

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

