

## **Consultation on ACC Appeal Changes**

**Submission to the Ministry of Business, Innovation and  
Employment**

**Date: 18 April 2016**

### **Contact**

**MARILYN HEAD, BA, DIP TCHG, MSC, SENIOR POLICY ANALYST**

**DDI 04 494 6372 OR 0800 283 848 | E-MAIL [MARILYNH@NZNO.ORG.NZ](mailto:MARILYNH@NZNO.ORG.NZ) | [www.nzno.org.nz](http://www.nzno.org.nz)**

**NEW ZEALAND NURSES ORGANISATION | PO BOX 2128 | WELLINGTON 6140**

### About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 47,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is *Freed to care, Proud to nurse.*

## EXECUTIVE SUMMARY

1. The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on proposed changes to the ACC appeal process, which include a proposal for a new Tribunal.
2. NZNO has consulted its members and staff in the preparation of this submission, and in particular its legal advisers, who are familiar with ACC appeals processes and have experience in representing ACC claimants at Review and Appeals.
3. NZNO is a member of the New Zealand Council of Trade Unions, te Kaue Kaimahi (CTU), and the ACC Coalition and strongly supports the submissions of CTU and that of Hazel Armstrong, spokesperson for the coalition.
4. NZNO **opposes** the ACC Tribunal Proposal.

## DISCUSSION

5. We submit that a tribunal could not make sound judgement on an appeal case, given that there would be variable opinions that could or would not be reached without impartiality or expertise.
6. Medical opinion on causation and diagnosis of injuries has become a major hurdle for claimants who are needing a specialist report to support their claim for review/and appeal.

7. ACC's contracted specialists and private treating specialists have very divided opinions on issues of causation and diagnosis to the detriment of the claimant.
8. This is a reason not to have a Tribunal, but to continue with the current system where the judges are independent, experienced and knowledgeable about the complexities of ACC law.
9. The current system of the Court being separated from the ACC processes enables the claimant to feel that they will receive a fair and independent opinion.
10. While it has been the case that appeals will often take some time to be heard, there are many sound reasons for delays which, in most cases, are needed to ensure all possible evidence has been sought such as obtaining medical reports.
11. Specialists are busy and often cannot find the time to write medical legal reports. Often further reports are required from the specialist in reply to the ACC Clinical Advisory Panel or ACC Branch Medical Advisors or other specialists contracted by the Corporation. This can cause considerable delay.
12. It is very difficult now to get an independent specialist opinion. There appears to be a growing trend for specialists not wishing to get involved in writing medical reports for their patients because of the apparent adversarial ACC process. This is also contributing to delays.
13. Our experience indicates that it would be detrimental to try to fast track to a system that is more likely to put pressure on claimant representatives to produce evidence and potentially lead to submissions that would not do the claimant justice and be more liable to result in unfair outcomes for the claimant.
14. We have no concerns with the present length of time an appeal takes. It is needed to ensure that there is enough time to gather all evidence to ensure fairness and justice.
15. For example, Client M with a mental injury claim had lodged her own appeal with her own submissions but then had been advised to seek some help with her appeal just as her hearing date was imminent. When her file was received it became obvious she had not understood the complexities of a mental injury claim and would not have been successful at appeal. There were other issues that were needed to be taken into account. This is the sort of legitimate reason for delay that is necessary to ensure the best possible outcome for the claimant.
16. Placing a time limit on the appellant and respondent submissions already exists. There is room for an extension of time if requested. The current system works well, there is a degree of flexibility within the

current system if there is a problem, for example, waiting on a medical report. Due to the complexities of ACC cases, a strict time frame would not work.

17. In regard to the question 'do you believe the Tribunal chair should be a Tribunal Member, District Court Judge or retired District Court Judge,'
18. Our answer is no; the current system does not need changing.
19. In answer to question 7 "Would you prefer to be heard by a Tribunal Specialist' NZNO's position, we submit that the appeal cases should remain as they are, under the jurisdiction of Judges.
20. Problems that could and should be addressed appear at the review stage, for example.
21. The number of claimants being declined for pre-existing conditions is increasing with opposing specialist opinions in this matter. This is causing great delay, with counteracting reports going backwards and forwards with adjournments required as we wait to have yet another opinion from the Clinical Advisory Panel.
22. It is extremely difficult now to find an independent specialist especially an occupational physician (often needed for opinion on causation of injury) as many specialists are contracted by the Corporation and cannot be seen as independent.
23. The cost of a medical report is a major barrier to claimants going to review/ appeal. Many specialists charge well in excess of the \$935 awarded at review. The advocate/ lawyer charges are in many cases substantial, so costs are a major barrier to access the review and District Court process. It appears that access to enable a challenge for a declined claim is now only for those who can afford the fees with no provision for access for those unable to afford the costs of specialist and legal costs.
24. Issues that stem from the review stage from Fairway hearings include, not enough understanding of medical issues. For instance a claim was dismissed as the reviewer stated, "medical evidence does not mention epicondylitis" when in fact medical evidence stated that the diagnosis was "tennis elbow" a lay term or form of epicondylitis.
25. Case law is most often used to decline a claim because of the lack of understanding of medical issues. It is very easy to misquote case law.
26. There is procedural unfairness. For example, in one instance a submission was sent within the given time frame, but it did not reach the reviewer, who, nevertheless, went ahead and made a decision to dismiss the claim without having seen those submissions. An apology was later made but that did not help the claimant.

27. Addressing some of the above issues would be a way of preventing cases going to appeal.
28. Another issue that causes delay is the difficulty in seeking the appropriate specialist such as a musculo-skeletal specialist or rheumatologist. These disciplines are not mentioned in ACC regulations 1993, so Fairway has taken the view that these specialists can only be paid half of the \$935 awarded for a medical report, so either the claimant pays the difference or the specialist will not write a report.
29. That in itself narrows the field of specialists and can cause unnecessary delays. The regulations need updating to encompass new disciplines that will enable all registered medical specialists to be recognised and paid the full fee.

## CONCLUSION

30. NZNO is concerned that the proposed Tribunal system would be unwieldy, restrictive and very likely to prove unjust to claimants dealing with their appeals.
31. The current system works well. Delays are necessary in finding and producing medical evidence that will support the claimant in their appeal to the District Court. The outcome impacts on claimant's and their family's livelihood.
32. The independence of the District Court encourages injured people to believe they will get natural justice.
33. A Tribunal would not be perceived as being separate from the ACC process, and there would be less confidence in the impartiality of the system.
34. We must keep the current system of the Judiciary hearing ACC appeals. The claimant must be assured of privacy, fairness and independence separate from the ACC process. This is natural justice.
35. NZNO **opposes** the proposed changes to ACC's Appeals process and **recommends** that you do not proceed with the new Tribunal.

Maevis Watson

**ACC Advisor / Advocate to the New Zealand Nurses Organisation.**

