

Minutes of a meeting of the Board of the Accident Compensation Corporation held at ACC Boardroom, Level 7, Justice Centre, 19 Aitken Street, Wellington on Thursday, 27 June 2019 at 9.00 am.

Present

Dame Paula Rebstock	Chair
Ms Anita Mazzoleni	Member
Mr James Miller	Temporary Deputy Chair
Ms Kristy McDonald QC	Member
Mr David May	Member
Ms Leona Murphy**	Member
Dr Tracey Batten**	Member
Mr John Brabazon	Member

In attendance

Mr Scott Pickering	Chief Executive	
Mr Peter Fletcher	Chief Technology & Transformation Officer	
Ms Deborah Roche	Chief Governance Officer	
Mr Herwig Raubal	Chief Actuarial and Risk Officer	
Mr John Healy	Chief Financial Officer	
Ms Emma Powell	Chief Customer Officer	
Ms Sharon Champness	Chief Talent Officer	
9(2)(a)	Russell McVeagh	Board only session
9(2)(a)	L.E.K. Consulting	Item 4.1
9(2)(a)	L.E.K. Consulting	Item 4.1
9(2)(a)	Head of Health, Safety and Wellbeing	Item 7.1
Ms Gabrielle O'Connor	Head of Client Service Delivery	Items 4.1 – 5.1
9(2)(a)	Head of Provider Service Delivery	Items 6.2 and 7.2
9(2)(a)	Head of Privacy	Item 6.1
9(2)(a)	General Counsel and Company Secretary	Items 7.1 – 7.2
9(2)(a)	Manager Corporate Secretariat	
9(2)(a)	Senior Associate Company Secretary	
9(2)(a)	Associate Company Secretary	Items 4.1 – 6.1

** Attended via telephone / videoconference

1 Procedural Business

1.1 Apologies

There were no apologies received for the meeting.

1.2 Register of Members' Conflicts of Interest Arising

Ms McDonald QC informed the Board that she had been appointed as a director of the Racing Industry Transition Agency.

Mr Brabazon informed the Board that he was soon likely to become a shareholder of a new Nevis insurance company aimed at charities. The Board Chair noted that this did not present a conflict for the current meeting and was unlikely to present a conflict in the future. It would be noted on Mr Brabazon's Conflicts of Interest register once the shareholding was confirmed.

CONFIRMED: The Board reviewed the Register of Members' Conflicts of Interest Arising and confirmed that it was not aware of any other matters (including matters reported to, and decisions made by, the Board at this Meeting) which would require disclosure.

2 Committee Updates

2.1 Investment Committee

Mr Miller updated the Board on the key matters from the Investment Committee (BIC) meeting of 26 June 2019:

- Investment performance had improved for the month, although it would be difficult going forward.
- The BIC would review a paper at its next meeting detailing a proposal for securities lending.
- Deutsche Bank had been suspended as a counter-party due to its deteriorating credit rating.
- Marathon Asset Management had been reviewed, and a paper had been considered detailing the Investment Team's general approach to retaining or dismissing external managers.
- The annual Review of Maximum Shareholding Limits was approved.

- The BIC had had a lengthy discussion about the NZ Equities team linking its work more to ACC's core health and safety purpose, arising out of Management's paper on linking health and safety performance to company executive remuneration. A further paper would come back to the BIC, with Management having taken on board the Committee's feedback on the wider issues.
- A paper on the Qualitative Review of Risks had been considered. It presented three longer-term investment issues: the US/China 'tech war', the recent outperformance of 'quality' stocks, and the increased capital regulatory requirements for New Zealand banks.

In response to a Board query regarding the overall year end position, the BIC Chair noted that the figures were not yet available, and nor had the revaluation of the private markets investments been completed. The result was likely to be similar to last year's—close to breakeven but under benchmark. Given the fund's conservative positioning, it was not a bad result. The BIC Chair reported on the difficulties with the headline interest rates coming closer and closer to zero; the BIC was thinking deeply about what could be done at this point.

3 Board Only Session

3.1 Chief Executive's Report

Items raised by Mr Pickering were:

- Employee engagement results.
- Client Payments 1 update.
- Next Generation Case Management (NGCM) Phase 3 consultation update.
- CEO Branch visitation programme.
- Select Committee & ICIP Cabinet Paper update.

4 Presentation

4.1 Rehabilitation Performance Review

The Board Chair welcomed Messrs ^{9(2)(a)} and ^{9(2)(a)} of L.E.K. Consulting. She acknowledged the interim nature of their report, and noted that it was important for the Board to have this opportunity

for input before the report was finalised. She invited the Board and Management to participate openly in the discussion which was an opportunity to challenge and test issues that ACC may have overlooked.

9(2)(a) took the Board through the presentation, slide by slide, explaining L.E.K.'s observations as to why ACC was experiencing deterioration in the 70-day return to work (RTW) rate. The cause of the significant volume growth in weekly compensation (WC)—7% compound per annum over seven years—was unknown. The deterioration in RTW rate appeared to be due to the increased claims volume growth.

Board discussion and queries focused on the following:

- Why the deteriorating 70-day return to work rate was not changing. 9(2)(a) observed that the drivers of the deterioration appeared to be systemic rather than due to demographics or injury mix, but that claims volume growth appeared to be causing the deterioration, and frontline staff were struggling to keep up.
- Whether the frontline was under-resourced. 9(2)(a) explained that more work was required on inefficient processes in branches. It was not clear that NGCM would solve all the issues. Nor did the issues appear to be driven by provider behaviour. It was a mystery. There was something ACC was doing at the frontline, or perhaps clients had an entitlement mentality.
- Whether ACC's client-centricity had caused the deterioration in performance. 9(2)(a) explained that, although the potential drivers needed to be carefully analysed, it was unusual to see 7-8% compound growth for ACC that was not being seen internationally. In other words, it was specific to ACC.
- Whether Sensitive Claims profiles were different from other claims profiles, and whether people were taking more time to recover in that area. 9(2)(a) suggested that Sensitive Claims were a small percentage of all claims, and changing Sensitive Claims handling would not likely improve the RTW rate.
- Regarding the Compound Annual Growth Rate (CAGR) of new claims depicted on slide 8, whether L.E.K. could review data going further back in time, as perhaps prior to 2011 there had been a high level of entitlements being declined, and this was a catch-up phase. L.E.K. would review the data for prior years.

- The extent to which reactivated claims would explain some of the RTW deterioration. 9(2)(a) confirmed that reactivations were real, but would not impact the RTW rate.
- Whether claimants were reactivating their claim with a new injury or were claiming multiple times for the same injury. 9(2)(a) explained that the data L.E.K. had was simply for each claim and not per person. Ms Powell would make deeper information available to L.E.K.
- Whether L.E.K. had analysed ethnicity, as Māori have lower access to ACC but stayed on the Scheme for longer. 9(2)(a) explained that ethnicity was too small a portion in claims to have been considered.
- Regarding the capacity of providers, 9(2)(a) explained that L.E.K. had analysed trend rates in GP and surgical availability, and there was nothing unusual in the data.
- Regarding the relativities of ACC staff's caseloads, whether L.E.K. had a view on the number of claims per case manager, both as to work rates and control of costs. The Board asked that L.E.K. look into the range, particularly with ACC moving to the NGCM model.
- Whether there was a correlation with data from the Ministry of Social Development (MSD) and ACC's RTW rate.
- Whether the wider health system had changed, and whether the health system was overworked, resulting in leakage from the health system to ACC.
- Why the self-employed category was the only one to not have a deteriorated RTW rate (shown in slide 12). 9(2)(a) explained that it was due to the need for business continuity—while the self-employed were pleased to receive WC, their businesses had to carry on, so they had a very strong incentive to get back to work.
- In response to a Board query, Ms O'Connor provided her insight on the issue of FTEs of frontline staff; which was the more significant point: not enough staff at the frontline, or the turnover of frontline staff, leaving less-experienced people who weren't making the right judgement calls? The Board suggested the possibility of turnover *because of* too few staff.
- Whether L.E.K. had looked at behaviours, with people not wanting, or not being incentivised, to get back to work. 9(2)(a) suggested that, given the trends ACC was seeing, either client/social attitudes, or ACC's attitude, was relevant.

- Ms Champness asked for a longer timeframe to be provided for the data on slide 14 (frontline capacity). 9(2)(a) agreed to provide that.
- The impact of ACC's KPI culture on the deteriorating 70-day RTW rate. In response to a Board query regarding whether there had been any change in the KPI regime, 9(2)(a) reported that branches were of the view that the focus had always been on the 70-day RTW rate.
- Regarding case management and workflow management constraints on frontline capacity, whether there were international comparators available on introducing standardised clinical pathways. 9(2)(a) explained the iCare pathways approach which was an automated system alerting case managers to the next appropriate task for the client. Early triage processes enabled the identification of psychosocial indicators and streaming those clients into a different treatment regime. Ms O'Connor explained the similar functionality of NGCM, and its potential for adding functionality all the time. She explained that there had been consideration of adding in clinical pathways, but it had been decided to add it in through the Health Services Strategy (HSS). The Board noted that in the Auditor-General's report from 2014 there was a recommendation to have clinical pathways put in place. Mr Raubal explained that it was envisaged under the HSS, but had not proceeded as had been hoped.
- Regarding the impact of New Zealand's high immigration rate, whether ACC was sufficiently supporting the migrant community, particularly in relation to any correlation between their injury rates and their ability to understand English. 9(2)(a) agreed that this was worth reviewing.
- Regarding the Board's request at the May 2019 Board meeting that Management review claims leakage at a case level, whether the leakage work could be fast-tracked and done in conjunction with this L.E.K. review.
- The benefit ACC might receive from some early lead indicators, rather than always measuring after the fact what had been done.
- The 60% staff turnover in the Short-Term Claim Centres (STCCs). Ms O'Connor explained the high turnover rate: the employees in that area tended to be younger, with most of the attrition being internal to ACC as they moved into higher paid work, such as case management. The Board expressed concern at not having been advised of this turnover level before. Ms Champness explained that the regular reports to the Board on staff turnover related to external turnover, where staff left ACC.

- The clinical rationale around the 70-day KPI. The Board queried whether other organisations used different rates. Ms O'Connor explained that 70 days was based on clinical input, and the psychosocial factors around getting back into employment beyond that period of time. Mr Raubal explained that there was also a statutory requirement for such a period. The Board proposed reviewing whether it was the right KPI. Ms O'Connor echoed that sentiment, as it was not one ACC wanted for its future.
- Whether mental health issues were a driver of slower RTW rates. 9(2)(a) agreed that they definitely had an impact. However, L.E.K. was confident that the issue for ACC was volume growth and the difficulties the organisation was having in coping with that. The decline in RTW rates was not replicated in other organisations.
- Whether legislative changes were considered in L.E.K.'s report. 9(2)(a) acknowledged they were not. 9(2)(a) suggested consideration be given to legislative interpretation issues. For example, the legislation included the words "maximum benefit", but also "reasonable". It was possible that ACC was over-emphasising "maximum benefit" and under-emphasising "reasonable".
- Whether provider behaviour impacted volumes growth. 9(2)(a) advised that providers were not driving growth.
- The fact that many New Zealanders hated their jobs, and the extent to which GPs' patients asking to go onto ACC was a recent phenomenon that would show up in the past seven years' claims volume growth.
 - That Management should immediately start testing some of L.E.K.'s observations on issues ACC could control, such as case load, and also test whether NGCM would alleviate issues, rather than waiting to validate the data.
- The frustration of not knowing the drivers of the deterioration in RTW rates. However, the L.E.K. report had eliminated some of the red herrings, which was very useful.
- That further information should be obtained from L.E.K. on the case load comparators in the presentation, the extent to which the frontline was under-resourced, and the extent to which the 1 to 4-week RTW rate contributed to the volume growth.
- The further questions raised by the report and the discussion: perhaps clients had changed behaviour in response to ACC having changed its behaviour; perhaps thought needed to be

given to the meaning of 'client-centric'; whether to intervene at a critical point in the client journey, rather than at 70-days; whether the high staff turnover was due to inefficiencies with case management or to high workload.

The Board warned Management against giving conflicting messages now to staff, regarding the customer-centric approach.

The Board requested that L.E.K. look further into the drivers of the volume growth. Mr Pickering would follow up with L.E.K. on next steps. The Board Chair thanked Messrs ^{9(2)(a)} and ^{9(2)(a)} for the presentation.

RESOLVED: The ACC Board resolved to:

Note the L.E.K. draft interim report

5 Operational Reporting

5.1. (a) ICIP Reporting

Mr Fletcher highlighted the following in relation to Client Payments (CP1):

- CP1 had now achieved 7,700 payments to 3,200 clients.
- Three of the planned CP1 early life support releases had been made, but the third release had resulted in double payments to 176 clients. Processes had been put in place to prevent a similar issue occurring. Staff were working with affected clients, of whom just over 100 had responded, mainly positively; the remainder were still being liaised with.
- Despite the disappointing set back, CP1 had had a successful start.

Management provided the following information, in response to Board queries:

- Mr Fletcher reiterated that processes had been put in place so that the issue would not happen again. He explained that the cause was likely a result of the release over the weekend.
- Regarding how Management had been notified of the issue, Ms O'Connor explained that the team had received two notices simultaneously: clients had called to notify ACC of the issue, and the monitoring service had also noted the issue.

- Ms O'Connor confirmed that there was no risk of having *missed* paying any clients.
- Mr Fletcher reported that his team had probably overextended itself by pushing through three early life support releases in a short period.
- Regarding the double-paid clients that ACC had not yet reached, Ms O'Connor explained that attempts had been made to contact all those affected, with voicemail messages having been left for them to respond to.

Mr Fletcher reported on the following in relation to NGCM:

- NGCM was reporting green for the first time in nine months. He explained that the project was well on track for the August 2019 rollout. However, the testing for the remediation of warehouses was running behind schedule. Management was taking a risk-based approach so that the most important issues were tested before go-live.
- Staff consultation had completed during the month and senior leader appointments had completed during the week. Mr Pickering reported that the process in which the senior leadership had been selected was extremely robust and that he was very proud of the achievements.

Regarding Board engagement in the go-live process for NGCM in August, the Board agreed to a similar process as had occurred for the pre-live go-live for CP1. Mr Fletcher would liaise with the Board Chair regarding which Board Members to include in the pre-go-live meetings.

The Board congratulated Ms O'Connor for the progress on NGCM.

The Board acknowledged the positive feedback that had been received from the Cabinet Committee regarding the ICIP update.

In response to a Board query Mr Fletcher confirmed that Management was confident the HSS would meet the August 2019 reporting timeframe, with assistance from PwC. Mr Pickering suggested connecting L.E.K. with PwC in the HSS work, and looking at what could be achieved in the business over the next 18 to 24 months, with the near-term focusing on where ACC could drive the outcomes and the longer-term focusing on engaging with providers. This would be part of the conversation with the Board in August.

RESOLVED: The ACC Board resolved to:

- (a) **Note** the ICIP Report.

(b) **Note** the Investments Technology Issues Report.

5.1 (b) & (c) Claims Cost Report and Performance Report

Mr Healy highlighted the following:

- The Annual Report timetable, under which Annual Report would be published a month earlier than last year. The Board indicated the importance of the full Board strongly engaging with the draft until it was at an appropriate stage of completion for delegation to two Members (as proposed in the timetable).
- The presentation of the income statement, in response to an earlier Board request to isolate some of the volatile elements in the profit and loss statement. Presentation in a fashion similar to the government's OBEGAL disclosures would help to explain ACC's large deficit. The Board discussed the proposal and suggested that changing to this type of presentation would be more appropriate in surplus years. However, if the presentation was to change now, Mr Healy should benchmark across all insurance companies in Australasia, and identify to which ACC was comparable. That would determine the type of presentation ACC could justify using. Then, reporting in this way would need to continue consistently into the future. The Board asked Mr Healy to present the options to the Board, showing the actual figures, to enable the Board to make a decision. In response to a Board query, Mr Healy confirmed that Treasury did not have a preference on the type of presentation used by ACC.

Mr Healy reported that the Minister had approved the Service Agreement which would be published shortly, but had not yet approved the Third Quarter Report for publication.

The Board discussed the likely Year End deficit and the extent to which it would show in the Government OBEGAL. Mr Healy informed the Board that, as at 20 June, the deficit was \$9 billion.

The Board discussed claims costs. Mr Healy reported that the actuaries had remodelled the projections for the actuarial strain (of \$900 million) to isolate the impact of Sensitive Claims (c.\$420 million). In response to a Board query, Mr Raubal confirmed that the figures were above budget, but this had not resulted from the remodelling (which simply isolated the Sensitive Claims part of the strain). The strain was caused largely by volume. Mr Raubal would bring to the July Board meeting an indication of the Accounts in which the strain was occurring. In response to a Board query as to whether the OCL Management Group was addressing the Sensitive Claims aspect of the strain, Mr Raubal explained that the disaggregated information had only just become

available, so had not yet been to the Group. Regarding whether anything could be done about the Sensitive Claims part of the strain, Mr Raubal pointed out that ACC had been trying to *increase* access to the service, therefore the question was about getting outcomes for clients consistent with the spend. The Board discussed the assumptions that had been made about volume growth. Mr Raubal explained that the assumptions had been based on a levelling off last year, but then the growth had increased again.

The Board requested that the OCL multiplier always be included in the Claims Cost Report, as it was very useful. Mr Healy agreed to do this.

Mr Healy reported that forecast operating costs would be \$14 million higher than budget, and he explained the breakdown of the spend. The Board noted that this would require Board approval, to ensure there was no Management overspend at Year End. Mr Pickering would prepare a paper for the Board on the issues. Mr Healy confirmed, in response to a Board query, that all overspend had been accounted for in the \$14 million. The Board agreed to delegate authority to the Board Chair and the Chair of the Risk Assurance and Audit Committee to approve the additional expenditure.

In response to a Board query regarding the provision in the financial statements for the refunds to self-employed levy payers, Mr Healy explained that most of the refunds had already been made.

The Board discussed the reference on page 5 of the Claims Cost Report about the Financial Condition Report recommendation to implement a formal framework for monitoring and measuring client, operational and financial outcomes. Mr Raubal explained that the work had been largely completed. In response to a Board request, Mr Raubal agreed to review the past five years, to provide a retrospective on the recommendation.

ACTION: Management to undertake a five-year retrospective review of the Financial Condition Report recommendation regarding a formal framework for monitoring and measuring client, operational and financial outcomes.

RESOLVED: The ACC Board resolved to:

- (a) **Note** the Claims Cost Report.
- (b) **Note** the Operational and Financial Performance Report.
- (c) **Note** the Annual Report 2019 publications timeline and proposed changes to the Income Statement format.

- (d) **Delegate** authority to the Chair of the Board and the Chair of the Board Risk Assurance and Audit Committee to approve the operating budget overspend of up to \$14 million that had been reported to the Board verbally and would be explained fully in a forthcoming paper to the Board.

6 Board Papers

6.1 (a) Q3 Privacy Compliance Report & Key Risk Indicators

9(2)(a) introduced the paper, highlighting the following:

- The number of reported near misses had been added to the report, which was a useful indicator of ACC's improved privacy culture.
- There had been two recent Level 3 privacy breaches, both of which had been previously reported to the Board. This was still within the target of five or less for the year.

In response to a Board query as to whether the privacy breaches could be prevented through encryption technology, 9(2)(a) explained that most of the breaches related to staff emailing information to the wrong health provider, which encryption would not resolve. However, Management was reviewing how to make it easier for providers to send information using portals.

The Board queried the reported ICIP outstanding recommendation from the Privacy Impact Assessment relating to Client Payments. The Board emphasised that privacy was a very high priority for the business and that the point of Transformation was to build in privacy by design. Mr Jones was given the Board's full support to help to achieve this. 9(2)(a) reported that Mr Fletcher had been made aware of the problem. The Board expressed its confidence that Mr Fletcher would do what needed to be done.

The Board queried the percentage of staff completing privacy training within ten days of commencing work at ACC. 9(2)(a) explained that the target was set at 90%. The percentage of people meeting the target had risen from 71% to 75%. The main barrier related to contract staff where the onboarding routine was not as strict. The Board suggested that ACC should be able to exert pressure on contractors, and gave 9(2)(a) its permission to be forthright.

RESOLVED: The ACC Board resolved to:

- (a) **Note** that quarter three had similar levels of reported breaches to this time last year (84 Level 1 & 2 breaches).

- (b) **Note** that the quarter three Key Risk Indicator (KRI) report includes the number of reported near misses, and that these have increased, which is a positive reflection on ACC's privacy culture.
- (c) **Note** that two of the KRIs (privacy training of staff within ten days of starting work at ACC, and the number of privacy breaches resulting from staff not following process), have not met their compliance target, and that the Privacy Team is targeting communications on these two KRIs.

6.1 (b) Privacy Maturity Self-Assessment and Privacy Maturity Action Plan

9(2)(a) reported on the annual privacy maturity self-assessment which he had undertaken. One year ago, KPMG had presented a Privacy Maturity review to the Board, outlining a range of recommendations. Overall, good progress had been made on these in the last 12 months.

9(2)(a) reported on the focus for the coming year. The Board requested that the team push for legislation changes that would support privacy by design through, for example, removing the requirement to send hard copy letters to clients. The best outcome would be everyone using a portal, and, in this regard, MyAcc would be a big step forward.

9(2)(a) confirmed that there was still a small percentage of clients without internet, and so hard copy communications would still be required for them.

RESOLVED: The ACC Board resolved to:

- (a) **Note** that the Head of Privacy has completed the annual Government Chief Privacy Officer (GCPO) Privacy Maturity Assessment (GCPO Privacy Self-Assessment).
- (b) **Note** that ACC's full GCPO Privacy Self-Assessment is available on request to 9(2)(a)
- (c) **Note** that ACC's privacy maturity has improved since KPMG completed an assessment in July 2018, with 'embedded' having been achieved in six of the nine elements of the Privacy Maturity Assessment Framework.
- (d) **Note** that that the Privacy Team has identified key deliverables for improving maturity in the three remaining areas, all of which are in train, and that ACC remains in a strong position for achieving embedded in all nine elements in 2020.

6.2 (a) Public Health Acute Services Annual Service Agreement

9(2)(a) explained the price increases in the new service agreement. Ms Roche outlined the policy implications of the agreement. In response to Board queries, 9(2)(a) explained that—

- The pricing was marginally below that which had been budgeted for, but aligned with movements from the Ministry of Health (MOH) to DHBs for core services and tertiary adjustments.
- There was limited scope for negotiation, and ultimately it was an agreement between the Ministers.

The Board Chair noted her conflict in the matter and asked the Temporary Deputy Chair to put the resolutions to the Board without her input, which he then did.

RESOLVED: The ACC Board resolved to:

- (a) **Note** that the Deputy Director-General, DHB Performance, Support and Infrastructure (Ministry of Health) has signed the Agreement.
- (b) **Note** the cost associated with the 2019/20 Public Health Acute Services Agreement is \$558,584,890; representing a funding increase of 5.34% on last year's total amount. This contribution has been included in the budget set for the 2019/20 financial year.
- (c) **Approve** the Public Health Acute Services Agreement 2019/20
- (d) **Delegate** authority to the Chief Executive to execute the Public Health Acute Services Agreement 2019/20

6.2 (b) Residential Support Service – Contract Extension

9(2)(a) reported that there had been an intention in 2017 to work on the Residential Support Service (RSS) pricing model with MOH. However, building a consistent model with MOH had been unsuccessful. ACC was now progressing the development of its own model to standardise the assessment of pricing across providers. The new timeline for completion of this work was September 2021. Board discussion focused on the following:

- Whether ACC was actively trying to bring new competitors into the market to push prices down. Mr Dyer responded that this was not currently possible.
- Who it was that decided the level of care for the individual client. 9(2)(a) responded that a needs assessment was undertaken for the client, and the ACC's case manager negotiated the care and cost with the provider.

- Whether Management had external support to develop the model. 9(2)(a) responded that it was being completed in-house, using the capability of his team and the analytics team.
- Whether, given that 800 of the 1300 clients in the RSS were aged 65 and older, the cost to ACC of the RSS was accurate, since assessments of injuries for the elderly so often rested on whether they were age related or accident related. 9(2)(a) confirmed that the 800 clients were covered by ACC.

RESOLVED: The ACC Board resolved to:

- Note** that the current Residential Support Services (RSS) contract was extended on 1 October 2017 and expires on 30 September 2019.
- Note** that the current contract appears to be performing well, with opportunities to improve the pricing model to align with a greater range of client complexity levels.
- Note** that there is a programme of work in place to complete a pricing review and undertake a contract refresh, but this needs further time to be completed and implemented.
- Approve** an extension to the RSS contract for a period of two years (1 October 2019 to 30 September 2021).
- Note** the forecast spend over the two year extension is estimated at \$132.96 million.
- Note** the proposed contract extension has no material impact on the Outstanding Claims Liability (OCL) and Levies.
- Note** that the proposed extension is compliant with the Government Rules of Sourcing and ACC Procurement Policy as the contract will continue to remain open for new supplier applications during the life of the contract.
- Note** that Board approval is required in accordance with Section B3.1 of the Corporate Delegations Schedules, as the Whole of Life Cost from 1 February 2003 to 30 September 2021 for this service is estimated at \$706.53 million.

7 Performance Reports

7.1 Health, Safety and Wellbeing Report

Ms Champness presented the Report. In response to the Board's request for more detail on the whistle-blower issue in the report, Ms Champness explained that she had received no further information as to why it had been reported to WorkSafe rather than through ACC's whistle-blower mechanisms. In response to a Board query, the General Counsel explained ACC's Protected

Disclosures Policy. The Board requested a regular whistle-blowing report, to enable the Board to identify whether there were any systemic issues. Ms Champness reported that the whistle-blower referred to in her report had raised concerns with WorkSafe about workload and stress in the Sensitive Claims Unit. Ms Champness explained the range of initiatives that Management had put in place for the Unit and reported that WorkSafe had been invited to provide feedback to Management, but the invitation had not been taken up.

In response to a Board query regarding when the lead indicators on the top ten risks, referred to in the report, would be available, ^{9(2)(a)} explained that this was in next year's workplan. The Board would see the draft indicators in the first quarter, with the data provided later in the year.

The Board congratulated Management on ACC's low injury rate.

RESOLVED: The ACC Board resolved to:

- (a) **Note** actions underway to mature our safety system, demonstrate safety leadership and strengthen our safety culture.
- (b) **Note** there was one notifiable events in May 2019.
- (c) **Note** the health and safety performance indicators.

7.2 Legal Report and Policy Update

(a) **Legal Report – LEGALLY PRIVILEGED**

The General Counsel summarised the report, focusing on the following:

- Ng had been given a possible fixture for the second week of November 2019. However, the date might be affected due to ACC's application to introduce further evidence.
- The *Stafford* judicial review hearing was set down for 10 September 2019. The hearing may be vacated. If it was not, a full report to the Board would be presented in July, with an out of cycle paper to BIC at the same time. If the date was vacated, the report would be scheduled for August 2019.
- A new matter not mentioned in the report was a recent decision from the District Court, which may receive media attention, upholding ACC's refusal to fund a cannabinoid for chronic pain management because Pharmac had not approved it for the use for which the patient wanted it.

RESOLVED: The ACC Board resolved to:

- (b) **Note** ^{9(2)(h)} [REDACTED]
- (c) **Note** the *Ng* 'ordinary consequences' Test Case continues to progress. Counsel is approaching specialists to seek evidence to address the practical application of the *Ng* test.
- (d) **Note** in relation to the *Stafford* litigation
- i. The Court of Appeal's decision has not yet been issued in the case concerning the legal basis for a caveat to be lodged against land registered in ACC's name.
 - ii. The judicial review proceeding concerning the scope of Ministers' powers to direct Crown entities under the Crown Entities Act 2004 not to dispose of land in scope of Mr Stafford's breach of fiduciary duty claims in the Wakatu litigation will likely progress to a hearing before the end of 2019.

(b) **Policy Update**

Ms Powell reported on the proactive release of the mental health Cabinet paper. The release would be packaged with MSD's. Ms Powell confirmed to the Board that ACC's view had been referenced, and that the paper had come from the Ministers for MSD and ACC.

Ms Roche informed the Board that ACC, Police, Treasury and MBIE had received a range of official information requests in relation to the gun buyback scheme. The timing of the response would be matched with the other agencies'. The Board Chair asked to be kept informed of the documents to be released.

^{9(2)(a)} [REDACTED] updated the Board on the air ambulance contract. In January 2018, the Board had approved Phase 1 of a two-phase strategy on the air ambulance contracts and the exit of single engine helicopters from the service. The contract was joint between ACC and MOH through NASO, and included the DHBs. The Northern and Central contracts had been signed, ^{9(2)(j)} [REDACTED]

Ms Roche reported on the ICIP Cabinet paper having gone through Cabinet. ACC was now in the 30-day proactive release period. The Privacy and Legal teams had assessed the paper and had

identified no issues for withholding information. The Board requested a final review of the paper to ensure it did not contain any commercially sensitive information that should be withheld.

Ms Roche informed the Board that the Cabinet reshuffle had resulted in a new Associate Minister for ACC being appointed—the Hon Willie Jackson. The briefing for the new Associate Minister would be circulated to the Board when completed.

RESOLVED: The ACC Board resolved to:

- (c) **Note** that the Minister is exploring possible opportunities to progress legislative modernisation proposals through different amendment packages, and management is awaiting formal advice on whether this work will progress.
- (d) **Note** that a progress update on the Integrated Change Investment Portfolio was considered by the Cabinet Government Administration and Expenditure Review Committee on 20 June 2019.
- (e) **Note** that the Ministry of Health is currently exploring issues related to the cost of delivering services under the Public Health Acute Services Agreement between the Minister of Health and the Minister for ACC, and that management will update the Board on the progress of that work at the Board meeting.
- (f) **Note** that management will bring a paper to the July Board meeting about the air ambulance contracts, including what has been achieved, variations to what was planned, the direction forward, and a request for increased funding (if required).

8 Board Administration

8.1 Minutes of Meeting held on 30 May 2019

APPROVED: the ACC Board approved the minutes of the meeting held on 30 May 2019.

8.2 Schedule of Matters Arising

The Board **noted** the Schedule of Matters Arising.

The Board requested that the forthcoming *Torchlight* paper include a summary of who within Management had authority trigger litigation.

8.3 Confirmation of Decisions Made Out of Cycle

RESOLVED: the ACC Board resolved to:

Note that there were no decisions made out of cycle for the period of 24 May 2019 to 19 June 2019.

8.4 Annual Work Programme

NOTED: The ACC Board **noted** the annual work programme.

9 General Business

There was no General Business.

10 Confirmation of Next Meeting

To be held at the ACC Boardroom, Level 11, PwC Tower, 188 Quay Street, Auckland on Thursday, 25 July 2019 at 9.00 am.

Closure

The meeting closed at 3.40 pm.

Approved

Chair

Date