

10 March 2016

Accident Compensation Policy
Discussion document submissions
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email: accidentcompensation@mbie.govt.nz

Accident Compensation Appeal Tribunal

Dear Sir/Madam

The New Zealand Medical Association (NZMA) wishes to provide feedback on the above consultation. The NZMA is New Zealand's largest medical organisation, with more than 5,500 members from all areas of medicine. The NZMA aims to provide leadership of the medical profession, and to promote professional unity and values, and the health of all New Zealanders.

We note that there are a number of stages in the ACC decision, review and appeal process, and that the current consultation proposes replacing the District Court with a Tribunal for appeals on questions of law and fact. We note that a major driver of the proposal is the long waiting times for appeal hearings; it takes around two years for accident compensation appeals to be dealt with by the District Court. Other objectives of the proposed change include to provide consistency in decision making processes, and to promote trust and confidence in the decision makers.

The NZMA is generally supportive of the proposal to shift the appeals process to a Tribunal, especially if this leads to an improvement in the consistency and quality of decisions. Much will depend on the composition of, and process of appointment to, the Tribunal. Our preference is for Option 3—where eight to ten specialist Tribunal members would be available to hear appeals and develop expertise in accident compensation legislation, process and disputes. We note that the legislative qualifications to become a member of the Tribunal would be the same as a District Court Judge. We also note that the Tribunal could exercise its power by one member sitting alone or two members sitting together. We request further information on how the members of the Tribunal would be appointed.

A major barrier to appeals under the existing system is the cost to the appellant. Not everyone with an unsatisfactory result with ACC is in a position to fund an appeal at a District Court. We consider a Tribunal to be more in keeping with ACC's insurance model (as opposed to the litigation-based court system). We understand that the proposed Tribunal is likely to operate in a more informal format than the District Court, and, as such, some appellants will not feel the need to engage the services of a lawyer. Widened accessibility to the Tribunals would be a positive outcome. While the proposed Tribunal should help address the current backlog of cases, it may not have a major impact on the timeliness of how cases proceed. Our understanding is that most delays in the appeals process are due to adjournments while evidence is sought—mainly medical reports—and that these delays are likely to continue even with the Tribunal system.

A potential drawback of the Tribunal system could be the lack of independence (actual or perceived) of the decision makers from ACC. As the Tribunal members become ACC experts, there is a risk they could be drawn into ACC culture, with reduced independence of the Tribunal as a decision-making entity. We note that the first two iterations of ACC legislation (1972 and 1982 Acts) both had appeal provisions that were very similar to the proposed Tribunal. Yet we understand that consumers (and others) lobbied to have the ACC Appeals Authority replaced in the 1992 legislation so that claimants could have a legal avenue outside the ACC system. Given that the current proposal appears to reflect a shift back to a system that was abandoned, we would like to request further information about the disestablishment of the Appeals Authority in the 1992 legislation.

If a Tribunal is established, we recommend that the results of its work be measured and reported after a finite period—12 months, for example. As the primary driver for establishing a Tribunal is to reduce waiting times for hearing appeals, it is imperative to demonstrate that this goal is achieved. The costs of a Tribunal will be substantial, especially as our preferred Option 3 will involve up to 10 lawyers (albeit working part-time). Outcomes such as enhanced patient satisfaction, reduced appeal waiting times and expenses incurred, can all be measured and benefits apportioned. If waiting times diminish and costs are contained, then a new Accident Compensation Appeal Tribunal may prove to be very effective.

We hope that our feedback has been helpful and look forward to receiving further information relating to our queries.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Child', written in a cursive style.

Dr Stephen Child
NZMA Chair