

Report finds serious barriers to justice for those challenging ACC decisions

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A team of researchers working with the University of Otago Legal Issues Centre, and in partnership with the support group Acclaim Otago, has found serious barriers to access to justice for people challenging Accident Compensation Corporation (ACC) decisions through the court system.

The report, entitled “Understanding the problem: an analysis of ACC appeals processes to identify barriers to access to justice for injured New Zealanders”, has been delivered to the Minister for ACC, Hon Nikki Kaye. The research group will be meeting with the Minister in the next week to discuss the report and recommendations as the basis for driving reform.

Professor Mark Henaghan, University of Otago Dean of Law and Acting Director for the Legal Issues Centre, says that the researchers examined more than 500 written decisions of the District Court, High Court and Court of Appeal that were decided between 2009 and 2015. The group’s aim was to identify barriers to access to justice faced by people seeking to dispute ACC decisions through the statutory dispute resolution process in the courts.

The New Zealand Law Foundation-funded research found four key ways that claimants were not getting access to justice and where reform was needed to address these barriers:

1. Insufficient access to the law, including to publicly available legal information, to court decisions often not using the ACC statute or other similar cases, and to basic protections under the ACC legislation;
2. Getting access to evidence was often difficult, including issues with obtaining relevant medical evidence and the lack of fair principles of evidence law;
3. Access to legal representation in the form of an experienced lawyer to defend the claimant’s interests and test ACC’s arguments; and
4. Claimants encountering the sense of not “being heard” and the feeling that they were not given a fair hearing by an independent judicial officer based on the

evidence and the law.

The report's authors were concerned by a lack of any real data on the problems with the current process, especially given the proposal to abolish access to the District Court and replace it with strike-out provisions in a new ACC Tribunal.

“Officials were proposing to treat the symptoms of cost and delay, rather than the root causes of those problems; the access to justice barriers that generate inefficiencies,” says Dunedin lawyer Mr Warren Forster, the lead author of the report.

The research was supplemented by a survey of more than 600 injured people conducted in preparing Acclaim Otago's 2014 shadow report to the United Nations Committee on the Rights of Persons with Disabilities. That report received endorsement from the overwhelming majority of representatives of injured people in New Zealand and resulted in recommendations from the UN Committee that the Government should consult on the tribunal proposal and reconsider the dispute resolution system from a human rights perspective.

“Access to justice relates to an area of legal scholarship that is receiving increasing national and global attention. In this study, the researchers sought to identify whether ACC claimants had come to Court with what they needed to present their case to the judge,” says Professor Henaghan.

“This research carried out by Mr Forster and colleagues working with our Legal Issues Centre contributes much needed analysis, knowledge and recommendations that will make strong impact on policy development and law reform to help claimants enforce their rights,” says Professor Henaghan.

The report has been endorsed by leading practitioners in the ACC jurisdiction, including Peter Sara, John Miller, and Philip Schmidt. The foreword by Court of Appeal judge and keynote speaker for the 2014 NZ Law Foundation Ethel Benjamin Commemorative Address, the Hon Justice Winkelmann, praised this report as a helpful addition to research about present problems with access to justice.

“As the authors, we look forward to a constructive dialogue with other stakeholders in the ACC system. Further ahead in the coming months, we intend to organise a public forum to engage broadly and inclusively about policy and legal options to improve access to justice for ACC claimants,” says Mr Forster.

The report is available at www.otago.ac.nz/law/research/legalissues/news.

The University of Otago Legal Issues Centre was established through the vision and generosity of the Gama Foundation, together with the University of Otago Foundation Trust, to serve as the country's first research centre focusing on improving the legal system.

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