ACC FUTURES COALITION

ACC Re-envisaged for the 21st Century

From the proceedings of the ACC Futures Forum
Organised by the ACC Futures Coalition
30 April 2021, Brentwood Hotel, Kilbirnie, Wellington

inside front cover

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Contents

Acknowledgements iv

Executive Summary 1

Highlights from the Forum 2

About the ACC Futures Coalition 5

Background to the Forum 6

Proceedings of the Forum 7

Plenary sessions 7

- Minister for ACC – Hon Carmel Sepuloni 7
- ACC structure and governance in the context of the new public management – Len Cook 7
- Why Inequality in ACC Provision Matters – Sue Moroney 8
- Addressing Inequality in ACC Provision: Māori – Dr Dianne Wepa 9
- The Immediate Changes We Need – Hazel Armstrong 10
- How ACC Fails the Disability Community – Dr Huhana Hickey 11
- Lessons from Australia: National Disability Insurance Scheme (NDIS) – Prof Richard Madden 12

Reflections on our way forward: Panel discussion 13

- Dr Hilary Stace 13
- Dr Michael Fletcher 14
- Warren Forster 15
- Wayne Butson 16

Workshops 16

- Reforming the Accredited Employers Scheme – Fritz Drissner and Ben Thompson 16
- Medical issues and occupational disease – Wattie Watson 17
- Institutional Racism and ACC – Tom Harris 18
- Gender and ACC – Dr Dawn Duncan 19
- Disability and ACC – Dr Hilary Stace and Dr Andrew Dickson 19
- Rights of Appeal and Legal Issues – Peter Sara and Warren Forster 20
- ACC Funding and Governance – Don Rennie and Professor Susan St. John 20
- Social Insurance: Other models and their implications for ACC – Craig Rennie 21

About our Speakers 22

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- The workshop rapporteurs: Quinn Vugler, Hope Farquhar, Becca Boles, Melissa Harward.

We also want to thank all the participants for attending and making it such a successful day.

Disclaimer

The opinions and information contained in these proceedings do not represent the views of the Coalition but will assist it in developing its policies.

Glenn Barclay, Hazel Armstrong, Susan St. John and Quinn Vugler

Executive summary

The ACC Futures Coalition (the Coalition) is establishing a new mandate to address the issues currently facing ACC:

- Can the disparity in entitlements between those who are impaired through injury and those who are impaired at birth or by the birth process or through health conditions be addressed, and if so, how?
- The Māori experience of ACC reflects Māori experiences with other government services. What changes are required?
- Why are most recipients of ACC entitlements men and what can be done to establish gender balance?
- Does the obligation on the scheme to be actuarially fully funded limit the services ACC provides and how they are delivered? What needs to change?
- What is the best public management form for ACC?

The Coalition organised a Forum on 30 April 2021, where a case was made for substantial reform of ACC, across all of the topics under consideration. ACC has served us well but the evidence is clear that a wider examination of how the scheme operates is needed. This may take the form of a Royal Commission or a similar inquiry, as Hilary Stace called for during her plenary contribution, or it could be through a comprehensive government-led policy process.

The Coalition needs to be ready for reform, and the Forum and its proceedings are the first steps to confirming a clear view of what reform might look like. They begin our own policy development process, which will ultimately lead to the adoption of an updated ACC Futures Coalition manifesto. We encourage people to participate in this process and support our work from here on in.

Highlights from the Forum

Plenary sessions

Minister for ACC – Hon Carmel Sepuloni

The Minister stated that discussion of any significant expansion of the ACC scheme is really about whether an entitlement based social insurance approach is the best way for New Zealand to meet the health and welfare needs of its citizens.

ACC structure and governance in the context of the new public management – Len Cook

The board of ACC should focus on the integrity of the services received by the public, and the quality of the processes that provide them.

Why inequality in ACC provision matters – Sue Moroney

"It's easier to get ACC funding for a rugby injury or an accident from a drunken night out than it is for an injury sustained during birth."

Just 37% of ACC's financial payouts went to women and 63% to men in 2017–18.

Inequality in ACC Provision: Māori – Dr Dianne Wepa

In the case of ACC, the Māori experience consistently involves patterns of systematic and substantive under-representation in a range of services.

The Māori Health Authority provides a major resource for engagement with ACC. This could result in more sophisticated, refined and targeted service delivery pathways designed to meet the needs of Māori (which in turn benefits other population groups).

The immediate changes we need – Hazel Armstrong

Over the years the Woodhouse principles have been undermined and there is a need to look again at the legislation and for ACC to review its practice.

How ACC fails the disability community – Dr Huhana Hickey

We should have a revival of Sir Owen Woodhouse's original dream, which was that ACC should apply to people with disabilities no matter how the disability was caused.

Lessons from Australia: the National Disability Insurance Scheme (NDIS) – Prof Richard Madden

It provides access to treatment and support services and not compensation. People who are entitled to compensation are not covered by the NDIS and the right to common law actions remains. A National Injury Insurance Scheme was supposed to roll out alongside the NDIS.

Panel discussion: Reflections on our way forward

Dr Hilary Stace

We can do better, building on ACC, to develop a universal, equitable, affordable national scheme rather than looking to the NDIS. There has been a lot of work developing a person-centred disability support system governed and led by disabled people themselves. It is called Mana Whaikaha.

Dr Michael Fletcher

Extending ACC to include sickness and disability would improve horizontal equity for those who are covered by ACC, compared with those who have a similar disability created by illness, but it does create other disadvantages and problems.

Warren Forster

We can proceed in a piecemeal ad hoc fashion to bring about change, some of which will be necessary, or we can get political parties to adopt policies or require a government department or agency to plan a principle-based extension of the scheme.

Wayne Butson

There was reference [in a Labour government press release] to the need to consider the disparate outcomes for those currently covered by the scheme and those impaired through ill health and other sources. There is an appetite within Labour to look at it.

Workshops

Reforming the Accredited Employers Scheme – Fritz Drissner and Ben Thompson

ACC recently conducted a review of the AEP and discovered that while there were some positive outcomes … some features of the programme have not functioned as intended and there was a long list of concerns.

Medical issues and occupational disease – Wattie Watson

Schedule 2 is failing firefighters. The answer is presumptive legislation that presumes specific cancers are occupational cancers for firefighters. Canada, USA and Australia have all enacted presumptive legislation.

Institutional racism and ACC – Tom Harris

Māori are being filtered out of system at different stages: just getting to see a GP; ending up with the wrong claim lodged; or the right claim lodged with not enough support or entitlements. ACC needs a Kaupapa Māori approach – face to face, by Māori for Māori services.

Gender and ACC – Dr Dawn Duncan

The ACC scheme was designed with 1960s assumptions about the worker and the work being performed. The cover provisions are out of date and fail to reflect the realities of the 2021 labour market. Women are particularly negatively impacted by these outdated cover provisions.

Rights of appeal and legal issues – Peter Sara, ACC Lawyer and Warren Forster

Alternative processes were outlined.

ACC funding and governance – Don Rennie and Professor Susan St. John

Participants recommended that ACC Futures support a move back to the model of an independent commission for the governance of ACC; and that a fund be retained sufficient to meet future unforeseen contingencies, to repeal the present provisions relating to fully funding accounts, and to review the levy system.

Social insurance: Other models and their implications for ACC – Craig Rennie

Social insurance is usually an addition to a benefits system. The three interrelated elements of the social insurance are: the levy; the rate of compensatory payments; the duration of any payments.

About the ACC Futures Coalition

The ACC Futures Coalition is a group of health providers, lawyers, community organisations, ACC consumers, academics and unions campaigning to maintain and improve ACC. It was set up in 2009 after political attacks on the scheme. While the Coalition was instrumental in preventing parts of the scheme being privatized, the scheme has since been undermined by the limiting of entitlements and access to entitlements, and the moving of long-term claimants off the scheme, often before they are ready.

Our current aim is:

> To build cross-party support for retaining the status of ACC as a publicly-owned single provider committed to the Woodhouse Principles, and a “no fault” compensation social insurance system for all New Zealanders. Our commitment is to have an ACC scheme that has integrity and the trust of the public of New Zealand, and is focussed on injury prevention, treatment, complete rehabilitation and compensation for the injured claimant.

In support of our aim we have developed a manifesto, which primarily addresses issues within the current scope of the scheme. A copy can be found on our website.

Background to the Forum

The Coalition organised a one-day forum on 30 April 2021 to promote our manifesto goals and to begin the work for more substantial change.

Pressure has been building on the scheme for some time, as reflected in the election pledges of the Greens and Labour parties. The Greens proposed, “Reforming ACC to become the Agency for Comprehensive Care, creating equitable social support for everyone with a work-impairing health condition or disability.”

Labour was more guarded but among other specific commitments to address many of the issues covered by the Coalition’s manifesto they said that they would “examine inequities between support through ACC and the welfare and health system for disabled people and people with health conditions”.

Since then there have been many media reports that mainly involve the grey areas that arise from having a scheme that grew out of workers compensation with a focus on accidental injury and tight definitions about what that means. Examples of this include ACC’s decisions around birthing injuries and the inadequacy of the scheme as a vehicle for addressing the mental health trauma experienced by those who witnessed the Mosque shootings in Christchurch in 2019.

The Government has also announced a significant reform of the health sector and signalled the introduction of an “ACC-like” scheme of social insurance for those who lose employment. Both of these reforms will impact on ACC and we need to understand what that means.

We were joined on the day by many experts in their fields who shared their experiences and knowledge with participants. There was useful questioning and debate and the following proceedings set out to capture all that with a view to informing the development of a new manifesto so the Coalition can promote a clear agenda for reform.

Proceedings of the Forum

PLENARY PRESENTATIONS

Hon Carmel Sepuloni, Minister of ACC

The Minister started by saying that she was pleased to have been given the ACC portfolio, given its links to other portfolios, and the difference in support available to those who have been injured and those who have chronic illnesses and disabilities. The Government was committed over this term to looking at ways of improving the scheme and how it interacts with health and welfare. She said a range of options exist for addressing the current boundary issues, ranging from small scale targeted changes to the boundaries through to significant expansions of either health and welfare systems or ACC.

She saw the Health and Disability Sector Review and the Welfare Expert Advisory Group (WEAG) report as providing opportunities to look at whether "differences in levels of support can be rebalanced". The former will reform the health system into a nationwide health service, driven by two new organisations – Health New Zealand and a Māori Health Authority. Decisions are still to be made about Disability sector reform but she will be taking a paper to Cabinet later in the year.

As a result of the WEAG report the Government has made a number of changes to the welfare system and others will be considered in this term.

The Minister stated that discussion of any significant expansion of the ACC scheme is really about whether an entitlement based social insurance approach is the best way for New Zealand to meet the health and welfare needs of its citizens. This could mean a profound change to how we fund and deliver the social support system in this country. It could also shift ACC's focus away from workers' compensation, currently one of the core purposes of the scheme. The current entitlements provided under ACC, such as weekly compensation being 80% of income, may no longer be affordable if cover is expanded to all illness. Some rationing may be required.

She is currently considering whether fundamental reform to the scheme is needed and is particularly interested in whether the Accident Compensation Scheme provides equal access to women, Māori, and Pacific peoples.

Many of these decisions are complex and require trade-offs and she encouraged the Coalition to continue to have these important discussions and work through some of the system's big questions.

In the meantime, she is progressing a programme of improvements to the Accident Compensation Act 2001 in the form of two amendment bills. The first, to be introduced later this year, will implement a number of policy proposals that can be progressed relatively quickly. The second bill will follow in 2022 once she has had an opportunity to consider what further changes need to be made.

ACC structure and governance in the context of the new public management

Len Cook, Former Government Statistician of New Zealand and former National Statistician of the United Kingdom and Registrar-General of England and Wales

Len drew on his experience in public administration both in New Zealand and the UK to set the scene for the day.

While the form of ACC envisaged by Sir Owen Woodhouse has never been fully put in place, since the scheme was first put into legislation it has moved even further from what he intended. In practice the concept of ACC as a social insurance scheme has been shaped more by a focus on commercial markets than it has on the principle of public service.

This has determined its design, place in the public management system, funding and the relationship to the health and disability system. ACC operates

as a Crown Entity, with relationships described in its legislation with other Crown entities (Worksafe, DHBs) and departments (Ministry of Health, Statistics).

The new public management reforms from the 1980s and 1990s in New Zealand saw a shift from capability (where expertise and experience are valued, research is invested in, common information standards apply, accountability demonstrated, public interest is the focus) to function (driven by contractualism and regulations, with spot markets for resources, (including planning, strategic thinking, research, communications]) and goals set by the minister's performance objectives).

The reforms saw a new form of agency model with quite distinct autonomy and separate performance arrangements come into being, with the following features:

- Performance measures focused on efficiency, not effectiveness or efficacy (loss of quality, connectivity, equity) and outcomes weakly researched outside government.
- Communications and information exchange limited
- Redistribution achieved by providing cash transfers in some form to people to purchase at market prices (housing, health, education) goods of weakly regulated quality
- Competition established as a notional concept (competition mainly internal for resources rather than of outcomes).

This compartmentalisation of operations, infrastructures, research, network centres and evaluations has had a number of unfortunate consequences across government. A wide range of publicly funded services do not operate in a well-informed market, which together with co-payments and other additional costs, leave many members of the public without access to the services they need.

Reliance on contracts, and insecure contracting practices, limits government ability to deliver what is needed while limiting systems planning in the key capability areas of technology and workforce.

What does this all mean for ACC?

For a start the ACC full funding model is a political choice and not inherent in the social insurance model behind ACC. While the fund management model may dominate the focus of ACC the existence of the fund does not reduce the position of government as underwriter of the scheme. There are other ways ACC could operate such as maintaining a strong contingency reserve of cash.

In terms of governance the Crown entity model results in boards duplicating the management's role in oversight of the integrity of strategic, operational and financial practices. In turn that role overlaps with that of the Auditor General. The board of ACC should focus on the integrity of the services received by the public, and the quality of the processes that provided them. The role should be more like that of the Social Security Commission established under the 1938 Social Security Act and oversee the quality of the public's experience.

ACC is part of a wider system of health and social services and there needs to be a more coherent and integrated approach to balancing rehabilitation, income maintenance, injury prevention and compensation for loss, with some certainty of process and scope. Health, rehabilitative and income support capability is often managed by others and ACC needs to have levers to span these functions and work effectively as a network centre.

Like other public services ACC also needs to be able to adapt to societal and demographic change.

Why inequality in ACC provision matters

Sue Moroney CEO, Community Law Centres O Aotearoa

Sue tackled the general issue of inequality in the provision of ACC services. We need to understand who is excluded from accessing the resources of ACC and who misses out in accessing justice when ACC's decisions need to be challenged.

- Which groups are disproportionally excluded from coverage or entitlement? Who struggles to get access to complete rehabilitation, as envisaged by Sir Owen, and home help?
- Who gets legal aid and who misses out given there are very few lawyers specialising in ACC as legal aid providers?
- The ability to pay for representation is often negatively impacted by the gender/ethnicity wage gap and low pay

- People are often having to represent themselves against the money and expertise of the Corporation, which is often "lawyered-up".

Sue focussed on the situation for women as an example of the problems with the scheme. Just 37% of ACC's financial payouts went to women and 63% to men. When breaking this down by the scheme's accounts in the 2017/18 financial year it looked as follows:

- Work = 21% female; 79% male
- Sports = 27% female; 73% male
- Motor Vehicles = 28% female; 72% male
- Treatment Injuries = 47% female; 53% male

Furthermore the rate of claims being declined was higher for women than men, particularly in the work account where the rate of decline was 36% higher for females (7.6% female declines; 5.6% male declines) and motor vehicles where the rate of decline was 19% higher for females. The sports account had the same rate of decline for women and men but elsewhere the rate of decline was 32% higher for females.

These statistics won't change while ACC doesn't adequately report on or monitor access to its support by gender or ethnicity.

Sue identified some recent examples of bias in decision-making around ACC which helps provide at least part of the story behind these statistics. The 2010 Vandy High Court decision[1] clarified that there was no subsequent wage support if an injury/accident occurred when a claimant was not in paid employment, even if the claimant's earlier injury had been aggravated while in employment. This decision was having a disproportionate impact on women who are more likely to be responsible for raising children. ACC's decision in 2020 to stop cover for many birthing injuries, which has led to an outcry, exclusively impacts on women.

She ended with the following quote:

> "It's easier to get ACC funding for a rugby injury or an accident from a drunken night out than it is for an injury sustained during birth."

1. ACC v Vandy CIV-2010-485-001331

Addressing inequality in ACC provision: Māori

Dr Dianne Wepa, Programme Director: Bachelor of Community Health, University of South Australia

At the 2018 hearings for stage one of the Health Services and Outcomes Inquiry of the Waitangi Tribunal (Wai 2575), Director-General Dr Bloomfield stated: 'As a population group, Māori have on average the poorest health status of any ethnic group in New Zealand'.

Māori experience a higher burden of many serious health conditions, despite significant investment in a health system that is meant to be focusing on addressing Māori needs as reflected in some key indicators e.g.: life expectancy is 7 years less than non- Māori; Māori have higher rates of unmet health need and higher disease-specific mortality rates compared with non- Māori; Māori experience lower referral rates for elective services.

In the case of ACC the Māori experience consistently involves patterns of systematic and substantive under-representation in a range of services. Under-utilisation is most notable in the referral and uptake of elective surgery services, home and community support services and duration of weekly compensation claims (from 5%–50%). Māori are presenting for treatment, however during their engagement with the health provider Māori are not being referred to services to which they are entitled.

There are several possibilities that might explain what is going on during this interaction. It could be: racism/unconscious/conscious bias; lack of cultural literacy education; or lack of accountability.

Dianne also drew attention to the lack of Māori providers and therefore Māori have a lack of choice in who treats them. This may also be a reason behind non-referral.

Dianne suggested that the Inclusion of cultural satisfaction outcomes within Personal Key Performance Indicators (KPIs) could provide some accountability and lead to behaviour changes.

Dianne also pointed out that there is a tension between the health lens of equity (health needs are different between population groups and therefore differences in service utilisation are to be expected) and the business insurance view of equity (service utilisation is a matter of

personal choice). ACC tends to reflect the latter, notwithstanding a number of initiatives targeting Māori (see the ACC website).

WAI 2575 Health Services and Outcomes Kaupapa Inquiry and the Health and Disability System Review are opportunities to engage with the changes within the New Zealand Health system for the benefit of Māori.

The Health and Disability System Review will see the establishment of a national health service lead by a new agency – Health New Zealand. It also establishes a Māori Health Authority to:

- Ensure the health system is performing for Māori
- Partner with MOH to advise Ministers on hauora Māori
- Directly fund innovative health services targeted at Māori (including Kaupapa Māori services)
- Work with Health NZ to plan and monitor the delivery of all health services.

The Māori Health Authority provides a major resource for engagement with ACC. This could result in more sophisticated, refined and targeted service delivery pathways designed to meet the needs of Māori (which in turn benefits other population groups). Injury treatment and rehabilitation could be tailored to reflect socio-economic position and cultural preferences.

Systemic and personal changes are required to sustain an all-of-system approach improve health outcomes for Māori as they deserve no less.

Note: Since the Forum was held on 30 April 2021, ACC has announced a new engagement with Iwi Māori to develop kaupapa Māori health services.

The immediate changes we need

Hazel Armstrong, Partner, Armstrong Thompson Law

Hazel outlined the history of the scheme and in particular the tightening and loosening of entitlement and cover by different governments over the years. ACC Futures Coalition had been formed when the last National-led government had proposed re-privatising the work account and while that government had been forced to back off that proposal, Hon Nick Smith as Minister had pushed through a number of changes that were designed to tighten the breadth of cover, with a particular focus on making rehabilitation more restrictive.

This was all part of a focus on saving money after the Minister had announced that the scheme was 'technically insolvent', following some poor market performances by the ACC fund in the wake of the Global Financial Crisis.

The Nick Smith changes consisted of:

- The imposition of a 6% threshold for hearing loss
- Barriers to accessing cover for gradual process injuries/occupational disease claims
- Disestablishment of the Ministerial Advisory Committee of work-related gradual process/ occupational disease
- Disentitlement in cases of self-inflicted injuries or suicide
- Making it easier to have weekly compensation suspended because a claimant is deemed vocationally independent by, for example defining full time work as 30 hours a week.

After running its successful campaign against privatisation the ACC Futures Coalition turned its mind to wider reforms of the scheme, as well as the repeal of the Nick Smith changes. A manifesto was established that argued for:

- Cover to be extended to areas such as mental injury caused by non-work traumatic events, non-work related asbestos disease and birthing injuries.
- Access to entitlements should be improved by the removal of the requirement to be an earner at the time of injury and at the time of incapacity in order to be eligible for weekly compensation (i.e. reversal of the Vandy decision), requiring entitlement decisions to be issued within statutory time frames, changing the way weekly compensation is taxed when back dated and providing that holiday pay should not be abated against weekly compensation.
- Board representation to include workers, disabled persons, Maori and Pasifika.

- Creating a larger pool of assessors – i.e. not limited to those appointed or approved by ACC, so long as the assessor is appropriately qualified and trained.
- Adjustments to how the lump sum is calculated.
- Changing the definition of full time employment by increasing it to 37.5 hours a week.
- Taking pre injury earnings into account when making vocational independence decisions.
- Reinstating consideration that the person can work in each and every part of pre injury employment when considering incapacity.
- Improving access to justice by removing the bar to appeal to the Supreme Court, increasing review costs, making review decisions enforceable and increasing legal aid entitlements.

Over the years the Woodhouse principles have been undermined and there is a need to look again at the legislation and for ACC to review its practice. These changes would be an important step towards achieving that.

How ACC Fails the Disability Community

Dr Huhana Hickey, Managing Director, Pukenga Consultancy

Huhana based her presentation on the lived experience of living with a disability, rather than a data driven evidence based approach. This meant both her own experience and the experience of others within the disability community.

What we have in NZ is world class system of ACC, but what we also have is a non-world class system of Ministry of Health and DHB delivered disability funding. If you look at the research on the disparate treatment of Māori – is a similar story.

Huhana provided several stories of people who have received different treatment according to how they acquired their impairments. For example, she related the stories of 3 people who are quadriplegic: one who got everything they needed right down to their massage everyday, their home modifications, and the ability to travel around the world first class as part of their work; another who gets less than that; and one who recently passed away after struggling with abject poverty. The last one wasn't given the same vehicle support, care support or the same treatment as the other two got. He died because he'd given up living – he was tired of fighting the system.

There also many people who should be on ACC but aren't under the current system, including Huhana. Her own story with ACC begins in Stratford on a farm where she grew up and where she and her Mother were exposed to 245T. They used to spray with the chemical until 1965 and in New Plymouth they had an Ivan Watkins Dow factory that manufactured it up until quite recently. Her Nana lived quite close to the factory and her Mum worked at the factory and they used to play around the drums as kids, because no-one told them it was hazardous material that had to be treated with care. Both Huhana and her Mother were denied access to ACC because they didn't want to open up the flood gates. The Government provided them with one free medical appointment a year, which Huhana has declined because it is such a waste of time given that she has to see doctors much more frequently than that. There was no ACC cover because the exposure was not work related. However, the harm was considerable and we know that there are a lot cases of neurological issues, cancers and skin issues around Taranaki and the Waikato. She has had 9 melanomas removed and neurological issues that are so rare that she can't get the right medications or treatments for them.

There are so many issues of discrimination that disabled people are struggling with. For example, if you come under the Ministry of Health and you need a specialised vehicle you will get $12,500 for the van or car and $12,500 for a hoist. Now a brand-new hoist is $25,000 to start with and you need a vehicle that costs a lot more than $12,500 too. For people on supported living payments that is beyond their means. So they have to rely on a public transport system that is not set up for them, so unless you have resources you cannot get around freely. If you are under ACC, on the other hand, you can get much of your transport needs covered.

Huhana also had whiplash a few years ago but also had MS. ACC will not accommodate existing disabilities that might mean that rehabilitation from something like a car accident takes longer, unless the disability was one that ACC already covered.

So we have an ACC system but there are a lot of long term disabled who just get dumped off the system or treated badly. As a disabled person she is tired of discrimination, tired of the fact that those under 18 who are injured cannot live on 80% of the minimum wage, or that others have to go onto the supported living payment, which is even less.

Huhana reminded us that ACC, like the Australian NDIS, was a gold standard scheme when it was first designed, but there have been many amendments over the years that have undermined those intentions and broken it down. We should have a revival of Sir Owen Woodhouse's original dream, which was that ACC should apply to people with disabilities no matter how the disability was caused.

We need a system that provides universal disability support run by people with disabilities so that there is no discrimination. There are now plenty of well qualified disabled people who could run their own services and run them well. She has a petition going around at the moment asking for a specialist disability agency that is independent but has the power to enforce regulations, similar to WorkSafe but led and run by disabled people. We need to get service delivery for people with disabilities out of the Ministry of Health and the DHBs to an independent system. You would get your funding from the one place. Mana Whaikaha is shown to be working really well, which shows it can be done.

We want to bring the MoH/DHB clients to the same position that ACC provides, where everyone gets access to good quality, universal health care and disability supports. But to do that we've got to fund it adequately, perhaps a through levy based system like ACC.

We also need to stop siloing services and bring them together. Huhana has recently been defined as eligible for aged care services and the assessment she had there did lead to all the siloed services being pulled together around her by the assessor who understood that the silos were the problem. That's what can happen when you work together in a collaborative approach, including the individual their family and whanau.

Huhana is working and likes to work but it is so hard under MoH. When Huhana was briefly under ACC she had all of that. We have to have a system that provides good comprehensive care regardless.

Lessons from Australia: National Disability Insurance Scheme (NDIS)

Prof. Richard Madden, Honorary Professor at the University of Sydney

Professor Madden provided background to the development of the NDIS in Australia. Like NZ the disability sector went through deinstitutionalisation in the 1970s and 1980s, and the support services were delivered at state level with varying levels of state funding and Commonwealth grants. This was formalised by the Commonwealth-State Disability Agreement in 1992. There had been various state initiatives to reform the sector, such as Stronger Together in NSW in 2006, but this was the structure that was in place prior to the NDIS.

The NDIS came into being following the report of the Disability Investment Group in 2008 and the Australian ratification of the UN Convention on the Rights of People with a Disability the same year. It was picked up by the new Labor Government and the policy was also supported by an inquiry by the Productivity Commission in 2011, which said that the scheme would cost effectively minimise the impacts of disability, maximise social and economic participation and create community awareness of disability issues.

The NDIS Act passed in 2013 with bipartisan support and all States and Territories signed agreements with the Australian Government. They planned to withdraw from disability support and devolve their services to the NGO sector.

The NDIS was founded on the following principles:

- Support the independence and social and economic participation
- Provide reasonable and necessary supports
  - Support achievement of goals and maximise independence
  - Support living independently and inclusion as fully participating citizens
  - Develop and support capacity to live in the community and be employed
- Enable choice and control.

The scheme applies to a broad array of permanent impairments, including psycho-social and impairment that results in substantially reduced functional capacity to undertake one or more of

communication, social interaction, learning, mobility, self-care, self-management. It also includes impairment that affects the capacity for social and economic participation. The age requirement for new applicants was to be up to age 65.

It provides access to treatment and support services and not compensation. People who are entitled to compensation are not covered by the NDIS and the right to common law actions remain. A National Injury Insurance Scheme was supposed to roll out alongside the NDIS but work on this is continuing, although catastrophic road injury compensation has been achieved.

The aim was to create an insurance based approach through the NDIS, informed by actuarial analysis to ensure financial stability. Although it uses the term 'insurance', social insurance is not a well understood concept in Australia and the NDIS is not a fully funded scheme in the way that ACC is in NZ. The agreements between the States and Commonwealth are complex and the scheme is funded 50% by each, with the Commonwealth paying 100% of any cost overruns.

At maturity (2019–20) the NDIS was estimated to cost $22 billion per annum it is costing $21.7 billion in 2020–21. The States contribute approximately 50% of what they were previously spending. There was a Medicare levy increase of 0.5%, from 1 July 2014, as well as offsets from existing Commonwealth programmes and approximately $5 billion of new Commonwealth appropriation from 2020–21.

The scheme is administered by a new Commonwealth agency, the National Disability Insurance Agency (NDIA).

2019–20 was the target date for full rollout with 470,000 people expected to participate. 532,000 participants are now expected by mid 2023, with 430,000 covered by the end of 2020. Half are receiving support for the first time; 6.7% are indigenous people; 10.5% are culturally and linguistically diverse (CALD); and people under age 65 in nursing homes are down 27% to 4,600. Overall Professor Madden sees the NDIS as a success. It is a major social initiative in Australia that gained bipartisan support in Commonwealth, State and Territory Governments, provides services to 430,000 participants and secured $10 billion in additional spending on supports for people with a disability.

However, there are some major issues with the scheme. The NDIA is concerned about cost pressures arising from increasing client numbers, package size and spend per client increasing and larger packages for high socio-economic groups. The way the scheme is funded (not fully funded or fully ringfenced) has also left it exposed to politicians tightening the purse strings.

There is a lack of transparency in decision making and service providers are facing pressures and disruption. There have been controversies associated with the scheme as well, over such things as the need for independent assessments and the rejection of some supports like sex services.

Professor Madden made it clear in Q&A that at no time has Australia ever had a social insurance fund based on the actuarial model and he has found New Zealand's insistence on that puzzling.

REFLECTIONS ON OUR WAY FORWARD: PANEL DISCUSSION

Dr Hilary Stace, Adjunct Research Fellow at the Health Services Research Centre, VUW

Hilary commented on the NDIS as a possible model for NZ. The original vision was for a new equitable national disability support service. As part of its development Australian officials, academics and disability advocates came to NZ to find out how ACC and the MoH worked and spoke to disability activists here. We told them that there needs to be one universal equitable lifelong national system. We said that they already had a good model in the local area co-ordination system in Western Australia where anyone could come into a local office and ask a local person for disability support services.

Julia Gillard was a great champion of the NDIS but when she was rolled and Labour lost power what happened was that each state rolled out various pilots that reflected state politics and conservative Federal government cutbacks. New rationing and caps haven't really ceased since. It didn't become the innovative transformative system that was hoped for. But some providers are doing very well out of it and it has its vocal supporters. Hilary also noted the problems of the cut off at age 65 and that non-citizen residents (incuding New Zealanders) contribute to it but cannot access NDIS support.

She quoted a friend who worked in a senior role in the NDIS in its early days to draw attention to perhaps its main problem:

> "There is a belief that if you invest in capacity building for a person then they do not need the same level of funding going forward and we have seen people who for the first time in their lives had received an adequate level of support beginning to thrive and then the next year having their support drastically reduced and their lives collapsing. There is a real dominance of the role of the actuary in the funding decision making and there is a belief that supports will reduce over time, which we know can be the case for some, but the reality is that for many life will unravel very quickly if support is not sustained."

Here in NZ we can do better, building on ACC to develop an universal equitable affordable national scheme than looking to the NDIS. There has been a lot of work developing a person centred disability support system governed and led by disabled people themselves. It is called Mana Whaikaha and is based on enabling good lives principles. It is working well in the Manawatu and will hopefully do so elsewhere and this approach needs to be incorporated into whatever model is developed here.

But for that to happen we need a Royal Commission or some similar authoritative inquiry into accident compensation, disability and income support that goes back to the Woodhouse principles and incorporates the enabling good lives principles. And we need to get the terms of reference right so that they are appropriately broad.

Dr Michael Fletcher, Senior Research Fellow at the Institute for Governance and Policy Studies

Michael addressed 3 main points in his presentation:

- The need for a well administered adequate minimum income floor for our welfare system
- Equity and fairness issues that arise should ACC be extended to sickness and disability
- 'Unemployment insurance' extensions to cover redundancy and lay-offs.

Income adequacy and hardship for those on benefits is a critical issue that needs to be addressed. He does not agree that we can address both this issue and provide unemployment insurance to cover redundancies and lay-offs. Employment social insurance will take a lot of money and it doesn't really matter whether that comes from payroll or general taxation. But just as importantly it will take a lot of time from Government so that it will not be able to address the issue of an adequate minimum income.

Michael has updated the analysis done for the Welfare Expert Advisory Group and this has demonstrated that, notwithstanding the increases made by the Government in recent years [note: this was presented prior to the 2021 budget] the gap between the deficits WEAG calculated between minimum living costs and beneficiaries' incomes remains large in most cases. For example, a single person in a flat in South Auckland who gets all their entitlements would still have a deficit of around $110 a week. With families with 2 or more children the numbers are even bigger. We are still well behind, but he is optimistic that we will see some movements in the budget but they need to be really big.

In terms of equity and fairness extending ACC to include sickness and disability would improve horizontal equity for those who are covered by ACC compared with those who have a similar disability created by illness but it does create other disadvantages and problems. It is important to remember that ACC is linked to the loss of the right to sue and that makes it fundamentally different from a social insurance scheme that is normally time limited and linked to income smoothing over a limited period of time.

One obvious disadvantage is its distributional impact – the biggest benefits go to the better off people. The better off could self insure and for lower earners you could have a better benefits system.

He is not persuaded by unemployment insurance for redundancies and layoffs and it is not clear what the problem is that is being addressed. If it is designed to provide income smoothing over a period to protect against wage scarring then a better welfare system could cover that part of the problem. If the problem is around just transitions then it seems that you would want a bespoke

package for that industry that is closing down and that might include a more generous long term training package but it doesn't mean introducing a two-tier welfare system. If it was for Covid and the GFC then it was proved that if they want to, governments can do things and it is better to keep people in paid work than pay them an insurance wage once they are unemployed.

Warren Forster, Barrister and Researcher

Warren outlined a vision for a universal integrated system for supporting our people with impairment and reducing their disabling experiences.
To get there our leaders must recognise the discriminating and disabling experiences that have affected our people arising from the political decisions taken over the last 50 years. More than half the people receiving a benefit are either disabled or supporting a person with a disability. We need to act now and if we don't then we are going to lose the opportunity within a generation.

We can proceed in a piecemeal ad hoc fashion to bring about change, some of which will be necessary, or we can get political parties to adopt policies or require a government department or agency to plan a principled based extension of the scheme. It is this last option that Warren favours.

He sees 4 principles that would sit at the core of this:

i) Te Tiriti o Waitangi and human rights (including UNCRPD) compliant by design

ii) Person centred at the point of delivery

iii) Innovation of funding to create a sustainable funding model

iv) Progressively realised over 10 years.

We will need a dedicated agency to drive the policy work to make this happen. We need a structure. We need to build relationships with stakeholders such as iwi and all the usual organisations. We need to model how we collect the money to fund the system. We can raise the tax necessary or we can perhaps set up a sovereign wealth fund using the existing ACC fund to provide the return on investment to fund the gap between tax increases based on CPI and health and social inflation. Whatever the model we need to talk about it.

Then we need to build capacity and this is going to take a long time. We are going to need a workforce for the future system and we are going to need leaders for the future system. We need to work on co-governance. The systems we have at the moment don't comply with our obligations under Te Tiriti and people with disabilities and their organisations will be an essential part of that future. We need to build the data system required to model that expansion.

We need to debate and plan the expansion (during years 2 and 4 of the implementation). The steps for doing this could be based on:

i) Impairment or person specific characteristics. This could be such things as the level of impairment, the type of impairment, the cause of impairment, the age at point of diagnosis or assessment or geographical location

ii) The type of support required (health support, social support, income support, habilitation and rehabilitation – these need to be integrated)

iii) Individual choice

iv) A rights-based social investment approach

v) When the economic conditions meet certain criteria e.g. when the fund can deliver enough money.

We need to determine the policy settings, which will require a lot of work, for example, what will be the relationship with the health system? We need to think through income support and dispute resolution.

These are the decisions that need to be made, but we can't make them all now. You need to socialise these ideas otherwise we go back down the same path we have been on.

We will then need to plan for the transition and operationalise it. We need to move from what we do now to what the future state is.

His key recommendations were:

- We need to have agreement on the vision
- We need to agree about a principle based expansion
- We need to agree and develop a government agency to do the policy work
- We need to agree a framework to get this moving

- We need to fund whoever's job this is going to be to do this.

Wayne Butson, General Secretary, Rail and Maritime Transport Union of New Zealand

Wayne focussed on the Labour policy document from the 2021 election, saying that we needed to push Labour to do what they said they were going to do. Labour continues to support ACC as a publicly administered social insurance scheme that provides comprehensive injury cover – a scheme that remains cost effective, manages injury proactively and delivers rehabilitation and realistic compensation.

We all have our views on how well ACC delivers but there is general agreement that it is the most cost-effective injury treatment and compensation system in the world.

We should not look for something highly innovative from the current Government when it comes to ACC reform. You can see this in the recent press release regarding the appointment of Steve Maharey as ACC chair, which was presented as a 'steady as she goes' appointment. However, hidden within this there was reference to the need to consider the disparate outcomes for those currently covered by the scheme and those impaired through ill health and other sources. There is an appetite with Labour to look at it, but not sure if something will come of it.

One of the big advantages that ACC Futures Coalition has is that there is a Labour Affiliates Council consisting of 5 unions affiliated to the party, all of which are affiliated to the ACC Futures Coalition, and they have been talking to Ministers.

Looking at the policy document itself, you can see there is potential to address issues like increasing the rate of loss of earnings for some categories of workers and removal of the abatement of holiday pay. It is not bold and there is a theme in the policy about protecting the fund. The 6 percent hearing loss threshold has had a chilling impact in the hearing loss area.

There is willingness to make these changes, and address the rest of the Nick Smith changes, but Wayne felt there was unlikely to be any movement on another significant issue – providing the right of appeal to the Supreme Court.

Wayne agreed with earlier speakers that everything in ACC is to do with the fund. It is never a discussion about whether it is a good thing to do for the working people of New Zealand, or about whether it is good for New Zealand as a society, it is always a conversation about what will be the impact on the fund. This is unlikely to change and the Government will do as the Minister said this morning, and will be taking a cautious approach.

WORKSHOPS

Reforming the Accredited Employers Scheme

Fritz Drissner, Health and Safety Organiser, E Tu! and Ben Thompson, Partner, Armstrong Thompson Law

Ben started by outlining some of the practical problems from a legal perspective with the Accredited Employers Programme, which allows large employers to reduce their work levy by up to 90%. This lets them manage their employees' injuries by 'standing in the shoes' of ACC.

He pointed out that problems mainly arise when employers seek to 'change hats' and confuse employment matters with the management of claims under ACC. These include the sharing or use of medical information contrary to purpose for which it was obtained; and attempts to "settle" claims or denial of claims arising from concerns regarding fault.

Some accredited employers put in place systems that discourage prompt ACC claims being made, for example by referring claimants to the company physio in the first instance. In other cases claimants 'fall down the cracks' between ACC and the accredited employer, when disputes arise between them as to source of symptoms, and therefore liability for entitlements. This can lead to delays and litigation, even where evidence clearly establishes a right to entitlements.

Accredited employers often depart from standard dispute resolution processes by providing 'Informal' responses to review applications, which can be of potential evidential and jurisdictional disadvantage to a claimant, or failing to clearly explain rights and responsibilities.

Fritz outlined how the scheme operates. Accredited employers have to meet certain requirements to stay in the AEP. They need to:

- Meet the ACC audit standards for workplace safety and be able to demonstrate an ongoing commitment to maintaining these standards
- Demonstrate employee involvement in injury prevention and management process
- Have active injury management procedures covering rehabilitation and return to work
- Have systems and processes in place to ensure injured employees can access their legal entitlements
- Demonstrate financial solvency
- Be able to meet the claims data reporting and electronic transfer requirements of the AEP.

ACC recently conducted a review of the AEP and discovered that while there were some positive outcomes (the programme currently delivers better return to work outcomes for employees and lower compensation costs than for those not part of AEP) some features of the programme have not functioned as intended and there was a long list of concerns.

Injury management outcomes were not as positive as expected and satisfaction with injury, claims, and rehabilitation management for employees is low compared with ACC-managed work claims.

Employees in AEP didn't always feel they have adequate opportunities to influence their work environment and their satisfaction with the injury/claims/rehabilitation management process was low compared to non-work claims. The programme was not delivering consistent and positive outcomes for those employed by accredited employers when they have a work injury. In some cases, employees may not report when they disagree about the way their claim or rehabilitation and return to work has been managed because of fears of the impact on their career. Some treatment providers felt that accredited employers and their third party administrators don't always act in the best interests of their employees because of a fundamental conflict of interest. There were practical issues with current data collection, which is incomplete and does not allow for effective benchmarking. Finally, auditors are frustrated that addressing their recommendations for improvements (especially for critical risks) isn't mandatory.

ACC responded by streamlining internal processes and making some initial improvements to how ACC administers the programme and some steps were taken to improve the quality of their data by reviewing the data and identifying new data collection requirements.

However, changes to the AEP framework are made by the Minister for ACC in consultation with stakeholders and there no date set yet for when this consultation will take place.

Recommended ACC Futures Position

The workshop recommended that ACC Futures Coalition position should be to seek the disestablishment of the AEP for the reasons set out above. As interim steps the Coalition should advocate for much stronger audits of accredited employers in order to raise standards and ultimately make it more difficult for employers to stay in the scheme. Audits should:

- Use independent auditors
- Involve unions in the auditing process
- Be based on injury prevention
- Be rigorous audit with an agreed framework of acceptable processes
- Include powers to issue improvement notices or fines when performance is unacceptable.

Medical issues and occupational disease: ACC fails firefighters in their time of greatest need

Wattie Watson, National Secretary, NZ Professional Firefighters' Union

Wattie's presentation explored why Schedule 2 is failing firefighters, the inadequacies of the ACC toxicology panel, and the mechanism of presumptive legislation to determine causation.

She outlined that causation is the biggest hurdle for anyone battling health conditions due to their work environment. Without union support most workers cannot afford specialist reports or the costs of challenging ACC decisions through review and litigation and many literally do not have the time or energy for such a battle before succumbing to the disease.

For firefighters' this is compounded as their workplace is dynamic and simply can't be tested.

Walking into fire is an inherently dangerous occupation but the biggest killer of firefighters is not the flames but the toxic smoke. Firefighters have significantly higher rates of specific cancers than the general public due to the exposures to toxins and carcinogens in every-day fires and emergency incidents.

Firefighters have protective uniform and breathing apparatus – but they can never be fully protected as their uniform has to be able to breathe to prevent metabolic heat build-up. As a result firefighters absorb the toxins and carcinogens through their uniform and skin.

Despite a wealth of credible and accepted international evidence demonstrating the high rates of specific cancers for firefighters, workers compensation schemes around the world fail firefighters as they cannot prove which toxins and carcinogens they were exposed to, or when. Firefighters cannot individually meet the traditional tests of causation as their dynamic workplaces cannot be tested.

Therefore Schedule 2 is failing firefighters. The answer is presumptive legislation that presumes specific cancers are occupational cancers for firefighters. Canada, USA and Australia have all enacted presumptive legislation recognising specific cancers as occupational cancers for firefighters.

There are additional issues for firefighters that ACC is not well equipped to address. Increasingly firefighters are regarded as first responders in medical situations, which account for around one third of their call outs. This means they have to deal with issues like suicides, sudden infant death and car accidents and fatalities. Mental health issues are increasing with around 10-15% of firefighters experience mental injuries as a result of their work.

The fact that FENZ is an accredited employer complicates the situation, resulting in double handling of claims.

Institutional Racism and ACC

Tom Harris, Kaihautu, Waitemata Community Law

Tom outlined a case study of a young Māori male (17 years old), who had been working full time since leaving high school, was living at home and did not use drugs or alcohol and did not smoke. While riding his motorcycle to visit friends, was hit by a drunk driver who was driving home from a local pub. The driver tested four times over the legal limit and was described by police as being incoherent.

The young man had extensive injuries including a head injury, multiple broken bones and contusions, lacerations and hematomas. He was discharged from hospital with limited mobility, low vision in his left eye and multiple open wounds around his body.

His experience of ACC was poor. On a personal level he found the requests for income statements and the style of communication difficult. At an institutional level he experienced little to no follow up regarding timeliness of applications and payments and a lack of acknowledgement of risk around young persons' vulnerability when exposed to systems and processes that can limit their access to entitlements. He experienced structural racism when his lump sum compensation ended up being lower than other clients who had less severe injuries.

Would this still happen today?

Māori are being filtered out of system at different stages: just getting to see a GP; ending up with the wrong claim lodged; or the right claim lodged with not enough support on entitlements. There needs to be mechanisms in place to guide Māori, especially young Māori, through ACC processes to ensure they don't miss out on entitlements. ACC needs a Kaupapa Māori approach – face to face, by Māori for Māori services.

Support is required early, before disputes arise and we need accountability when we identify institutional racism. We need some way, other than disciplinary action, to deal with that.

There are questions about how ACC is self-monitoring complaints about institutionalised racism, whether information is accessible for everyone and what types of training ACC staffing are getting.

Gender and ACC

Dr Dawn Duncan, lecturer, Faculty of Law, University of Otago

Dr Duncan discussed how the differences in the work that women typically perform result in different patterns of injuries and illnesses. That the work-related injuries and illnesses women are more likely to suffer, tend to have less ACC cover available. This is because the hazards of the work that women perform are often more psychosocial in nature (stress, bullying, violence, care fatigue), or are more often chronic and complex, rather than a single accident resulting in a physical injury with simple causation. The ACC scheme was designed with 1960s assumptions about the worker and the work being performed. The cover provisions are out of date and fail to reflect the realities of the 2021 labour market. Women are particularly negatively impacted by these outdated cover provisions. The impacts on female dominated occupations (such as nursing, teaching and social work) were discussed, along with options for reform.

The workshop also discussed the exclusion of birth injuries from ACC cover. Current rules around which injuries from childbirth qualify as accidents are limited to situations of treatment-related injury or illness.

> "Most perineal tears are not caused by treatment but by the birthing process. This includes perineal tears occurring after a clinically indicated and appropriately performed mediolateral episiotomy, where the perineal tearing reflects the challenges of a difficult birth. Therefore, ACC is not able to cover these injuries."

Childbirth is not regard as "work", and birth falls outside the definition of accident, due to the lack of "external force applied to the body". While originally included, over time more perineal tear claims have been rejected as ACC's position is that the birthing baby is part of the mother and can't be regarded as a separate force causing the tear. Treatment for rejected claims are unacceptably delayed in the public health system causing much distress and incapacity. There is no reason in principle for excluding such injuries, and this reflects merely a policy choice not to cover childbirth related injuries. Options for reform were discussed.

Issues of monetary compensation were discussed – and while good for some, others were excluded. While income-related compensation may have been a wonderful innovation and a legitimate part of the no-fault concept, a gender lens reveals that far less is paid to women who usually spend time out of the workforce in unpaid caregiving roles. The latest ACC 'Aide Memoire' "ACC's delivery to priority populations: Part 1-Women" shows that Pre Covid there were about 60,000 male and 30,000 female claims for earnings-related compensation with women receiving weekly compensation at a little over half the rate of men. We can infer from this that of the total earnings-related payouts, around 80% were to males.

The arbitrariness of what counts as an "accident" for the purposes of ACC cover was discussed, along with the gender differences in policy decisions over the years. The situation of a high earning man who was injured in a drunken brawl or reckless behaviour on the road or rugby field and yet entitled to substantial income support was highlighted. In contrast, a woman may be badly injured by the same man who bowls her over on his electric scooter as she travels to her extremely socially valuable but unpaid caregiving duties and receive much less. Her treatment costs would be covered by ACC but her income support would be limited to a taxable $287 per week, if she was eligible to income support at all.

It was discussed how earnings-related compensation favours males in full time work. Women are often employed part time and are treated less favorably by ACC. For example, ACC provides a potential loss of earnings payment to a child under 18 who is seriously injured that is more generous than a welfare payment. This rightly reflects that welfare is poor compensation for a lifetime of not being able to earn. Yet many women are out of the workforce in caregiving roles. If they are seriously injured during this time there is no loss of potential earnings considered for them.

Disability and ACC

Dr Hilary Stace and Dr Andrew Dickson

No formal notes were received from this workshop but there was a wide ranging discussion about issues that people with disabilities experience with ACC and the problems with getting cover.

Rights of appeal and legal issues

Peter Sara, ACC Lawyer and Warren Forster

The Serious Shortcomings of the Current System: Peter Sara

Peter outlined some of the serious shortcomings of the current system of dispute resolution. The district court is the last chance that claimants have to challenge factual issues and most unrepresented claimants lose because law is complex and presenting the facts is complex.

There are long delays in getting evidence and delays in getting access to ACC files. It is a long drawn out process that leads to a disconnect with ACC for claimants.

A Future Framework for Resolution: Warren Forster

Warren proposed an alternative system based on a dispute resolution process and a legal, court based process.

The first step in this dispute resolution process must be a consensus-based dispute resolution model, adhering to the nine standards and thirty five key capabilities set out in the Government Centre for Dispute Resolution maturity framework. It should not be compulsory, but have a presumption that access would be timely (within a few weeks) and designed to resolve issues and maintain or rebuild the relationship. A navigation service would need to be available to help people link in with this service.

Should there be failure to resolve the dispute at the initial level, the second step would be access to an independent Tribunal that would adjudicate disputes that cannot be resolved through the consensus-based process (or which are not appropriate to be taken through that process). Again this would need to be timely, within a few months of the dispute arising. It would need to be based in the Ministry of Justice and well resourced.

A legal, court based process is the second component of a future framework. The final factual determination must be made by a court. The options are a specialist court, the District Court or the High Court. Given the development of a Tribunal and the leave process below the preferred model is the High Court. There are significant benefits of using the existing High Court process as it allows all aspects of a dispute to be determined together.

The final step must allow legal questions to be determined. It is a fundamental requirement of the rule of law that questions of law can be determined by the Court of Appeal and Supreme Court.

Having a leave requirement will allow the Court to determine when cases are appropriate.

Discussion

In the discussion that followed the presentations there was concern expressed that the dispute resolution process might get bogged down. To be successful there would need to be access to the service in a wide range of geographic locations and it would need to have access to skilled and experienced facilitators. The costs of representation in the process would need to be met as well.

In the case of the tribunal, there would need to be public access to enable decisions to be reviewed and data collection. Both of these elements are required to ensure consistency. It should take an investigative approach to ensure unrepresented claimants have medical evidence.

With regard to the court process participants favoured a specialist court as there would be benefits in developing judges and case law in an area of the law that is not glamorous. Unrepresented litigants would have a hard time in the High Court.

ACC Funding and Governance

Don Rennie, ACC lawyer and expert on ACC, and Professor Susan St. John, Director, Retirement Policy and Research Centre, University of Auckland

Governance

Don reflected that the Woodhouse Report set out the guiding principles for the governance of ACC which were:

1. An independent authority that was to apply the principles of the Woodhouse Report.
2. 3 commissioners for terms of at least 6 years appointed by the governor general.
3. Have a barrister with at least 7 years practical legal experience as the chair.

The first iteration of ACC did not reflect these recommendations, instead having 3 commissioners appointed by the Minister and although one commissioner had to be a barrister with relevant experience, they did not have to be the chair.

In 1982, ACC moved from a commission to a corporation. This created a board of directors who would again be appointed by the Minister of the day. This further politicised the governance positions.

Over time ACC's governance has moved from that of a social insurance scheme, distinct from a private insurance company, to that of a corporation that follows the private insurance model. Some of the issues surrounding the governance include:

- The board only manages procedure and its key focus is on the fund
- They rely on the Ministry of Business, Innovation and Employment (MBIE) for their policy advice – from an external agency
- There is a large shortage of statistics
- The focus on the fund misdirects from the purpose as proposed by Sir Owen Woodhouse
- The board does not often reflect the key stakeholders in ACC.

Recommended ACC Futures Position

The participants agreed to recommend that ACC Futures should adopt a policy on the composition of the board so that it would should better reflect New Zealanders and have a wider range of voices than it currently has. This would include people from disability communities and workers advocate communities. ACC needs to be recognised as a socio-legal system.

The participants agreed to recommend that ACC Futures support a move back to the model of an independent commission for the governance of ACC.

The Fund

ACC moved to a fully-funded scheme in the late 1990s, where ACC is obliged to have enough money invested to enable them to meet the costs of the scheme that arise from injuries that occur today for the duration of the claims.

This model has meant that over time ACC has built up $50 billion in its reserves, which effectively cannot be touched to improve services. The existence of the fund is helpful for the government's books but this means that much of the focus of the board, and some in senior management, is on the performance on the fund's investments and meeting the fully-funded targets rather than the service that the corporation should be providing.

Recommended ACC Futures Position

The workshop participants agreed that ACC Futures policy should be to retain a fund sufficient to meet future unforeseen contingencies, to repeal the present provisions relating to fully funding accounts and to review the levy system.

Social Insurance: Other models and their implications for ACC

Craig Rennie, Economist and Director of Policy, NZ Council of Trade Unions

No formal notes were received from this workshop but it covered what social insurance is and looked at international models. Craig outlined that social insurance provides for the payment of money in the event of an adverse event occurring. This compensation was usually linked to earnings and the schemes were contributory based. Alternatively, some models are funded out of general taxation.

The payments are generally time limited e.g. up to 3 years.

Social insurance is usually an addition to a benefits system. The three interrelated elements of the social insurance are: the levy; the rate of compensatory payments; the duration of any payments.

About our Speakers

Hazel Armstrong

A partner in law firm Armstrong Thompson, which specialises in ACC, health and safety and employment law. She sits on the NZ Law Society ACC Committee. She is a co-convenor for ACC Futures.

Glenn Barclay

Glenn is co-convenor of ACC Futures Coalition. He has been the National Secretary of the NZ Public Service Association, from which he has recently retired.

Wayne Butson

General Secretary of the Rail and Maritime Transport Union since 1999. A strong advocate for health and safety in the workplace.

Len Cook

A professional statistician. He was formerly Government Statistician of New Zealand 1992-2000, and the UK National Statistician 2000-2005. Len also served as the Families Commissioner of New Zealand from 2015-2018. Len was also a member of the Royal Commission on Social Policy.

Dr Andrew Dickson

Dr Dickson is a health sociologist at Massey University and a Director at Other Side Consulting, with an interest in public health and critical health studies.

Fritz Drissner

Initially working as a social worker, for the last 22 years Fritz has been working for E tu, the largest private sector union in the country where he works in health and safety.

Dr Dawn Duncan

Dr Duncan is a lecturer at the University of Otago, Faculty of Law, teaching and researching primarily in labour law, health and safety, ACC and social security law.

Dr Michael Fletcher

A Senior Research Fellow at the VUW Institute for Governance and Policy. Michael has 20 years' experience as a public sector policy advisor and researcher including as Group Manager, Policy and Research in the Families Commission, Principal Advisor at MSD, and Chief Labour Market Advisor in the Department of Labour.

Warren Forster

Warren Forster is a Barrister and Researcher with expertise including ACC law, Human Rights Law and Access to Justice. He is currently completing an international research fellowship focused on how to bring the vision of an integrated universal system to reduce disabling experiences to life. Warren is also a director of Talk-Meet-Resolve.

Tom Harris

Tom is the manager for Waitematā Community Law Centre and is a trustee on a number of local community groups and trusts within the Waitematā region. Tom also participates in advisory groups which include the district courts, NZ Police, Iwi leadership groups and local marae.

Dr Huhana Hickey

Dr Hickey is an academic and disability rights lawyer.

Professor Richard Madden

Professor Madden is a statistician, actuary and Honorary Professor at the University of Sydney. He has been part of the University's Centre for Disability Research and Policy, and closely analysed financing arrangements for the NDIS.

Sue Moroney

Sue Moroney is the Chief Executive Officer of the Community Law Centres o Aotearoa. Sue was a Member of Parliament 2005-2017, where she championed the extension of Paid Parental Leave to 26 weeks, ensured workers had a legal right to rest and meal breaks, campaigned for pay equity.

Craig Renney

Craig Renney is the Economist and Director of Policy for the NZ Council of Teade Union. Prior to his current role he worked as Grant Robertson's advisor for five years, and as an analyst at the Treasury, MBIE and the Reserve Bank.

Don Rennie

Don Rennie is an ACC lawyer. Don was the first Hearing Officer appointed by the Accident Compensation Commission, the first Director of Research and Planning Division of ACC. He wrote the first Accident Compensation in NZ textbook.

Peter Sara

Peter is a lawyer working with four decades of experience in representing injured people and employers. He is the Chairperson of the NZ Law Society ACC Committee.

Hon. Carmel Sepuloni – Minister for ACC

In addition to Minister of ACC, Hon Carmel Sepuloni's portfolio includes the Minister for Social Development and Employment, Minister for Disability Issues, and the Minister for Arts, Culture and Heritage. Carmel Sepuloni was first elected to Parliament following the 2008 general election as a list member, becoming New Zealand's first MP of Tongan descent.

Dr Hilary Stace

Dr Hilary Stace is Adjunct Research Fellow at the Victoria University of Wellington Health Services Research Centre, as well as a disability advocate. Her 2011 PhD examined autism as a public policy challenge.

Professor Susan St John

Professor Susan St John is the Director of the University of Auckland's Retirement Policy and Research Centre and a founding member of Child Poverty Action Group, with a long interest in ACC.

Ben Thompson

A partner in Armstrong Thompson where he specialises in ACC and employment law. He is an experienced litigator in both NZ and the UK. The majority of his ACC litigation work for the last several years has been for union members working for accredited employers.

Wattie Watson

National Secretary of the NZ Professional Firefighters' Union. She was the founding principal of two employment law specialist law firms primarily advocating for workers and unions.

Dr Dianne Wepa

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