

Report on ACC Futures Meeting with MBIE

On 24 October 2018 a group of ACC Futures members met with Hayden Fenwick and Andrew Craig of MBIE to discuss reversing the 2010 amendments to the Act, and legal issues identified by the NZLS, ACC Futures and ARG. ACC Futures had prepared for the meeting and sent a list of issues for discussion.

Andrew Craig is the policy lead on this suite of issues, while Hayden Fenwick is the Manager of the Accident Compensation Policy team.

MBIE said they were in discussions with the Minister. They noted that the Labour Manifesto made few actual commitments, and that it held no formal status following the formation of the Coalition Government. They thought his priorities were the ACC review process, levy issues e.g. for shareholder employees, and purchasing of health services. They noted that the Minister's focus was on fairness and transparency, rather than significant legislative reform or review per se. MBIE noted that the Act itself had technical drafting issues and was out of date.

They asked ACC Futures for its prioritisation of all the issues raised in correspondence (covering the 2010 amendments to the Act, and legal issues identified by the NZLS, ACC Futures and ARG); given many would impact on the non-Earner's account new funding and budget bids would be needed, which requires both prioritisation within the ACC portfolio and between other government portfolios and priorities.

The Act is on the list of the Parliamentary Counsel Office's list of re-writes for modern drafting, which includes ensuring appropriate placement of detail, powers and discretion between the different regulatory levels (Acts, Legislative Instruments etc).

The issues

1. Vocational Independence: Reversing the definition of vocational independence from 30 to 35 hours per week.

MBIE said:

- The Labour Manifesto said there was a commitment to review this change, but it was not a priority.
- *They asked us to provide them with what practical difference the change from 35 to 30 hours had made, and wanted evidence to show that claimants get less vocational rehabilitation, or that it is shifting cost to the Ministry of Social Development.*
- They noted that rehab providers and front-line staff [case managers] like it (30 hour threshold) and think that it gets people back to work.
- MBIE was unaware of any research on vocational independence and Hazel said she would send through some research on the transfer of claimants from weekly compensation to WINZ benefits; and that claimants on VI were worse off.
- MBIE is doing no research on VI or its long term impact on outcomes.

2. The three step test for gradual process claims

- We discussed work-related gradual process disease claims, and the change to the burden of proof that claimants carry in showing their risk was significantly greater in that employment task or environment.
- MBIE's view was that the gradual process test was quite liberal. They are looking at other jurisdictions such as Canada.
- The three steps make sense to MBIE, but they have an open mind.
- *They would like to see borderline cases where there should have been a gradual process covered, but it wasn't.*

3. Re-establishing the Ministerial Advisory Panel

- We then briefly discussed a return to the Tripartite Ministerial Advisory Panel on gradual process.
- They would consider the costs and benefits of the Panel, noting they were scratching around for money.
- They were looking at schedule 2 and seeing whether it ought to be updated (i.e. whether it is consistent with the [ILO list of occupational diseases](#) 2010 Rev.), and if so, who would make the recommendations. They noted that the [Government's Science Advisory System](#), comprising the PM's Science Advisor and the Departmental Science Advisors, could be utilised to ensure robust scientific advice.

4. Taxation of back dated weekly compensation

- MBIE agreed that it was wrong to tax at the highest rate and are looking at a principled approach
- They were also looking at the ACC treatment of other abated lump sum pay-outs (i.e. NZNO settlement lump sum)

5. Costs on review

- MBIE has done some work and are drafting a discussion document.
- They have reviewed the District Court and High Court Rules
- They are open to change
- They asked about full payment of medical reports- whether paid in full?

6. *Vandy*

We discussed the issue of earner status at time of injury and at the time of incapacity, which requires a claimant to be earning at date of injury and date of incapacity for entitlement to weekly compensation, as illustrated in *Vandy v ACC*.

- They agree change is needed.

7. Somatic Pain Disorder

We discussed Somatic Pain Disorder as an example of the regulatory requirement for lump sum assessors to use the AMA Guide and DSM IV.

- We noted that DSM V has been around since 2013.

- We also raised the inherent systemic sexism within DSM V, in not recognising female sexual dysfunction, while male sexual dysfunction is recognised, and suggested a change in the ACC user handbook to account for this.
- MBIE appeared unaware of the issues surrounding DSM 5, and saw it as an oversight that could be updated, if it did not raise any policy issues, either by adopting DSM V or updating the ACC User Handbook.

8. No enforceability to require timely entitlement decisions

- We handed over the letter we wrote giving examples of untimely entitlement decisions
- we explained we wanted a requirement of timeliness of primary entitlement decisions enforceable in the Act.
- It used to be the case under the 1998 Act that all decisions had to be made in 21 days, with options to extend the time frame.
- MBIE did not disagree with an enforcement mechanism.

9. No enforceability of review decisions

- MBIE did not disagree with the need for a legislative enforcement mechanism for review decisions.

10. Appeals to the Supreme Court

- They were working with the Ministry of Justice
- They appeared to have no opinion on this matter.

11. The accredited employer scheme

- MBIE needed more evidence as to the problems.
- The programme used to have a regulator, or tripartite oversight, but now there is neither. MBIE appeared to think that there should be more oversight and regulation.
- The return to work outcomes is better under an accredited employer programme, but this may be due to greater ability to rehire in larger employers.
- We raised the issue of privacy of ACC records, *and were asked to show where private information had been misused by an employer.*
- On third party providers, MBIE thought they should be properly operationalised and regulated.
- We highlighted where third party providers were held to account through unions and collective agreements provisions on injury management and programs. Hazel said she would send through the RMTU/KRG injury management programme agreement.