

MEDIA STATEMENT

Access to justice barriers validated: who will fix them?

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The Government has today acknowledged that the four themes identified in Acclaim Otago's 2015 access to justice report are valid. It has also deferred the ACC tribunal proposal until 2019, and acknowledged that delays were more complicated than the Government had been previously advised.

The Minister for ACC, Hon Nikki Kaye, has demonstrated courage and commitment to meaningful change. Her decision to commission Miriam Dean CNZM QC's report was an important step in improving trust and confidence.

The question now is "who is going to do what to fix the problems?" Cabinet has left much of that up to ACC, who has its own incentives in this process, and historically low levels of public trust and confidence.

Who is going to be responsible for addressing ACC's systemic problems?

Mr Forster, lead researcher, says: "The Government has put forward a plan that relies on ACC itself to fix the problems, but ACC is wearing too many different hats. For example, the medical working group is a once-in-a-generation chance to resolve an issue that has plagued ACC for decades. What interest does ACC have in funding its opponents?"

Dr Denise Powell, co-author, adds: "The Dean report does not show that the problems have been solved. Rather, it identifies serious underlying issues that have built up over a long period of time. If these are to be solved it requires that ACC works collaboratively with many different stakeholders and that there is independent oversight of the process."

Dr Powell continues: "We have to remember that to get to this point has required Acclaim to take access to justice issues to the UN and undertake a large scale research project. Up until this independent report our claims had fallen on deaf ears at ACC."

Mr Forster says: "We are currently researching solutions to these wider problems and expect to report by later this year, but we can say that under the current arrangements, the Minister cannot be responsible for the operational issues that keep arising. There need to be institutional arrangements to prevent, resolve and learn from these huge systemic problems that keep arising. If it's not going to be the Minister, and the Board and Chief Executive are not appropriately placed to do it, then there needs to be some independent body."

Review costs consultation

The Ministry has also issued a consultation document on review costs, which are payable to reimburse legal and evidential costs when claimants attend a review hearing. Ms Dean's report makes important findings that while lawyers play a crucial role in narrowing disputes, less than 1% of all lawyers practice in ACC law.

Mr Forster says: "This consultation document freely acknowledges that people have been complaining about review costs for years, but they haven't even been adjusted for inflation since 2008. The review costs failure raises some real questions for ACC and its ability to

handle these reforms going forward. Was ACC aware that this was a problem? Why hadn't the issue been addressed before now? Who has benefited from this failure? Who was responsible for ensuring that adjustments would be sufficient to stop market failure for medical and legal services at review?"

Another real concern raised by Mr Forster is access to data and information held by ACC to inform the process going forward. At page 14 the Dean Report expresses "[surprise] ACC could not readily provide comprehensive and reliable data on its cover and entitlements decisions" and "that ACC does not have at least some general idea of the total costs of defending disputes."

Mr Forster continues: "To my knowledge, ACC doesn't publicise how much it pays in review costs to claimants, or how much it pays its own legal advisors. All costs have to be authorised, and ACC does have a payment code for that purpose, but the Cabinet paper only records a figure of "around 2 million dollars" in review costs paid to claimants. Can the Board give an exact figure to the Minister on how much is spent on legal costs?"

He concludes: "We need ACC to be able to account for public funds and we need to know how much ACC is paying its internal and external representatives for similar services. Without that information, we can't have a proper discussion about what a level playing field looks like."

This is a historic point for the ACC scheme and we welcome any opportunity to work alongside ACC and the other lead agencies to develop robust and transparent solutions to the confirmed barriers to access to justice. But we reiterate that independent oversight is required to ensure timely and genuine resolution of the access to justice problems for injured people.

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