



ACC and MBIE Briefing Paper: update on the response to the Miriam Dean Review and next phase of work to improve disputes performance

Date	12 December 2018	Priority	N/A
Security classification:	Nil	Briefing paper no:	BP 18-040

Action Sought

	Action sought	Deadline
To: Minister for ACC (Hon Iain Lees-Galloway Minister for ACC)	Note that following consideration of ACC and MBIE's report on the Miriam Dean Review [BP18/032], you requested further information on ongoing work by ACC to improve dispute resolution processes, as well 6-monthly updates on this work.	None
Cc: Associate Minister for ACC (Hon Peeni Henare)	Note that this report responds to your request for further information and reporting. Note that we have included the progress previously reported to you on the Miriam Dean Review in BP18/032 so that there is one main document for ease of reference. Agree this report and the appendices on the progress implementing the Miriam Dean Review recommendations be posted on MBIE's website.	

Contact for Telephone discussion (if required)

Name	Position	Telephone	1 st contact
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MBIE consulted: Joint briefing

Supporting documents: Yes

ACC Briefing Paper: BP 18/032, Update on the response to the Miriam Dean Review and next phase of work to improve disputes performance (Resolution at ACC)

Report to: Minister for ACC

Recommended actions

1. It is recommended that you:
 - a) **Note** that following consideration of ACC and MBIE's report on the Miriam Dean Review [BP18/032], you requested further information on ongoing work by ACC to improve dispute resolution processes, as well 6-monthly updates on this work.
 - b) **Note** that this report responds to your request for further information and reporting; we have included the progress previously reported to you on the Miriam Dean Review in BP18/032 so that there is one main document for ease of reference.
 - c) **Note** ACC has commenced a new phase of work as part of its continual improvement of dispute resolution processes, which is focused on enabling ACC to take action early before a dispute is raised, and when one is raised, making it easier for claimants to review an ACC decision. **Noted**
 - d) **Note** that this phase of work, known as Resolution at ACC, involves:
 - i. Continuing to monitor disputes performance, including developing an integrated set of measures that reflect the intent of the Miriam Dean Review to track the new phase of work
 - ii. Finish implementation of remaining Miriam Dean work
 - iii. Growing the independent review market
 - iv. Best practice assessment of dispute resolution framework
 - v. Customer feedback to enable early action before disputes arise.**Noted**
 - e) **Agree** ACC report to you every six months on the above programme over the next 24 months, which will coincide with the evaluation report of the Navigation Service after its first two years of operation. **Agree / Disagree**
 - f) **Notes** s 9(2)(f)(iv) **Noted**
 - g) **Note** three key recommendations from the Miriam Dean Review have been concluded this year:
 - i. ACC's decision to fund a Navigation Service for claimants
 - ii. development of an agreed set of actions by the Medical Issues Working Group, and
 - iii. s 9(2)(f)(iv)

- h) **Note** a small amount of work from the Miriam Dean Review is still to be implemented, which will be done through ACC's transformation programme over the next 18 months, which ACC will report to you on as part of the Resolution at ACC six monthly update.

Noted

- i) **Note** agencies are confident that initiatives implemented to date have helped address the issues identified in the Miriam Dean Review by improving claimants access to justice, improving transparency of the disputes resolution process and providing greater support for claimants in the disputes process.

Noted

- j) **Agree** that MBIE will post a copy of this report and accompanying appendices on its website, alongside other publicly available reports and information on the Miriam Dean Review.

Agree / Disagree

- k) **Note** ACC has developed a communications plan for the release of this report, and talking points are attached for you or the office to use to respond to likely media and stakeholder interest following the release of this report.

Noted

Emma Powell

Chief Customer Officer
Accident Compensation Corporation

Date:

Hayden Fenwick

Manager, Accident Compensation Policy
Ministry of Business, Innovation and Employment

Date:

Hon Iain Lees-Galloway

Minister for ACC

Date:

Purpose

2. Following consideration of BP18/032, you asked for further information on work underway by ACC to improve the dispute resolution system for claimants beyond initiatives implemented as a result of the Miriam Dean Review (the Review).
3. This paper outlines the next phase of work underway by ACC (called Resolution at ACC) and provides a summary of progress from the Review as part of its commitment to continually improve dispute resolution for claimants. It also proposes how ACC might report on this ongoing programme of work to you.
4. We have included information from [BP18/032] in this report so there one main document for ease of reference.

Executive summary

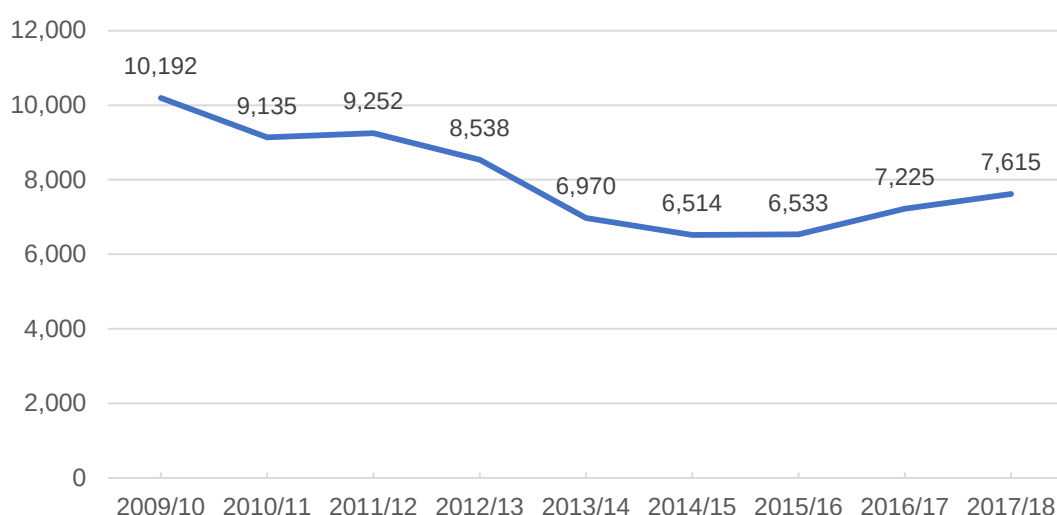
5. Improving the quality and timeliness of dispute resolution is a strong focus for ACC because it has a significant impact on claimants' outcomes and their service experience. ACC has made considerable improvements to its dispute resolution processes over the last few years. ACC remains committed to improving claimants' access, the claimant experience, and to addressing the issues that cause claimants to lodge a complaint or review in the first place.
6. Over the past few years, ACC has introduced:
 - an alternative dispute resolution process to resolve disputes and prevent escalation of claimant issues that lead to formal review hearings.
 - new ways of working in ACC's dispute management functions to ensure consistent claim decision making and management of reviews.
 - a closed loop feedback tool to provide greater insights into the more common types of feedback from satisfied and unsatisfied claimants that can be fed into the continuous improvement of design and delivery of ACC's services. This means the triggers for a poor claimant experience can be identified and addressed before a dispute is made.
7. This work has been supported by the Miriam Dean Review, which focused agencies' attention on the development of initiatives that improve claimants' access to justice, the transparency of the disputes process and on providing greater support for claimants wishing to review an ACC decision.
8. Over the last two years, ACC, FairWay Resolution Services Ltd and the Ministry of Business, Innovation and Employment have delivered the Review's recommendations, which will make it easier for claimants to review an ACC decision, including:
 - development of a range of tools, guidance and visual aids for claimants to improve their access to dispute resolution and to make the process more transparent
 - convening a Medical Issues Working Group and development of a set of actions to help improve claimants' access to medical evidence
 - funding a free navigation service by ACC to assist claimants raise complaints or disputes, which is expected to go live from mid-2019
 - s 9(2)(f)(iv) [REDACTED]

9. A summary of progress to implement the recommendations and a detailed status update from the Miriam Dean Review are attached as Appendices A, B, C and D.
10. In the next phase to improve the dispute resolution system, ACC is focussing on improving its ability to take action early before a dispute is raised, and when one is raised, making easier for claimants to seek a review. This phase of work, called Resolution at ACC, includes:
 - a. *Continue to monitor performance and make operational responses*
 - continuing to monitor review performance and dispute volumes and determining the appropriate operational responses to these, including capacity adjustments
 - developing an integrated set of measures that reflect the intent of the Miriam Dean Review to track the new phase of work (see paragraphs 37-38 for detail)
 - assessing elective surgery reviews to understand trends and insights to improve the consistency of decision making and reduce the number of reviews. This is expected to be complete by June 2019.
 - b. *Finish implementing the remaining Miriam Dean work*
 - procuring a Navigation Service that will advocate on behalf of ACC claimants. This will be followed by an evaluation after two years of operation in order to ensure the service is achieving good outcomes for clients
 - progressing the remaining work from the Miriam Dean Review and the Medical Issues Working Group (relating to data collection and access to medical evidence).
 - s 9(2)(f)(iv)
 - c. *Grow the independent review market*
 - growing the supply of independent review providers to speed up decision making and improve claimant outcomes
 - d. *Best practice assessment of dispute resolution framework*
 - assessing the dispute resolution framework against the Government's recommended best practice
 - e. *Customer feedback to enable early action before disputes arise*
 - gaining greater insights into the more common types of feedback from both satisfied and unsatisfied claimants using ACC's new real time customer feedback tool (Heartbeat) and providing quality feedback to ACC branch network on claimant issues before they reach dispute stage so early action can be taken.
11. ACC proposes to provide you with a six monthly update of progress against this programme of work over the next 24 months, which will coincide with the evaluation of the Navigation Service after two years of operation to ensure the service is achieving desired outcomes for claimants.
12. The section below outlines the work undertaken by ACC in recent years to improve dispute resolution processes, and provides a summary of key deliverables implemented from the Miriam Dean Review. It also outlines next phase of work for ACC.
13. A detailed status update on the implementation of the recommendations of the Miriam Review is attached as Appendices A, B, C and D. We are confident that the work to date has helped to improve the issues identified in the Review by:
 - improving access to justice and dispute resolution for claimants
 - providing greater support for claimants in the dispute process, and

- increasing transparency for claimants about how the disputes process works should they wish to review or appeal an ACC decision.

Dispute resolution is an ongoing focus for ACC

- Dispute resolution has been a strong area of focus for ACC for a number of years. The Miriam Dean Review noted the positive changes to ACC's management of disputes, particularly in relation to the dedicated units that deal with claims and disputes. Participants interviewed for the Review reported that they had noticed a "huge improvement in the way the elective services and sensitive claims units work with clients". Staff in these units were described as "empathetic, helpful and prepared to resolve matters", and "fantastic to deal with".
- In 2017/18, ACC received 1.9 million claims, of which 97.5% were approved. Of that number, a small percentage of claimants (7,615 people) sought a review of their ACC decision. The volume of reviews in 2017/18 has decreased from a peak in 2009/10 of 10,192 but has crept up in recent times alongside overall claims volumes, in response to which ACC is making some operational adjustments outlined below.



- Reviews on decisions declining ACC funding for elective surgery made up 34% of all reviews in 2016/17, followed by reviews for declined cover decisions (25%). Across the past eight years, the proportion of reviews found in ACC's favour has remained relatively stable between 80-85%.
- The work ACC, MBIE and FairWay have done in response to the Miriam Dean Review has further contributed to improving the disputes system. It is important that this work is seen as part of a wider commitment to continuous improvement of the disputes process, and to understanding and responding to claimants' experiences with ACC. This is described below.

Changes to ACC operations and processes

- In response to high review numbers in 2009/10, ACC introduced a number of changes to the disputes process to manage increases in volumes, improve claimant experience and promote early resolution of disputes. This removed the need for clients to go through the process of preparing for and attending a review hearing. Early resolution can also prevent or reduce an adversarial relationship that can develop between claimants and ACC. Some of the changes to achieve early resolution include:

- extending the administrative (internal) review timeframe to allow ACC more time to resolve issues before proceeding to external review
 - increasing the financial delegation for settling reviews to assist settling disputes of low financial value (i.e. less than \$2,000), and
 - introducing an alternative dispute resolution (ADR) process to resolve disputes and prevent escalation of claimant issues that lead to formal review hearings. Since ADR was implemented in December 2015, uptake increased from 195 cases in 2015/16 to 3482 in 2017/18, with 33% of cases settled and 15% of cases reaching a partial settlement.
19. In July 2017, ACC introduced a new structure to the dispute management functions. As part of this restructure, new review teams were established. The new structure aims to develop a broad, flexible knowledge base to ensure consistent claim decisions and management of reviews, with the aims of improving:
- timeliness of resolution with the claimant, providing certainty of outcome more quickly
 - accuracy and consistency of decision making through the new function, ensuring claimants are receiving a consistent experience and treatment when they go through the disputes process, and
 - efficiency of ACC's operations through standardisation.
20. In the new review teams, review specialists are provided with additional scope to evaluate and revisit decisions made by case owners. They work proactively with claimants and decision makers to resolve the matter in dispute. A potential outcome is that the review will be resolved pre-hearing through an alternative resolution process. ACC is currently considering whether further capacity is needed to support the timeliness of decision making.

Implementation of the Miriam Dean Review recommendations

21. In July 2016, the government commissioned Miriam Dean, QC, to undertake an independent review of the ACC dispute resolution system, following the release of a report by Acclaim Otago (Inc) about the barriers that some people face when challenging ACC's decisions.
22. The work of agencies to respond to the Review has delivered:
- improved access to justice and dispute resolution for claimants
 - greater support for claimants in the dispute process, and
 - more transparency for claimants about how the disputes process works should they wish to review or appeal an ACC decision

Improved access to dispute resolution

23. The Miriam Dean Review found that inadequate access to legal resources along with ACC's complex legislation can prevent claimants from having a full understanding of the law. In response to these issues, FairWay, New Zealand Legal Information Institute, ACC and MBIE developed a range of tools, guidance and visual materials that help claimants to access the disputes process and better prepare and present cases for review or appeal. They are available on the relevant organisations' websites.
24. The Review found a lack of representation can be a barrier to claimants seeking to challenge ACC decisions. ACC is funding a free independent Navigation Service which will be capable of advocating for claimants' interests, assisting them to raise complaints or disputes where appropriate, and supporting them to prepare effectively for a Review hearing if required. The design of this service will ensure accessibility to people of diverse cultural backgrounds, particularly Māori, as well as people with different abilities and needs. It will deliver services to

approximately 4,000 claimants per year (a four-fold increase on the number of claimants currently using ACC-funded advocacy services).

Greater support to participate in the process

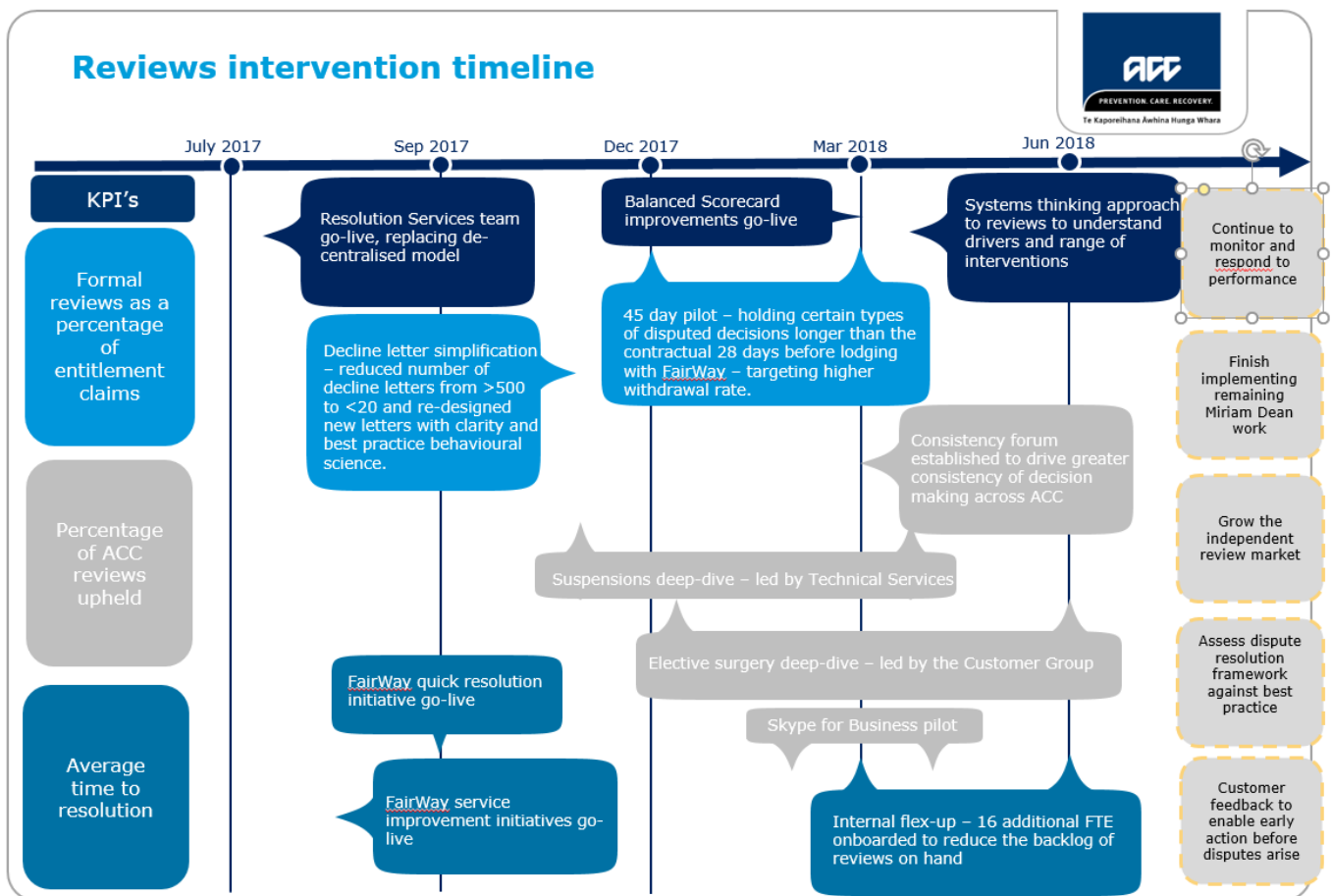
25. The Review found that claimants have difficulty gaining access to medical evidence, which is crucial in determining most disputes. The funding available for claimants towards their review costs was increased by 16.6% in 2017 to support claimants to participate in the process by giving access to adequate funding while a more comprehensive review by MBIE was undertaken.
26. s 9(2)(f)(iv)
[Redacted text block]

More transparency about how things work

27. ACC and FairWay have made a number of improvements to ensure their decision-making processes are more transparent to claimants. ACC and MBIE have developed visual maps for a range of injury types to assist claimants to understand their entitlements and the process ACC uses to make decisions.
28. FairWay has published case summaries to better inform claimants involved in the review process and completed an instructive video on the review process to explain to claimants how dispute resolution processes work.
29. ACC has reduced the number of decline letter templates from 100 down to 15, simplifying the process for claimants and improving ACC's ability to determine the number of formal decline decisions issued.

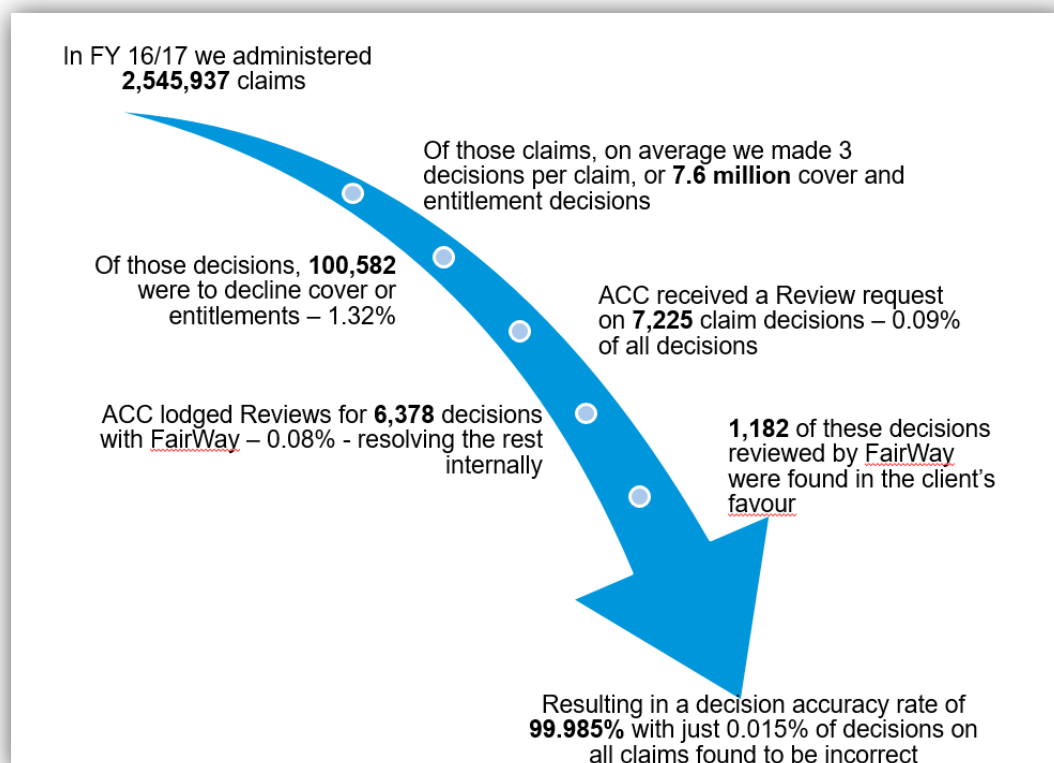
The next phase of improvement

30. ACC has made significant improvements to the dispute resolution system over the last few years and remains committed to improving the customer experience and addressing the issues that cause customers to lodge a complaint or review. The recent improvements, the work on the Miriam Dean Review recommendations and the next phase of work underway, underpin this commitment.
31. Following on from the Miriam Dean Review and operational changes made to date, ACC proposes to monitor and respond to you on a new programme of work, known as Resolution at ACC, as part of continuous improvement. The areas of work include:
 - a. Continuing to monitor review performance, including developing an integrated set of measures that reflect the spirit of the Miriam Dean Review to track the next phase of work
 - b. Finish implementing the remaining Miriam Dean work
 - c. Grow the independent review market
 - d. Best practice assessment of dispute resolution framework
 - e. Customer feedback to enable early action before disputes arise
32. The paragraphs below provide an outline of the programme.
33. ACC proposes to provide you with an update on the next phase of work every six months over the next 24 months, coinciding with the evaluation of Navigation Services after two years of operation.



Review performance

34. Review performance can be used as an indicator of organisational accuracy of decision making. Thus, ACC monitors disputes performance carefully.



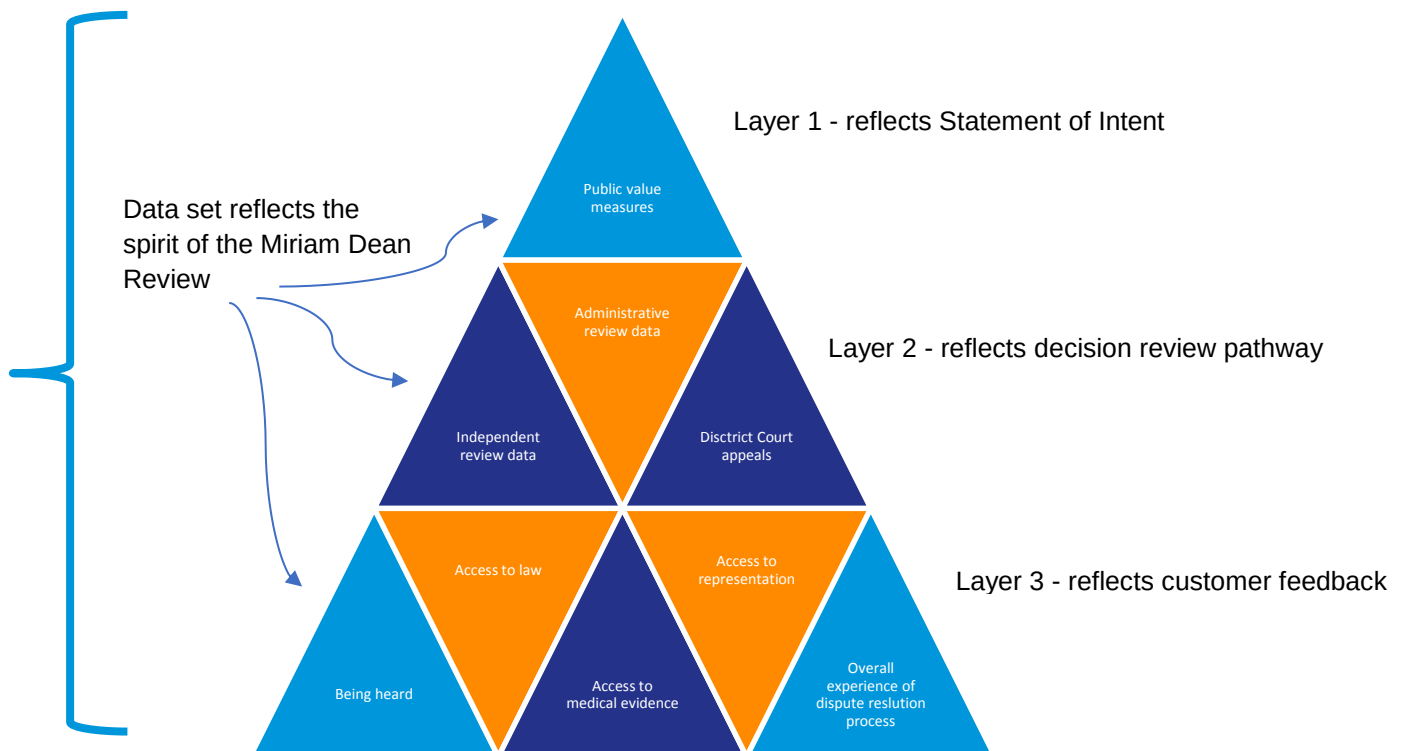
35. ACC reports on three key public value measures for disputes resolution and sets targets relative to historical performance: the proportion of the ACC reviews upheld, reviews as a percentage of decline decisions, and average time to resolution for claims with reviews. Information from the indicators is used to report to ACC's executive team, the Board and Minister.

Reviews

Measure	Most recent result	2017/18 actual	YTD actual	Full year target	Status
Proportion of ACC reviews upheld	Sep 2018	81.3%	80.8%	≥82.0%	A
Reviews as a percentage of decline decisions	Sep 2018	7.2%	7.1%	<7.1%	G
Average time to resolutions for claims with reviews	Sep 2018	99.5 days	97.6 days	<96.5 days	A

36. The percentage of ACC reviews upheld in September was 80.8% and the 12-month average dipped slightly to 81.1%. Working in collaboration with the wider ACC branch network is essential to improve on this measure. Resolution Services continues to provide feedback on adverse decisions for learning opportunities for the wider network and is delivering presentations to branches/units nationwide. ACC is finishing an investigation into elective surgery reviews which will be considered and next steps determined
37. Elective surgery has been selected to assess as the percentage of reviews to claims lodged is high and the percentage of reviews found in claimants' favour is high. The assessment will shed light on the trends and insights claims involving elective surgery and will help ACC to improve the consistency of decision making and reduce the number of reviews.
38. The average time to resolution for claims with reviews in September was 97.6 days, an improvement of 0.3 days from last month. In September, the percentage of ACC reviews (excluding levy reviews) that were resolved in early resolution (closed without having to instruct FairWay) was 19.1%. The number of reviews on hand at FairWay is 2419. This is 65 fewer than last month. This is the fifth consecutive month the number of reviews on hand has improved (i.e. reduced internal assessment of elective surgery reviews).
39. ACC will develop an integrated set of dispute resolution indicators that tie existing high level public value measures and decision review pathway indicators with new customer feedback measures (see figure 1 below) that will need to be developed over the next 18 months as the Heartbeat tool is embedded into ACC's operations.
40. The integrated measurement set will reflect the spirit of the Miriam Dean Review so that the intent of the Review can be tracked over time and provide a source from which to develop ongoing future improvements. For example, in future we might survey claimants to ask if they feel their voices are being heard in the dispute resolution system and what their experience is of access to law, evidence and representation when seeking to review an ACC decision.
41. At our first six monthly update, ACC will report back to you using the integrated measurement set (as far as it has been developed). Given the next phase of work is focused on enabling ACC to take early action before a dispute is raised, we expect to see over time a decrease in review numbers. However, given the programme is also focussed on making it easier for claimants to undertake a review, for example, by increasing the supply of independent review providers and by creating the Navigation Service, it is also possible that review numbers will increase.

Figure 1. Integrated dispute resolution and performance measurement set



Implementing remaining work from the Miriam Dean Review

42. Overall, 19 of the 20 recommendations have been concluded by agencies on the Miriam Dean Review recommendations. The remaining recommendation, relating to data collection, will be completed by ACC through the improvements to data collection being advanced through ACC's transformation programme over the next 18 months. A detailed summary and account of the implementation of the Review recommendations is attached as Appendices A, B, C and D.
43. ACC finalised with the Medical Issues Working Group in May 2018 an agreed set of issues and actions to help improve claimants' access to medical experts and evidence when undertaking a review. ACC and MBIE have completed a number of actions, but the issues raised of access to medical evidence are complex and not readily resolvable. A number of actions from the Working Group are still underway, and have implementation plans in place. The set of issues discussed by Working Group, the proposed actions and progress is detailed in Appendix C.

Procurement of the Navigation Service

44. ACC is finalising the model for the Navigation Service, which will be complementary to independent review provider services. A competitive tender process is planned to commence by the end of 2018. We expect the Navigation Service to be up and running in 2018/19 and see about 4,000 claimants per year, approximately four times the current number of claimants accessing ACC-funded advocacy services. The service will have a focus on accessibility to people of diverse cultural backgrounds, particularly Māori claimants, as well as people with different abilities and needs. The tender process will be aligned with the tender process for independent dispute resolution services.

s 9(2)(f)(iv)

Increasing supply in review market

46. ACC currently uses an independent, third-party provider (FairWay) to undertake formal reviews where disputes cannot be resolved by claimants and ACC. By the end of 2018, ACC intends to commence a procurement process to expand the number of external, independent dispute resolution providers to provide claimants with choice over how their dispute is managed. This will increase the ability to improve outcomes for ACC claimants through more timely decision making on Review cases.

Assessing against other government practice

47. ACC has commenced working with the Government Centre for Dispute Resolution (part of MBIE) to undertake an assessment of its dispute resolution framework and processes against best practice principles, which are based on providing dispute resolution services that are claimant focused and accessible, independent and fair, efficient, effective and accountable. Work to date has involved assessment of how best practice guidance might be tailored to ACC's processes, and understanding current and future practice using process mapping techniques.

Customer feedback to enable early action

48. ACC is incorporating feedback from complaints and formal review decisions into the continuous improvement of the design and delivery of ACC's services. This is intended to help eliminate some of the common pain-points that claimants experience.
49. In May 2018, ACC introduced a closed loop feedback tool, known as Heartbeat. The tool gives ACC the ability to collect real time claimant feedback from our customers, so we can make improvements quickly and easily. Starting with ACC's contact centre and next generation case management pilot site, ACC is capturing data and reporting on the most serious complaints, providing greater insights into the more common types of feedback from both satisfied and unsatisfied claimants in near real time, and, more importantly, providing quality feedback on claimant issues before they reach dispute stage so early action can be taken.
50. Heartbeat's data and analytics engine will allow ACC to identify themes, trends and systemic issues across ACC that the organisation would not have been able to see before. This will enable ACC to make more fundamental changes to the customer experience in the long term. Over time, Heartbeat will become an integral way for ACC to continue to improve for our claimants' experiences.

Communications implications

51. This report provides a summary that draws together all the dispute resolution changes that have been made over the last several years, including those arising from the Review and a plan to continue to monitor and report to you on disputes and reviews performance and progress on key initiatives to improve ACC's dispute resolution processes and claimant outcomes and service experience.
52. Agencies are comfortable with the response to the Review. We seek your agreement to release this report and accompanying appendices on the MBIE website.
53. On this basis, a ACC has prepared a communications plan to respond to any enquiries, which includes:
 - following your approval, the report and accompanying tables will be posted on MBIE's website, alongside other publicly available reports relating to the Review. ACC will provide a link to the report via its website.

- ACC will be the lead agency for any media enquiries and will seek input from MBIE or FairWay as necessary. Emma Powell (Chief Customer Officer) will be ACC's executive spokesperson.
- ACC will take a reactive approach to media and stakeholder interest, responding as it arises.

54. s 9(2)(f)(iv) [REDACTED]
55. We expect the report to generate some interest from stakeholders, for example, on the Medical Issues Working Group. An OIA request from the media was made in August 2018. Some stakeholders may be critical of an apparent lack of a final resolution on the complex issue of medical evidence. Or they may view the release of this report as an indication that agencies have stopped working on responses to the Miriam Dean Review's recommendations or wider dispute management improvements.
56. ACC is committed to continually improving dispute resolution management beyond the Miriam Dean Review. Work to improve claimant experience is ongoing and is now embedded in ACC's wider transformation programme. As a result of the Review, claimants are benefitting from improved support and greater transparency how the disputes process works should they wish to review or appeal an ACC decision.
57. We have also attached some suggested talking points for you or your office to use, should you receive any enquires, and we are available to provide any further support or information you would like.

Talking points

- Dispute resolution is a strong focus of the transformation being undertaken by ACC to become a more client-centred organisation.
- Publishing this report provides transparency about the work agencies have done in response to the Miriam Dean Review. It does not signal an end to work being done to improve the dispute resolution process. This is an on-going commitment for ACC.
- ACC, MBIE and Fairway Resolution Services have delivered the Miriam Dean Review's recommendations over the last 24 months, which will make it easier for claimants to review an ACC decision. We are confident that the changes made have improved claimants' access to justice and provides them with greater support and more transparency when they want to challenge an ACC decision.
- ACC has begun the next phase of work, which is focused on taking action early before a dispute is raised, and when one is raised, making it easier for claimants to review an ACC decision. This includes continuing to monitor performance, procuring the Navigation Service, growing the market of independent review provider, assessing the dispute framework against best practice, and using customer feedback to enable staff to act early before a dispute is raised.
- ACC will report regularly to the Minister for ACC over the next 24 months on this programme of work.
- Nineteen of the 20 recommendations from the Miriam Dean Review have been implemented, and work on the 20th – relating to data collection and access to medical evidence – has been substantially completed by ACC.
- The remaining work from the Miriam Dean Review will be implemented over the next 18 months alongside the next phase of improvements.
- Issues relating to medical evidence are complex and there are no easy solutions. Actions identified by the Medical Issues Working Group to improve claimant's access to medical evidence are either completed or underway.
- **s 9(2)(f)(iv)**

A recap on collective responses to date to the Miriam Dean Review

Improved data collection and publication

- ACC's suite of decline letters has been cut from 100 to 15, which improves its ability to track the number of formal decline decisions. The cover decision letter has been revised to be easier to understand in terms of what injury costs will be met by ACC.
- Feedback from complaints and formal review decisions is being incorporated into on-going improvements in ACC's services to help eliminate common claimant pain points. Claimant feedback is also being captured in close to real time, with data adding greater insight into more common complaints.
- Improving information that ACC collects on disputes data, including how many decisions are resolved in the claimant's favour when settling disputes at the administrative review stage.
- ACC is looking to more precisely record the number of entitlement decisions and reasons as part of an upgrade to its core client information.

Being heard

- **s 9(2)(f)(iv)**
- ACC has made internal changes to promote the early resolution of disputes, and created a specialised team to ensure greater consistency in how disputes and review applications are managed.
- A tender is running to increase the number of independent dispute resolution providers.

- ACC has adopted and published a model litigant policy
- ACC is now consistently collecting and recording settlement data, and is looking at feasibility of publishing the data in aggregated form.

Access to law

- Tools, guidance and visual materials are available to give claimants a better understanding of accident compensation law, and prepare and present cases for Review or appeal at the District Court.
- MBIE and ACC have produced visual maps for a range of injury types to help claimants better understand their entitlements, and the process ACC follows in making decisions.
- FairWay has created an on-line tool to guide people through making a submission
- FairWay has published case summaries to better inform claimants involved in the review process, and completed an instructive video on how the review process works.

Access to medical evidence

- ACC is working on a post-graduate module on causation for clinical professional development purposes.
- An external module based on ACC's internal clinical report writing course will help medical experts provide the information required to support ACC's decision-making.
- The NZ Orthopaedic Association (NZOA) subspecialty groups are working with ACC on agreed factors for ACC-funded elective surgery for certain injuries (e.g. knees and rotator cuff injuries). Reaching agreement on these factors is likely to speed up the decision process and minimise the areas for potential disagreement.

Access to representation

- ACC is funding a free independent navigation service to support claimants to dispute or review a decision. The service will be capable of advocating for claimants' interests; assisting them to raise complaints or disputes where appropriate, and supporting them to prepare effectively for a review hearing if required.

ACC and MBIE Briefing Paper: update on the response to the Miriam Dean Review and next phase of work to improve disputes performance

Appendix A: Miriam Dean Review - summary of progress

Background

1. In July 2015, Acclaim Otago (Inc) completed a report about the barriers that some people face when challenging ACC's decisions. The report, *Understanding the Problem: An analysis of ACC appeals processes to identify barriers to access to justice for injured New Zealanders*, concluded that "the current system does not provide access to justice", and identified the following four issues as the "likely causes of current inefficiencies in the dispute resolution system":
 - **Being heard** – some claimants feel that they are not genuinely heard by ACC, and do not feel they have 'had their day in court'.
 - **Access to the law** – inadequate access to legal resources.
 - **Access to evidence** – limited access to evidence (particularly medical).
 - **Access to representation** – limited access to experienced lawyers.
2. In response, the Government commissioned Miriam Dean QC, to undertake a Review of Acclaim Otago's report, known as *the Review of Accident Compensation Dispute Resolution Processes* (the Review).
3. The objective of the Review was to test the validity of the four issues raised by Acclaim Otago (as noted above) and to make any recommendations for policy, operational or legislative changes to the Accident Compensation Act 2001, and regulations.
4. In May 2016, Miriam Dean QC submitted the report of the Review. It confirmed a number of concerns raised by Acclaim, but also noted a number of areas where it did not find concerns to be valid, particularly in terms of access to the law/concerns directed at the courts. It also noted the improvements ACC had made to the customer experience in its specialist units through the adoption of a customer centric vision and values.
5. Areas of concern found by the Review included:
 - Improved data collection** – the need for ACC to collect and analyse data better to understand the triggers, outcomes, costs, and trends of disputes as a basis to continue to improve performance.
 - Being heard** – some claimants do not have confidence that the statutory Review process ensures that their side of the story will be heard. This is often related to a perceived lack of independence of FairWay from ACC.
 - Access to the law** – inadequate access to legal resources (case law, Review decisions, and guidance material), along with ACC's complex legislation, can be a barrier to claimants (particularly self-representing claimants) having a full understanding of the law.

Access to evidence – accessing medical evidence through the disputes process can be difficult, and relevant issues need to be explored by medical representatives and stakeholders to find solutions.

Access to representation – a lack of representation (e.g. a suitable lawyer or advocate) can be a barrier to claimants seeking to challenge ACC decisions.

Delivering the recommendations

6. As noted above, the Review made 20 recommendations for ACC, FairWay, MBIE, and the Ministry of Justice. The majority of the recommendations relate to the operational processes of ACC and FairWay. ACC, MBIE and FairWay are confident that the response to the recommendations has:
 - improved access to justice dispute resolution services for claimants
 - provided greater support for claimants in the dispute process, and
 - increased transparency for claimants about how the disputes process works should they wish to Review or appeal an ACC decision.

Improved data collection and publication

7. The Review noted the need for ACC to collect and analyse data better to understand the triggers, outcomes, costs and trends of disputes. To address this, ACC has made several improvements to the information and data collected on cover and entitlement decisions and disputes which will be embedded in current organisational change initiatives, including the rollout of new case management approaches.
8. To deliver on these recommendations, ACC has made several changes to data collected, how it's collected and the ability to report it as needed. These changes enable greater clarity and transparency for both ACC and claimants on ACC's decision making and the ability to understand ACC's performance over time. Key actions taken are:
 - Simplifying processes and reducing confusion for claimants by reducing the number of ACC decline letter templates from 100 to 15. This project also helps ACC to track the number of formal decline decisions issued, which has been a key concern of ACC's stakeholders.
 - Revising the ACC cover decision letter to make it easier for claimants to understand what costs ACC will help with for their injury.
 - Improving information that ACC collects on disputes data, including how many decisions are resolved in the client's favour when settling disputes at the administrative Review stage.
 - Creating processes to specifically identify ACC legal expenditure on defending litigation. Claimants were surveyed to understand why people withdraw from the appeal process. The results of this survey are now being Reviewed and we will consider next steps (cross reference to "Being Heard" theme).
 - Recently ACC has initiated a project to more precisely record the number of entitlement decisions and reasons. The implementation of this project will be achieved as part of the upgrades to ACC's core client information and payment systems, and after rollout of ACC's new case management model from May 2019. While ACC already collects data on significant decisions, this project will allow ACC to collect data on the detailed decisions that are made.

Being heard

9. The Review explained that some claimants feel that they are not genuinely heard by ACC, and do not feel they have 'had their day in court'. The Review found that this often related to a perceived lack of independence of FairWay from ACC and, while the Review did not question FairWay's independence, it recognised that some claimants think that FairWay is biased in favour of ACC.
10. The changes made by MBIE, ACC and FairWay will ensure that claimants have access to significant additional resources to participate in the process, and can have further confidence in the independence and robustness of the dispute system. Key actions taken to address these issues are:
 - The Government increased the contribution claimants receive to case-review costs above the cost of inflation by an initial 16.6% in June 2017 while further work was to be carried out.
s 9(2)(f)(iv)

 - Following the Review, FairWay's board expressed an interest in shifting to employee ownership. The Treasury supported this proposal and, having informed shareholding Ministers, engaged Deloitte to provide an independent valuation of the company.¹ FairWay was transferred to employee ownership in July 2017.
 - ACC has formalised its commitment to behave as a model litigant by adopting and publishing a model litigant policy. ACC requires all its lawyers, including external lawyers, to apply the policy in all civil litigation.
 - To increase transparency on settlement decisions, ACC is now consistently collecting and recording settlement data. ACC wants to be able to demonstrate to the public that we do look at settlement in appropriate cases, consistent with our Model Litigant approach. ACC will also consider the feasibility and usefulness of publication of the settlement data in aggregate form and the frequency and format of such publication.

Access to law

11. The Review found that inadequate access to legal resources (case law, review decisions and guidance material), along with ACC's complex legislation, can be a barrier to claimants (particularly self-represented claimants) having a full understanding of the law and their entitlements and rights.
12. Agencies have put considerable effort into providing additional information to claimants to ensure that they understand the disputes process and are enabled to participate effectively in it. Key actions taken are:
 - To help claimants to better present their cases at review or in the District Court, ACC funded the New Zealand Legal Information Institute (NZLII) to provide a guide to accident compensation, which is available through the NZLII website. The NZLII has also updated its library of High Court and Court of Appeal accident compensation cases, available on its website. Judgments of the Senior Courts can be searched for by Act and section on the Ministry of Justice website.

¹ The Minister for ACC and the Minister of Finance were the shareholding Ministers for FairWay.

- An online submission tool has been created by FairWay to guide people through preparing a submission. The tool helps people to present their position to a reviewer and makes it easier for all parties involved to prepare their case.
- FairWay and ACC have made improvements to their websites to ensure claimants can easily find the information they need about the support available to them to and how to resolve issues about their claim:
 - Graphics and video content have been created on ACC cover processes, review regulations and cost of treatment regulations that easily explain to claimants how the dispute resolution process works, and are available on the ACC and FairWay websites.
 - Publication of case studies and guidelines on the FairWay website give greater clarity about how Reviews are managed, conducted and decided.

Access to medical evidence

13. The Review found that claimants have difficulty gaining access to medical evidence, which is crucial in determining most disputes. The factors contributing to this issue are complex and there is no easy resolution. The Review concluded that a wide group of representatives were needed to discuss solutions to the policy and process-related problems with accessing medical evidence.
14. To respond to this recommendation, ACC convened a Medical Issues Working Group in 2017 to identify solutions to the issues raised in the Review. The group comprised representatives from the NZ Medical Association, the Council of Medical Colleges, Te Ora, Royal NZ College of General Practitioners, New Zealand Orthopaedic Association (NZOA), Forster & Associates, and the NZ Law Society. Other representatives were from Acclaim Otago, the Disabled Persons Assembly, NZ Association of Accredited Employers, FairWay, NZ Council of Trade Unions' Workplace Injury Advocacy Service, the Ministry of Justice and MBIE.
15. The Working Group held its final meeting in November 2017 and earlier this year in May 2018, ACC finalised with the Working Group their suggested solutions to the issues raised. ACC and MBIE, along with the Working Group and NZOA are working on several initiatives to resolve these issues. Detail on the discussions of the group, actions and progress is attached in Appendix C.
16. At the core, the issues with medical evidence are likely to be about cost for claimants and supply constraints on medical advice.
 - a. The work MBIE and ACC have done to recommend increased Review cost rates (on top of the inflationary adjustment already made) for claimants should go a significant way to reducing the access barriers related to cost. s 9(2)(f)(iv)
 - b. Issues of supply constraints on medical advice are more difficult to solve. Several initiatives have been progressed by ACC and the Working Group, but ongoing effort to improve the efficiency of decision making and use of limited medical resources in the disputes process will be important and will continue beyond the Review work.
17. Actions have been implemented in the seven key areas identified by the Review (discussed below). s 9(2)(f)(iv)
18. The Review identified seven areas for consideration, all issues affecting claimants access to medical evidence: the cost of case-reviews to claimants, conflict of evidence between medical

experts, education, timely access to medical experts, objectivity, information gathered by GPs, and understanding of legal and medical issues. The initiatives complete or underway to respond to these areas are:

- ACC has published a statement for medical experts on providing best practice objective medical opinions to ACC. This means claimants can have greater assurance that opinions from medical experts to ACC on their behalf are not biased in favour of ACC.
- Since February 2018, all ACC's elective surgery requests now come through the Treatment Assessment Centre. This is the first step in improving consistency on elective surgery decisions, including around consideration factors for ACC funding of surgery and avoiding disagreement between ACC and medical practitioners.
- ACC runs an internal Clinical Advice Panel (CAP), which provide clinical advice on causation to staff in the Treatment Assessment Centre who use it in the decision-making process to determine surgical entitlements and support. To increase the pool of experts and allow for a wider range of views, and address the perceptions that medical experts paid by ACC provide medical advice that it is biased towards ACC, the NZ Shoulder and Elbow Society have agreed to have one of their members provide input into ACC's Clinical Advice Panel (CAP). ACC's own employees on CAP are rotated and are bound by professional ethics and standards to provide an independent opinion.
- ACC is developing a trial with the New Zealand Orthopaedics Association (NZOA) where a clinical discussion takes place between an ACC CAP member and the treating surgeon to clarify medical evidence before a decline decision is issued. This seeks to build consistency of view between ACC experts and their external counterparts, and may reduce the need for clients to seek further medical evidence following a decline decision.
- NZOA subspecialty societies and ACC are working on agreeing injury-related factors for knee and rotator cuff tears that indicate whether it was caused by an accident, as opposed to a degenerative condition. While initiatives have been focused to this point on knee and rotator cuff injuries, this is the kind of ongoing work that ACC will continue to do on an ongoing basis as part of continuous improvement.
- ACC is developing a post-graduate module on injury causation to encourage more medical experts to provide opinions for ACC cases to increase the supply of medical advice available. To progress this, ACC is working with medical bodies outside of the Working Group. This is planned for completion in December 2018.
- To improve decision timeliness for claimants, ACC is developing its internal clinical report writing course into an external module to help medical experts to provide the appropriate information required to support ACC's decision making.

19. A key benefit from the Medical Issues Working Group was bringing together diverse groups, such as clinical and legal representatives, into a shared forum for discuss how to improve claimant access to medical evidence. ACC is giving consideration to how support this dialogue beyond the Review through its newly established Customer Advisory Panels, where there is opportunity to bring together a broad range of stakeholders. As well as this, ACC's Chief Clinical Adviser is considering what more needs to be done and how to best engage stakeholders in the clinical community on an ongoing basis beyond this Review.
20. Two recommendations were made by the Review to empower the District Court to commission medical reports for claimants and direct experts to confer. The Ministry of Justice and MBIE consider that while these recommendations improve the efficiency of the Court process, they are unlikely to improve access to medical evidence for claimants. In addition, they would replicate existing powers of the District Court to appoint experts to assist the Court and direct experts to confer. Such provisions would also create a separate process for ACC claimants compared to

other civil litigants, which is unjustified. These recommendations are therefore not being progressed and are considered complete.

Access to representation

21. The Review found that lack of representation (for example, a suitable lawyer or advocate) can be a barrier to claimants seeking to challenge ACC decisions. This barrier exists because of a considerable imbalance in the resources ACC can access compared with those available to claimants. Claimant demand for expert legal services often exceeds supply, with very few lawyers practising in the area of accident compensation law.
22. In response to this, ACC has made significant changes to its approach and resources for advocacy services, which will significantly improve claimants' access to representation and improve their ability to participate in the disputes process.
23. ACC is funding a free independent service which advocates, supports and prepares claimants to dispute or review an ACC decision. The navigation service will be capable of advocating for claimant's interests, assisting them to raise complaints or disputes where appropriate, and support them to prepare effectively for a review hearing if required. "Navigation" also captures all the functions which the services may provide in the absence of a dispute, such as assisting claimants to access entitlements and engage confidently with ACC in the future.
24. ACC expects the service to be up and running in 2018/19 and see about 4,000 claimants per year, approximately four times the current number of claimants accessing ACC-funded advocacy services. This service will focus on accessibility to people of diverse cultural backgrounds, particularly Māori claimants, as well as people with different abilities and needs. As part of the new service. The service will be aligned with current tender processes for independent dispute resolution services for ACC claimants, planned for the end of 2018.
25. Additionally, ACC has increased funding to its existing advocacy service provider, Workplace Injury Advocacy Service (WIAS), in response to the recent exit of another provider (Linkage Trust). The WIAS service is well-promoted on ACC's website, explaining what WIAS provides and how to make contact.
26. The recommendation for the District Court to have power to appoint counsel to represent claimants in exceptional circumstances was explored but considered by the Ministry of Justice as likely to create an unjustifiably separate process for ACC claimants compared with other parties before the Court and was not therefore progressed.

Review suggestions

27. In addition to recommendations, the Review made a further sixteen suggestions for ACC to consider. ACC explored all 16 suggestions and progressed all but one. Detail on the suggestions and their implementation is attached in Appendix D.
 - Nine suggestions have been completed, including establishment of a Resolution Services within ACC (discussed above), removing the original decision maker from the Review, and improving the accuracy, consistency and timeliness of ACC's Review functions.
 - Two suggestions remain underway and will be completed in 2018/19, including updating the ACC advocacy training manual, which will be reworked as part of establishing the new navigation service, and the creation of processes to enable medical experts to confer with each other, which ACC is working on with the NZOA.

- Four were considered by the Medical Issues Working Group, all of which are being progressed.
28. The suggestion to adopt the 6th edition of the American Medical Association Guidelines (in place of the 4th edition which is currently used) was not progressed, as adopting these new guidelines would result in reductions in claimant entitlements (smaller lump sum payments), primarily affecting mental injury clients.