

5 December 2023

Hon Matt Doocey
Minister for ACC

By email: matt.doocey@parliament.govt.nz

Tēnā koe Minister

The New Zealand Law Society Te Kāhui Ture o Aotearoa (Law Society) congratulates you on your appointment as Minister for ACC. We wish you all the best in the role and look forward to continuing our good working relationship with your office.

We have previously written to your predecessors about accident compensation law reform. It remains our strong recommendation that accident compensation legislation should be reviewed, and a bill introduced to improve access to justice for injured New Zealanders. The current legislative framework presents barriers to New Zealanders' ability to access justice and to the effective administration of justice.

Background

The Law Society is the professional body for lawyers in New Zealand. We are an independent statutory body constituted under the Lawyers and Conveyancers Act 2006 to regulate and represent the legal profession. We regulate just over 16,000 practising lawyers, and represent over 98% of lawyers.

The Law Society's role in law reform and advocacy

The Law Society has a statutory function to 'assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law.' This is a regulatory function carried out in the interests of the public.

The Law Society is consistently called upon to ensure workable legislation by providing reasoned and impartial submissions on law reform proposals. Law Society submissions also represent the public interest on matters such as access to justice, the administration of justice, constitutional protections, and the rule of law. We also act as an impartial intervenor in leading court cases of general and public importance in the higher courts.

To carry out this work,¹ the Law Society has over 170 volunteer lawyers, sitting on 17 committees, who contribute to submissions on bills, policy papers, working groups, and the like. Our **Health and Disability Law Committee**² includes highly experienced accident

¹ Further information about the breadth of our law reform and advocacy work can be found on our [website](http://www.lawsociety.org.nz).

² <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/health-and-disability-law-committee/>

compensation lawyers, and has long contributed to proposals impacting the accident compensation scheme, as well as advocating for improvements.

A comprehensive review of the Accident Compensation Act

A comprehensive review of the Accident Compensation Act 2001 (the Act) is long overdue. The Act has been through several iterations including in the 1970s, 1980s and 1990s. As a result, a large number of incremental and often inconsistent amendments have been made over the years. This makes it difficult to reconcile aspects of this important social legislation or to apply the law at first instance, on review, and in the courts. It also means the Act contains a number of provisions that now need to be substantially improved.

In our view, a comprehensive review should consider:

- Are the five principles outlined in the 1967 Royal Commission Report still applicable in modern New Zealand society?
- Does the current legislation enable the ACC to effectively administer a statutory legal system embodying the five Woodhouse (or alternative) principles?
- Do the present review and appeal systems and procedures available to ACC claimants meet the requirements of the rule of law?
- Does the current law provide an adequate replacement for the common law right to sue to recover damages for personal injury suffered in New Zealand?

In 2018, the then Associate Minister confirmed in Parliament³ that substantive legislative reform “is coming down the track” and this is a “substantive piece of work that is being worked on now with more fundamental changes to the Act”.⁴ The select committee report similarly recorded that officials have been asked “to take a careful look at ways to improve the scheme”.

Presumably, that ‘substantial’ reform was not the Accident Compensation (Access Reporting and Other Matters) Amendment Act 2023, though it is not clear what work is, or has been, underway. We would be interested to hear your views on progressing a comprehensive review.

Interim improvements in the interests of justice

Recognising that a full review does take time, we also urge you to consider making the following improvements in the immediate future:

1. Claimants cannot generally appeal personal injury disputes to the Supreme Court. This anomaly appears to be the product of history from the pre-Supreme Court period where final appeals were to the Privy Council. That right has now been extinguished, but for ACC disputes, there is no access to the Supreme Court. There is no principled reason for this; however, such a change requires legislative amendment.
2. Claimants often experience lengthy delays for decisions on entitlements to be made by ACC (such as funding surgery or paying weekly compensation). There is no statutory timeframe within which these decisions must be made.
3. Review decisions, which are made if a claimant is dissatisfied with ACC’s decision, are not enforceable in the courts. In some cases, claimants win at review but are left without a remedy when ACC or an accredited employer neglects or refuses to honour the review

³ Accident Compensation Amendment Bill 2018 – First Reading, 9 May 2018.

⁴ Accident Compensation Amendment Bill 2018 (49-2) (select committee report) at 2.

decision. Having won, the claimant cannot appeal, so the success can be illusory in these circumstances.

We are very happy to meet with you to discuss the issues raised in this letter if that would be of assistance to you. Contact can be made in the first instance via Bronwyn Jones, General Manager Policy, Courts and Government (bronwyn.jones@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in black ink that reads "Frazer Barton". The signature is written in a cursive style with a large initial 'F'.

Frazer Barton
President