



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Currently accident compensation appeals before the District Court have an average age of 669 days. This is far too long for people waiting for their accident compensation claim to be resolved.

As part of a package of reforms designed to improve court and tribunal services, the Government agreed in April 2014 to establish a new Accident Compensation Appeal Tribunal. The aim of the proposed Tribunal is to reduce the time it takes to deal with accident compensation appeals, while maintaining a fair process.

After listening to stakeholders' concerns, the Government agreed in June 2015 to refresh its approach to take into account the work ACC has been doing to resolve accident compensation disputes early on, consider different options for dealing with accident compensation appeals, and allow for targeted consultation with key stakeholders.

The number of reviews of ACC decisions has decreased steadily, as has the number of cases going to the District Court. However, there is more work to be done to help injured people when they are disputing the decision made by ACC on their claim.

If a system wide approach could be taken to further decrease the number of accident compensation reviews and appeals then this could help ease the pressure on the court system, which was one of the drivers for reform of the current appeal arrangements. Allowing time for more consultation and evaluation provides the opportunity to take account of all the factors affecting accident compensation appeals, before the Government decides whether to progress the Tribunal. It also provides an opportunity to listen to key stakeholders and see if ways can be found to improve the way claimants are treated in accident compensation appeals.

I am also interested in the bigger picture, and I have asked the Ministry of Business, Innovation & Employment (who are conducting consultation on my behalf) to commission an independent review of the issues raised in a report released in July 2015 by the advocacy group Acclaim Otago. The review will be carried out by Miriam Dean QC, a recognised expert in both formal advocacy and alternative dispute resolution.

You have been identified as a key stakeholder, and I am interested in hearing your views both through submissions and in person where possible. You are welcome to share and discuss this document with your stakeholders, and to reflect these views in your submission.

Details of how to provide your views to the Ministry of Business, Innovation and Employment are included in the '*How to have your say*' my section of this document.

Once the consultation is completed, the Government will consider whether to continue with the establishment of the Tribunal.

I welcome your input into this matter.

Hon Nikki Kaye
Minister for ACC
December 2015

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About this document

Purpose

The Government agreed in June 2015 to targeted consultation on the proposed Accident Compensation Appeal Tribunal. This discussion document seeks your feedback on the Tribunal. It is designed to gather information from key stakeholders to ensure the proposed system best meets the needs of people involved in the accident compensation appeal process.

This paper seeks feedback on two main areas:

- who should be the decision makers for accident compensation appeals - District Court Judges or Tribunal Members
- what rules and procedures should apply to accident compensation appeals.

The Government is also interested in the wider issues relating to accident compensation dispute resolution, although these are not the direct focus for this paper.

The structure of this document

This document commences by outlining the purpose of the discussion document, how to have your say and what happens next. It then describes the background leading up to the development of the discussion document and the objectives of consultation. The document then considers the problem to be addressed, provides an outline of ongoing work to reduce the number of accident compensation disputes, and describes the options identified to date.

At the end of each section and at the end of the discussion document, you will be asked ‘What do you think?’ There are questions that we would like you to consider when you make your

submission. You do not have to answer any particular questions and can provide comments that do not directly respond to any of the questions in the document.

How to have your say

MBIE is co-ordinating consultation on behalf of the Minister for ACC.

You are invited to make a submission on this discussion document by **5pm on Friday 11 March 2016**.

We encourage you to give your views on the questions in this document (listed throughout the document and repeated at page 11) and to provide any other comments you may have about the matters discussed. If you wish to raise further issues not covered in this document please take the opportunity to do so.

- The email address is: accidentcompensation@mbie.govt.nz
- The postal address is:

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

Publication of submissions

MBIE may publish your submission or a summary of submissions on MBIE's website. Please clearly indicate in your submission if you consider that any part of your submission should be withheld, including your name or the name of your organisation.

All submissions will be subject to the Official Information Act 1982. If you would object to the release of any information in your submission, please indicate which part (or parts) you consider should be withheld together with your reasons for withholding the information. MBIE will take such objections into account when responding to requests under the Official Information Act 1982.

Any personal information you supply to MBIE in the course of making a submission will be used by MBIE only in relation to the matters covered by this document.

What happens next

MBIE will analyse the submissions it receives in consultation with the Ministry of Justice. MBIE is responsible for developing accident compensation policy and the Ministry of Justice is responsible for developing courts and tribunals policy. There will then be a ministerial report back to Cabinet on the results of the consultation process towards the middle of next year.

If you have any questions about any aspects of the submission process you can contact us at accidentcompensation@mbie.govt.nz

Introduction – accident compensation appeals in the District Court

In April 2014, the Government agreed to the establishment of the Tribunal to hear accident compensation appeals. This proposal was part of reforms to improve court and tribunal services.

Currently accident compensation appeals are heard by the District Court. A number of stakeholders have raised concerns about shifting accident compensation appeals from the District Court to the proposed Tribunal.

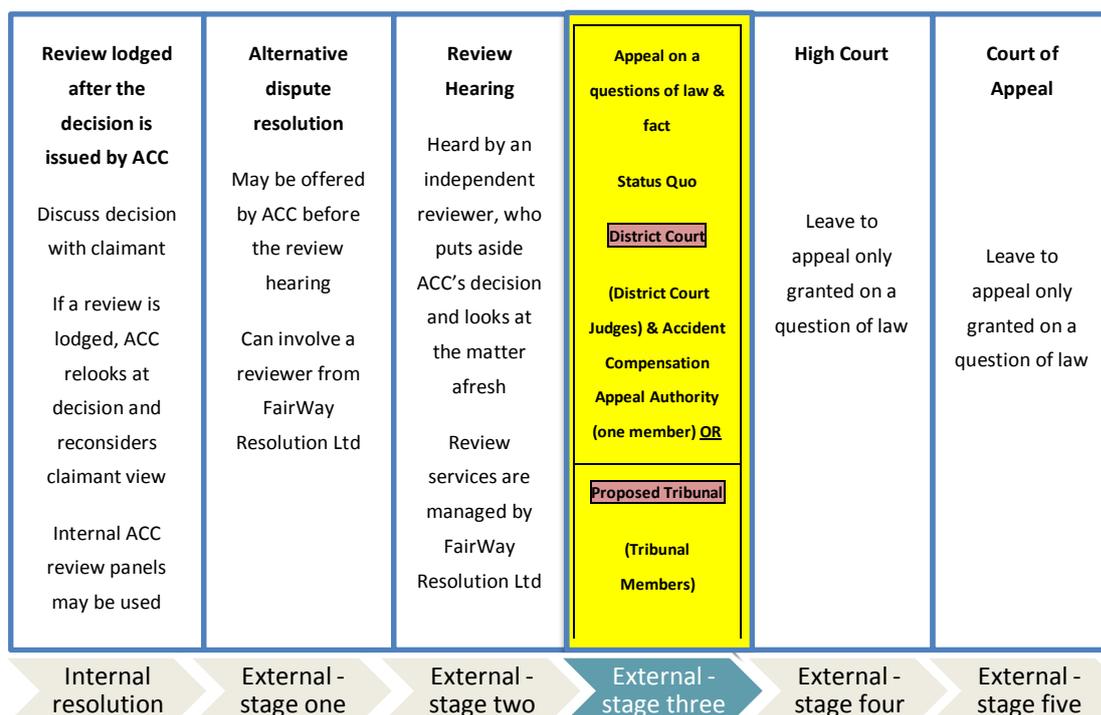
What are accident compensation appeals?

When a claim for accident compensation is made, ACC makes a decision on the claim. If the claimant does not agree with ACC's decision they can apply for a review. The review is external to ACC and is carried out by an independent reviewer. If a person is unhappy with the reviewer's decision they can appeal to the District Court. Appeals are usually made by a claimant or ACC, but there are other people who can appeal, for example an employer.

How does the District Court fit into the dispute resolution process?

The highlighted box below shows where the District Court fits into the dispute resolution process.

Decision, review and appeals process



Where would the Tribunal feature in the dispute resolution of accident compensation claims?

The Tribunal would replace the District Court in the highlighted box above.

Can a person go directly to appeal?

No. A review hearing is a compulsory step in the dispute resolution process.

Who currently makes decisions on appeals?

Most accident compensation appeals are heard by District Court Judges. A very small number of appeals are heard by a single member Accident Compensation Appeal Authority for the few remaining cases that must be decided under earlier accident compensation laws.

What are the rules for dealing with accident compensation appeals?

Most of the rules for appeals are set out in the accident compensation legislation. District Court Judges can hear any evidence they see fit. They may consider a wider range of evidence in accident compensation appeals than in cases which have stricter rules about evidence such as criminal cases. There are no rules in the legislation about how long ACC or a claimant is allowed to take to provide submissions.

How formal is the current process?

Accident compensation appeals are currently run much like a tribunal. Appeals are sometimes heard on the basis of written submissions rather than witnesses being called and can be held in venues other than courtrooms.

What is going to happen to the Accident Compensation Appeal Authority?

The Government intends to eventually disestablish the Authority. Any remaining cases will be heard by the District Courts (if the Government decides not to establish the Tribunal) or the Tribunal (if the Government decides to establish the Tribunal).

Objectives of proposed changes

We have developed a set of objectives to guide the discussion when considering who should be the decision maker for accident compensation appeals.

These objectives are to:

- Reduce waiting time for the hearing of accident compensation appeals
- Provide for the oversight of and consistency in decision making processes for accident compensation appeals
- Promote trust and confidence in the people who are making decisions on accident compensation appeals
- Be consistent with existing accident compensation appeal rights
- Be consistent with the United Nations Convention on the Rights of Persons with Disabilities
- Be cost effective in the use of public resources, including ACC funding

Options not considered in this paper

In developing this paper, MBIE has considered other options for dealing with accident compensation appeals such as:

- Limiting the grounds for accident compensation appeals.
- Creating a right of appeal to both the District Court and the Tribunal for a limited time.
- Replacing review hearings with the Tribunal and retaining the District Court for appeals.

This paper does not seek feedback on these options because they are unlikely to reduce waiting times, protect existing substantive appeal rights or be cost effective.

Related work

There are related policies and areas of work which are not the direct focus for this discussion paper but interact with it. In particular, work being carried out on ACC decision making processes and consideration of whether any enhancements could be made to the wider dispute resolution process for accident compensation claims. Work underway across ACC to improve client outcomes and experiences include the:

- Alternative dispute resolution trial to be rolled out nationally by December 2015
- Customer feedback project, established to improve services as a result of receiving complaints
- Customer service optimisation project which is implementing a more client-centric and streamlined claims management process to enable clients to quickly receive the help they need.

In July 2015 the Minister for ACC announced a review of the regulations which set the rates paid to legal and medical professionals for the work they do as part of ACC reviews. This was followed up by the Minister for ACC announcing in December 2015 that an independent review of the issues raised in a report by Acclaim Otago will be carried out.

Out of scope

This paper does not consider the following parts of the dispute resolution process:

- Review hearings
- Appeals to the High Court and Court of Appeal
- The availability of legal aid for accident compensation claimants
- The funding of specialist reports for accident compensation appeals
- The overall design of the dispute resolution process under the accident compensation legislation

District Court Appeals – the problem

It takes around two years for accident compensation appeals to be dealt with by the District Court.

Most accident compensation appeals are heard by District Court Judges who are supported by the Accident Compensation Appeals District Court Registry (the Registry). As of July 2015, the average age of accident compensation appeal cases is 669 days. The Ministry of Justice estimates it takes an average of 500 days for appellants to file their submissions in support of an appeal.

Can more District Court Judges be allocated to hear accident compensation appeals?

The allocation of District Court Judges to cases is under the control of the Chief District Court Judge. District Court Judges hear a variety of criminal and civil cases. The allocation of judges requires consideration of all court users, such as victims and witnesses of crime, defendants waiting in custody, and children and family members involved in Family Court cases, all of whom also have an expectation of timely access to court proceedings.

Who pays for the administrative costs of accident compensation appeals?

ACC pays for the administrative costs of District Court appeals, which cost around \$2 million per year.

Work to improve early dispute resolution and reduce the number of accident compensation appeals

ACC has been working on the early resolution of accident compensation disputes. The number of reviews of ACC decisions has decreased steadily from around 10,000 a year to 6,000 a year. There has also been a drop in the number of accident compensation appeals filed in the Registry, from 889 in 2010 to 442 in 2014.

For example, an Early Resolution trial was piloted in six ACC branches from April to December 2014 and focussed on encouraging claimants and ACC to participate in alternative dispute resolution before going to a review hearing. Since the trial started, the resolution rate for cases at branches participating in the trial has increased from 14% to 38%.

ACC has decided to roll out the Early Resolution trial across all its branches by the end of this year because the evaluation of this trial in March 2015 indicates the initiative may further reduce the total number of cases being reviewed.

Fewer reviews mean that there may be a further reduction in the number of accident compensation appeals going to the District Court. Further work will be carried out to evaluate whether these initiatives can substantially and sustainably reduce the average age of appeals. This would take the pressure off the District Court, which may affect whether or not to establish the Tribunal.

Other related work such as the review of the regulations which sets the rates paid to medical and legal professionals for review hearings may also impact on reducing the numbers of accident compensation disputes progressing to the courts.

Accident compensation appeals – the options

Option 1 - Retain the District Court and the current rules for dealing with accident compensation appeals (status quo)

The decision maker

District Court Judges are considered expert decisions makers. District Court Judges must have at least 7 years' experience as a qualified and registered lawyer.

District Court Judges who regularly decide on accident compensation appeals develop expertise in accident compensation legislation, process and disputes.

Procedures and processes

The rules currently applying to accident compensation appeals are relatively informal and allow the District Court to operate like a tribunal.

Timing

The hearing of accident compensation appeals cannot necessarily be resourced with sufficient District Court Judges to be able to decrease the waiting time for a hearing substantially down from 2 years.

Initiatives are underway by ACC to resolve disputes earlier but it is unclear whether these initiatives will sustainably decrease the number of accident compensation appeals to the District Court.

What do you think?

Are you aware of long waits for accident compensation appeals to be heard by a District Court Judge?

If so, what in your opinion are the main reasons for delay in the hearing of appeals?

Would you prefer for cases to be heard by a District Court Judge? Please explain the reason for your preference.

Option 2 - Retain the District Court and change the rules for dealing with accident compensation appeals

One option to decrease the time it takes for appeals to be resolved in the District Court is to introduce timeframes for the appellant and respondent to file their submissions and for the filing of the notices of appeal.

These reduced timeframes could be as set out in the table under Option 3 below.

What do you think?

Do you think appellants' and/or respondents' submissions in support of accident compensation appeals should have a time limit? If so, what would be a workable time limit for the filing of submissions on accident compensation appeals? If not, why not?

Do you think there should be a time limit for asking for more time to file an appeal? If so, what would be a workable time limit for asking for more time to file an appeal? If not, why not?

Do you believe other changes to the District Court processes are necessary?

Option 3 - Accident Compensation Appeal Tribunal

The decision maker

A specialist tribunal is generally appropriate for first appeals from decision makers in narrow fields or in cases that require technical expertise on the part of the decision maker rather than a court such as the District Court which deals with general matters of criminal or civil law.

Analogous specialist tribunals effectively and efficiently deal with claims of a similar complexity and monetary value to accident compensation appeals, such as the Taxation Review Authority, the Weathertight Homes Tribunal and the Social Security Appeal Authority.

Eight to ten specialist Tribunal members would be available to hear appeals and develop expertise in accident compensation legislation, process and disputes. This is an increase compared with the equivalent of slightly under three full time District Court Judges available to hear ACC cases (during the 2014 year). The legislative qualifications to become a member of the

Tribunal would be the same as a District Court Judge: both are required to have at least 7 years experience as a qualified and registered lawyer.

The Chair of the Tribunal would be full time and responsible for:

- Ensuring the orderly and efficient conduct of the Tribunal’s business
- Regulating Tribunal procedures, including the issue of practice notes
- Producing an annual report of the Tribunal
- Overseeing the administrative performance of the Tribunal, including consistency of decision making

Apart from the Chair, the Tribunal members would be part time. One member would be appointed as the Deputy Chair, which would also be a part time position.

Apart from the Chair, members would be paid for their time only rather than receiving a salary.

The Tribunal could exercise its powers by one member sitting alone or two members sitting together.

The procedural rules

The Tribunal would have substantively similar procedural rules to the rules in the District Court for accident compensation appeals.

The main procedural changes would be timeframes:

Current Rule	Proposed Rule
A notice of appeal must be filed within 28 calendar days after the review decision.	A notice of appeal must be filed within 20 working days of the review decision.
A District Court may accept a notice of appeal within any longer time.	An extension application must be filed within 60 working days of the review decision. The Tribunal may grant one extension of time for filing an appeal notice if it considers there are exceptional circumstances justifying the extension.
No time limit for filing submissions in support of appeal	An appellant must file submissions within 60 working days after the Tribunal receives the appeal notice. The Tribunal may grant one extension of time if it considers there are exceptional circumstances justifying the extension. The appeal may be dismissed if the appellant has failed to file submissions within the time for filing submissions (which includes any extension of time).

Timing

The allocation of appeals among Tribunal members could be adjusted to ensure timely resolution of cases and reduce the average time taken to determine appeals from over 650 days down to 250 days.

What do you think?

Would you prefer for cases to be heard by a specialist Tribunal Member? Please explain the reason for your preference.

Option 4 - Modifying the proposed AC Appeal Tribunal – led by District Court Judge

Chair

Option 3 could be modified to require a District Court Judge (either warranted or retired) to be the Chair of the Tribunal.

This would ensure oversight of accident compensation appeals by a District Court Judge but it would reduce the pool of applicants available for appointment as the Chair.

Legislative timeframes

The proposal approved by Cabinet in April 2014 included a 60 working day legislative timeframe for the appellant to file submissions, with the ability to extend this timeframe in exceptional circumstances. A timeframe could also be imposed on the respondent, which is usually ACC.

A practice note currently requests that respondents file submissions within 28 days, but this is not a legislative requirement.

What do you think?

If the Tribunal were established:

Do you believe the Tribunal Chair should be a Tribunal member, District Court Judge or retired District Court Judge? Please explain your reasoning.

Do you think appellants' and/or respondents' submissions in support of accident compensation appeals should have a time limit? If so, what would be a workable time limit for the filing of submissions on accident compensation appeals? If not, why not?

Do you think there should be a time limit for asking for more time to file an appeal? If so, what would be a workable time limit for asking for more time to file an appeal? If not, why not?

What do you think? Summary of questions

1. Are you aware of clients experiencing a long wait for accident compensation appeals to be heard by a District Court Judge?
2. If so, what are the main reasons for delay in the hearing of appeals?
3. Would you prefer for cases to be heard by a District Court Judge or a specialist Tribunal Member? Please explain the reason for your preference.

If the District Court were retained:

4. Do you think appellants' and/or respondents' submissions in support of accident compensation appeals should have a time limit? If so, what would be a workable time limit for the filing of submissions on accident compensation appeals? If not, why not?
5. Do you think there should be a time limit for asking for more time to file an appeal? If so, what would be a workable time limit for asking for more time to file an appeal? If not, why not?
6. Do you believe other changes to the District Court processes are necessary?
7. Would you prefer for cases to be heard by a specialist Tribunal Member? Please explain the reason for your preference.

If the Tribunal were established:

8. Do you believe the Tribunal Chair should be a Tribunal member, District Court Judge or retired District Court Judge? Please explain your reasoning.
9. Do you think appellants' and/or respondents' submissions in support of accident compensation appeals should have a time limit? If so, what would be a workable time limit for the filing of submissions on accident compensation appeals? If not, why not?
10. Do you think there should be a time limit for asking for more time to file an appeal? If so, what would be a workable time limit for asking for more time to file an appeal? If not, why not?

General

11. Are there any other comments you would like to make about the appeals process?