assurance