



Office of Hon Nikki Kaye

MP for Auckland Central

Minister for ACC

Minister of Civil Defence

Minister for Youth

Associate Minister of Education

- 5 MAR 2015

Ref: 2015-12

Lee M

Email: fyi-request-2537-6a4e8ff3@requests.fyi.org.nz

Dear Lee M

On behalf of Hon Nikki Kaye, Minister for ACC, thank you for your request made under the Official Information Act and received on 28 February 2015. You requested the following:

Question 1:

Does Section 137 of the ACC Act apply to reviewers that the ACC advertises for, interviews, appoints, employs, and who work in the ACC's (internal) reviews department, or, does Section 137 of the ACC Act apply to reviewers that the ACC advertises for, interviews, appoints, employs, but who work in Fairway Resolution Limited's offices, branches and/or circuit?

Question 2:

If neither of the abovementioned are applicable, can you explain who advertises for, interviews, appoints and employs reviewers who work in the ACC's reviews department, and, can you also explain who advertises for, interviews, appoints and employs reviewers who work in Fairway Resolution Limited's offices, branches and/or circuit?

Question 3:

Can you explain how Fairway Resolution Limited can advertise itself as being an organisation "independent" of the ACC - which implies being free from outside control and not subject to another's authority - when the ACC has the authority under Section 137 of the ACC Act "to engage and allocate reviewers" that apparently work in Fairway Resolution Limited's offices, branches and/or circuit?

Question 4:

How many people does the ACC "engage"/employ internally as reviewers under sub-section 137(1) of the ACC Act, and who work in the ACC's reviews department?

Question 5:

How many people does the ACC "engage"/employ internally as reviewers under sub-section 137(1) of the ACC Act, but who work in Fairway Resolution Limited's offices, branches and/or circuit?

Question 6:

Can you clarify what "reviewer" the ACC "must arrange" to allocate to the review under sub-section 137(2) of the ACC Act? Is it a reviewer who works in the ACC's review department or is it a reviewer who works in the Fairway Resolution Limited's offices, branches and/or circuit?

Question 7:

If the "reviewer" the ACC "must arrange" to allocate to the review under sub-section 137(2) of the ACC Act is a reviewer who works in Fairway Resolution Limited's offices, branches and/or circuit, then how does the ACC explain the "independence" of such a reviewer when the choice of reviewer is made by the ACC and not Fairway Resolution Limited?

Question 8:

What is the jurisdiction of Fairway Resolution Limited reviewers and what Section/s of the ACC Act provide for and authorise same?

Question 9:

Section 138(2) of the ACC Act provides that; "A reviewer to whom the Corporation proposes to allocate a review must disclose to the Corporation any previous involvement that the reviewer has had in the claim other than as a reviewer."

In circumstances where the ACC is choosing which reviewer is to hear the respective review applications, how can the ACC possibly claim that the review application and hearing process is objective, impartial, fair and just?

Question 10:

Is there any provision in the ACC Act, or in any of the ACC's policy and procedure documents, or in any of Fairway Resolution Limited's policy and procedure documents, for a potential reviewer who is applying for a position of reviewer within the ACC and/or Fairway Resolution Limited to disclose any previous involvement in the ACC and/or Fairway Resolution Limited?

If there is no provision in the ACC Act, or in any of the ACC's policy and procedure documents, or in any of Fairway Resolution Limited's policy and procedure documents, for a potential reviewer to disclose any previous involvement in the ACC and/or Fairway Resolution Limited as outlined above, can you provide the fullest possible explanation for the causes and reasons why there is no provision in the ACC Act, or in any of the ACC's policy and procedure documents, or in any of Fairway Resolution Limited's policy and procedure documents, for a potential reviewer to disclose any previous involvement in the ACC and/or Fairway Resolution Limited as outlined above,

Question 11:

Why is there no transparency regarding the issue of timetabling review hearings? Notwithstanding that there is no information made available to review applicants - in particular around how much time is allocated to review hearings - there is no information made available to review applicants around how it is decided what time will be allocated to review hearings, who makes these decisions, and whether such decisions can be appealed?

Question 12:

Published at Fairway Resolution Limited's under the heading "How Long Does An ACC Review Hearing Take?" is the following statement; "Hearings are usually scheduled in one-hour time blocks. Some only take a few minutes while others take much longer."

Why is there no transparency regarding the issue of review hearing duration? Notwithstanding that there is no information made available to review applicants other than that quoted above, the Fairway Resolution Limited's website does not advise review applicants what the situation will be when "others take much longer"?

Question 13:

Why does the ACC Act not include provisions around timetabling and scheduling of review hearings?

Question 14:

Why does the ACC Act not include provisions around dispute resolution in relation to timetabling and scheduling of review hearings?

Question 15:

In circumstances where a review applicant has - for example - five separate review applications "live" at one time; would it fair, reasonable and just for the reviewer to set down three review hearings on day one for one hour duration run concurrently (and during which time the applicant is expected to present their evidence and submissions, and have their witnesses give testimony in SUBSTANTIVE matters), and, set down two review hearings on day two for one and half hours duration run concurrently (and again during which time the applicant is expected to present their

evidence and submissions, and have their witnesses give testimony in SUBSTANTIVE matters)?

Question 16:

In the abovementioned circumstances and where the review applicant has physical, emotional and mental problems that prohibit them for attending more than one hearing on any given day, and where they need time in between the review hearings to rest and prepare for the next review hearings, and where the review applicants doctor provides a note saying that the applicant cannot cope with more than one review hearing on any given day, would it be a breach of the principles of natural justice and the review applicants human rights, to have the doctors note and the review applicants condition ignored by the Fairway Resolution Limited reviewer?

Question 17:

Is it permissible and/or acceptable for a review applicant to request that review applications be heard separately for health and/or other valid and substantiated reasons, and if so what law, policy, procedure or other instrument provides for this?

Question 18:

Is it permissible and/or acceptable for a review applicant to request and be granted an extension of the duration of review hearings, and if so what law, policy, procedure or other instrument provides for this?

Question 19:

Is it permissible and/or acceptable for a Fairway Resolution Limited reviewer to ignore a review applicant's request for his/her review applications to be heard separately for health and/or other valid and substantiated reasons, and if so what law, policy, procedure or other instrument provides for this?

Question 20:

Is it permissible and/or acceptable for a Fairway Resolution Limited reviewer to ignore a review applicant's request to be granted an extension of the duration of review hearings for health and/or other valid and substantiated reasons, and if so what law, policy, procedure or other instrument provides for this?

Question 21:

Could the ACC refuse to allocate another reviewer if the review applicant has evidence or suspects that the reviewer allocated to the review hearing/s is not "independent" of the ACC and/or cannot be objective, impartial and/or unbiased in considering the review applicant's matters and/or in reaching a decision about them? If so, under what law, policy or procedure could the ACC refuse to allocate another reviewer in the above described circumstances?

Question 22:

Would there be grounds for a review applicant to insist on another review being allocated by the ACC if there is a perception on the part of the review applicant that the reviewer allocated by the ACC cannot be objective, impartial and/or unbiased in considering the review applicant's matters and/or in reaching a decision about them? If so, under what law, policy or procedure could the review applicant insist on a replacement reviewer being allocated to his/her matters?

I believe the requested information is more closely connected to the functions of the Ministry of Business Innovation and Employment (MBIE). Accordingly, I have decided under section 14(b)(ii) of the Official Information Act to transfer your request to the Chief Executive of MBIE.

The Chief Executive has 20 working days from receipt of this transfer to make a decision on your request.

Yours sincerely

A handwritten signature in blue ink that reads "Nikki Kaye". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Hon Nikki Kaye
Minister for ACC