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Research finds overwhelming barriers to access to justice for injured people challenging ACC

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Research carried out by a team of researchers in partnership with Acclaim Otago (Inc) has found serious barriers to access to justice for people challenging ACC decisions through the court system. The research was funded by a generous grant from the New Zealand Law Foundation.

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, for discussion and comment.

Acclaim Otago was formed in 2003 to provide support to people experiencing ACC’s harsh work capacity testing regime. Many of their members have been through the ACC dispute resolution and appeals process.

The research was begun when the Acclaim group became concerned that the Government had secret plans to abolish access to the District Court in favour of an ACC Tribunal. An Official Information Act request revealed that the proposed new Tribunal would include rigid strike-out provisions giving claimants only 60 days to prepare their case, says Mr Forster.

In December 2010, it was reported in the media that ACC had stated that, “Sometimes the review and court cases go in ACC’s favour and sometimes they go in the claimant’s favour. This is how a fair system works and ACC abides by the review or court decisions.”

“Acclaim Otago’s experience and this research has shown it is not a fair system,” says Dr Denise Powell, spokesperson for Acclaim Otago.

The research report that has been published shows people disputing ACC decisions lack the resources required to present an arguable case. The report found 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 also found that ACC enjoys many advantages that come from being constantly engaged in litigation while also being the manager of the ACC scheme.

“This systemically disadvantages individual claimants, who are unfamiliar with what they need to do to succeed in court. Disputes proceed on the assumption that it is a fair system but this study identifies many aspects of the system which do not operate in a fair way,” says Mr Forster.

The principal authors of the report are Mr Warren Forster, Mr Tom Barraclough (who had also co-authored Acclaim Otago Inc’s recent UN report with Dr Denise Powell) and Mr Tihomir Mijatov. The research team included Benjamin Bielski and Curtis Barnes, whose participation was supported by a scholarship from Acclaim Otago with funding from the New Zealand Law Foundation.

The report was funded by the New Zealand Law Foundation and produced in collaboration with the University of Otago Legal Issues Centre.

Law Foundation Director Lynda Hagen says “The grant for the Acclaim Otago ACC report continues the Foundation’s support for projects that improve access to the law for disadvantaged groups of people, including the production of accessible legal resources for groups that can struggle with navigating the legal system, such as people with intellectual disabilities, the deaf and hearing-impaired, ethnic minority groups, and young people.”

The authors look forward to a constructive dialogue with stakeholders in the ACC system and advancing towards a human rights focus for the ACC system. They hope the Government will engage in further consultation with injured people under the Convention on the Rights of Persons with Disabilities before introducing legislation to Parliament.

The report is available from Acclaim Otago’s website at

< <http://acclaimotago.org/wp-content/uploads/2015/07/Understanding-the-problem-Access-to-Justice-and-ACC-appeals-9-July-2015.pdf>>

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