



Lee M

Fyi-request-2537-6a4e8ff3@requests.fyi.org.nz

Dear Lee M

Thank you for your letter of 28 February 2015 requesting information from the Minister for ACC under the Official Information Act 1982 (OIA), about the ACC review process. As you are aware, this request was transferred to the Ministry of Business, Innovation and Employment (MBIE) on 5 March 2015, as it is more closely connected with MBIE's functions (as MBIE administers both the legislation and regulations covering the Accident Compensation scheme).

On 24 March 2015 I wrote to you to inform you that I was extending the timeframe for responding to your request under section 15(1)(a) and (b) of the OIA, to 21 April 2015. This was to allow MBIE appropriate time to identify relevant information and consult with ACC and FairWay Resolution Limited (FairWay).

After further consideration of the matters raised by your letter, it has become evident that you are asking for explanations or a view on particular scenarios, and a number of your questions could be understood to be a request for legal advice. As such, they are not requests for specified official information, and are not within the ambit of the OIA.

Also, while a number of your queries are expressed generically, it appears they may be about specific matters. I cannot provide you with legal advice on the matters you raise. If there are specific issues underpinning your correspondence, you might consider seeking legal advice. For free assistance or a starting point, you could contact the Citizens Advice Bureau (www.cab.org.nz) or a local Community Law Centre (www.communitylaw.org.nz).

While your requests do not fall under the Official Information Act, I have replied more generally to the matters you raise by providing the information below about the process for reviewing ACC decisions and, in particular, the independence of reviewers.

In your correspondence you touch on the difference between an internal review by ACC and an external review by FairWay. It may be helpful for me to provide some information about this to begin with, as it is relevant to many of your questions.

As you will be aware, Part Five of the Accident Compensation Act 2001 (the AC Act) sets out the legal provisions governing the resolution of disputes about decisions made under the AC Act. Sections 134 to 148 of the Act specifically govern reviews.

Section 137 of the Act requires ACC to engage reviewers to undertake reviews for the purposes of Part Five of the Act. ACC does not engage its own staff to undertake these reviews. I understand ACC has a contractual relationship with FairWay for the provision of review services and that FairWay's staff and contractors are experienced in undertaking resolution processes. When an application for review is received by ACC, it is these FairWay



reviewers that are allocated the application to review. FairWay engages 33 reviewers to carry out reviews.

Before a case is sent to FairWay for review, ACC completes an internal review of the case. The ACC Review Unit sends the case to the relevant part of ACC to undertake this internal review. This is not a review under the AC Act. Rather, this is simply intended to provide an opportunity for ACC to reconsider its original decision before the statutory review process is initiated. If the case cannot be resolved (i.e. if ACC reaches the same decision) and the case does not go to mediation, then a FairWay reviewer will undertake a statutory review.

Reviewers have a duty to act independently under section 138 of the AC Act. FairWay is an independent Crown Owned Company, and is not part of ACC.

A reviewer is not precluded from hearing a specific review simply because he or she may previously have been employed at ACC. However, section 138(2) of the AC Act 2001 specifically provides that a reviewer must disclose any previous involvement they have had in a claim, other than as a reviewer. Where a reviewer has had involvement in a specific claim in any other capacity than as a reviewer, arrangements will be made for a new reviewer to be allocated. I understand that any concerns regarding the independence of the reviewer and raised with ACC or FairWay directly would be investigated and action taken (for example, re-allocation) if necessary.

Sections 140 and 141 of the AC Act set out the general principles for the conduct of reviews. Section 141(1) provides that a hearing must be held unless the review application is withdrawn, or there is agreement not to have a hearing. When a hearing is to be held, the reviewer must hold the hearing at a time and place that are agreed to by all persons who are parties to the application and the reviewer, or decided on by the reviewer if those persons do not agree. Section 141(2) further provides that the reviewer must also provide notice of the time and place of the hearing at least 7 days before the date of the hearing.

If someone has a concern around the timetabling and scheduling of their review, they are able to contact FairWay to discuss this. Any requests regarding a review hearing should be made to the reviewer who can, for example, adjourn the hearing or schedule a new date.

I note that you can contact FairWay directly if you have specific concerns regarding the management of a review and the review process. You can also contact FairWay's Complaints Investigator, at fairwayinfo@fairwayresolution.com.

In addition, you can contact ACC on 0800 101 996 or information@acc.co.nz if you would like to discuss a concern with a claim.

I hope you find this information helpful.

Yours sincerely



Rob Hodgson
Manager, MBIE