

Minutes of a meeting of the Board of the Accident Compensation Corporation held at ACC Boardroom, Level 11, PwC Tower, 188 Quay Street, Auckland on Thursday, 25 July 2019 at 9.00 am.

Present

Dame Paula Rebstock	Chair
Ms Anita Mazzoleni	Member
Mr James Miller	Temporary Deputy Chair
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	
Mr Mike Tully	Chief Operating 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) **	Head of Actuarial Services	Item 6.2
9(2)(a) **	Taylor Fry	Item 6.2
Ms Gabrielle O'Connor**	Head of Client Service Delivery	Items 4.1
9(2)(a) **	Head of Provider Service Delivery	Item 6.5
9(2)(a)	Executive Advisor	Items 4.2, 6.4
9(2)(a)	General Counsel and Company Secretary	Item 7.2
9(2)(a)	Manager Corporate Secretariat	
9(2)(a)	Senior Associate Company Secretary	
9(2)(a)	Associate Company Secretary	Items 2.1 – 6.1

** Attended via telephone / videoconference

1 Procedural Business

1.1 Apologies

An apology was received for Ms McDonald QC.

1.2 Register of Members' Conflicts of Interest Arising

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 Governance and Remuneration Committee

The Board Chair updated the Board on the key matters considered at the Governance and Remuneration Committee meeting of 24 July 2019:

- Chief Executive performance and remuneration had been considered. The changes would be brought to the next Board meeting.
- Executive performance and remuneration had been considered.
- The direct market incentives scheme had been approved. Ms Champness would consult Mr May and Mr Brabazon to look at the recommendations for the team for the current year.
- The Collective Bargaining Strategy had been discussed. The main issue for ACC was to hold the line on the link to performance.
- A draft Health Services Strategy (HSS) Committee Terms of Reference (TOR) had been considered. The Committee had clarified that the HSS Committee would be an advisory committee.

2.2 Risk Assurance and Audit Committee

Ms Mazzoleni updated the Board on the key matters from the Risk Assurance and Audit Committee (RAAC) meeting held on the morning of 25 July 2019:

- New insurance disclosures had been discussed, which extended previous years' sensitivity analysis on the interest rate and inflation rate impact on the surplus/deficit.
- A Funding of Accounts note had been added to the notes.
- ^{9(2)(h)} 
- The representation letter that Management makes to the Board and the Board makes to the auditors still needed some minor amendments. This would be approved by the Board via email.

The Board Chair thanked the RAAC Chair for the Committee's important work.

3 Board Only Session

The Board **RESOLVED**, in accordance with clause 14 of Schedule 5 of the Crown Entities Act 2004, to **appoint** a committee to advise it in relation to the Health Services Strategy. The Board would consider Terms of Reference for the establishment of the Committee via email.

3.1 Chief Executive's Report

Items raised by Mr Pickering were:

- General performance and focus areas
- ICIP update including NGCM
- Branch visitation programme August and September
- Property update
- Performance adviser role discussion
- Select Committee update.

4 Operational Reporting

4.1 (a) ICIP Reporting

Mr Fletcher highlighted the following:

- Analytics—A key milestone had been achieved with moving Eos data into the platform. This was a key component to broader use of advanced analytics. The remediation of Warehouses continued to be tight, and would continue to be so for Next Generation Case Management (Next Gen), however sufficient testing would be achieved to ensure there was no significant disruption.
- Client Payments (CP1)—This continued to track well; 11,000 payments had been made through the platform which was being tested at scale.

Mr Healy reported on an area of benefits realisation for CP1: ACC was paying IRD a fee of \$21 million per year. Mr Healy had reached agreement with IRD's CFO to separate out the elements of that figure. It was agreed that the CP1 go-live amount was c.\$6.5 million which would go down to \$0 by the end of this financial year. Additional fee reductions were being negotiated for the remaining c.\$14 million, which would be built into the budget going forward. This represented c.\$40 million NPV in new ICIP benefits. In response to a Board query, Mr Healy explained that the true costs of IRD's work was likely around \$10 million per annum.

Ms O'Connor provided an update on Next Gen go-live readiness:

- There were the typical bugs, but they were being managed. There had been change requests for the early life support (ELS) release. The team had reported only 13 defects, which was a good indicator of readiness for the August release.
- There were staff items flagging as 'High'. One of these was recruitment for the transitional claims support team. This had not been easy and would need to be monitored.
- There was continued general attrition, as staff were looking at career options. Management was monitoring this and had mitigations in place.
- The Expressions of Interest process was progressing well, with 170 leaders having been appointed, 1500 frontline staff assessed, and the appointment of 352 people having been made on 24 July. The scale was huge, and was being managed well.
- Training materials were completed and training was underway at the sites ahead of their go-live on 16 September.

- Go-live readiness assurance activity was occurring. All the Management responses to TA29 had been closed out. There were two Amber recommendations in TA23 regarding post go-live activities. Management responses for TA23 had been drafted.
- Management had completed an internal risk and control matrix, with an internal assurance review for go-live underway.

The Board's discussion and questions focused on the following:

- Whether any of the 13 defects were of concern, and whether the Management responses to TA23 would take the two recommendations from Amber to Green—Ms O'Connor explained that none of the defects was of great concern; five related to issues with the CP1 and Next Gen codes coming together, another five related to the Next Gen testing, and the other three related to the change requests. All the defects were at Sev 3 or below. And the Management responses would shift the TA23 recommendations from Amber to Green.
- Whether June's CP1 double payments could have been stopped at the bank—Mr Fletcher explained that the issue had not been discovered until after the payments had cleared.
- The atmosphere in the offices in line for Next Gen implementation—Ms O'Connor explained that there was a blend of excitement and anxiety. Staff were enthusiastic about the changes, and these early rollouts would build confidence for the full-scale rollout.
- The Next Gen rollout needing to be seamless in terms of impact to clients—Ms O'Connor explained how the Heartbeat programme and leaders' and ELS meetings would provide feedback on all elements of customer experience, which would be measured and tracked.
- When Analytics was due to finish—Mr Fletcher explained that the project was due to finish at the end of August 2019. Staff were already using the platform.
- The work on the Investments Team's technology issues—Mr Fletcher clarified that the Dashboard provided with the ICIP Report only related to the items which had been flagged Red, and progress was being made.
- The role of the Board sub-group overseeing the Next Gen go-live—Mr Fletcher explained that, due to having been unable to find meeting times when everybody was available, he would send out written updates regularly over the next 10 days. The key decision making session would be on 8 August.

RESOLVED: The ACC Board resolved to:

- (a) **Note** the ICIP June 2019 Report.
- (b) **Note** the Investments Technology Issues Report.

4.1 (b) Fourth Quarterly Report

Mr Healy highlighted that the year end results, both financial and non-financial, showed mixed performance. On the one hand, the Injury Prevention Return on Investment was its best yet, and reviews performance was excellent. On the other hand, rehabilitation performance had missed its targets, and NTS had also dipped.

Regarding Short-Term Claims Centres (STCC) staff turnover, Ms Champness explained that the external turnover rate had been 21% for last year, higher than the 17% average of ACC. The 40% internal turnover related mostly to moving to other roles in Client Service Delivery, and had been at that level for the last two to three years.

The Board focused on the following in relation to staff turnover:

- The value ACC places on the STCC positions; it was not ideal if people had to move to get a better position. Ms Champness explained that this was part of the work LEK was doing, and a lot was already being done to manage turnover. Ms Champness explained the improvement in job grades that would occur with Next Gen, which Management hoped would stem turnover.
- The impact of this 'posting turbulence', which could accelerate and create an unhealthy dynamic. Ms Champness explained that turnover had increased in the last few years, as staff moved into projects such as Launch Pad. The Board suggested that a view be formed as to what would give ACC a workforce that would deliver ACC's needs; incentives needed to be aligned to that.
- While the monthly reporting on turnover statistics was valuable, the information on internal STCC turnover had been news to the Board. This raised a question as to the Board's information needs. It was a case of understanding the data in order to problem-solve. It was also a question of transparency. Ms Champness reported that the Contact Centres had a high combined internal/external turnover: 25% external, 20-25% internal. There were processes in place for Contact Centres to manage that turnover. In response to Board

queries, Ms Champness explained that it was expected that Contact Centre staff would move on. Ms O'Connor explained that ACC hired people who were ambitious and intelligent and who would use those attributes to move on.

- Whether exit interviews were conducted to find out why staff were leaving—They were. Ms Champness explained that the engagement survey results from the STCC had scored very high, higher than the ACC average. There were few stress reports, and the main driver for internal turnover was career progression. In response to Board queries, Ms O'Connor confirmed that the level of stress reporting was accurate; STCCs handled lower complexity claims, and the staff who worked there were comfortable with fast paced work. Also, work was moved around the national team, and this helped managing any stress.
- Regarding Management's expectations as to the extent to which the Next Gen job re-sizing (which would remove the internal incentives to change jobs) would reduce turnover, and Management's strategies to get back to a steady state—Ms Champness explained that Management did not have a specific target.

9(2)(a) and Ms Powell presented on media issues management, highlighting the following:

- Media coverage recently was testing out the notion of wellbeing and fairness. Many agencies had been pulled into this, including ACC, as people felt empowered to raise in the media issues where they felt they had been wronged.
- The specific client stories in the media were being tracked and monitored by Ms Powell's team. On average there were twelve such stories per quarter.
- Ms Powell and Mr Tully were working closely together on the customer issues at the root of the stories. Communication with customers was the key factor in their satisfaction. People report to media that something did not happen until the media became involved, but often the thing has been in train but ACC had not communicated it.
- Ms Powell and Mr Tully were scoping a review of the client experience in treatment injury, which can take up to nine months for a decision to be made by the time medical advice is obtained.

The Board queried whether Management monitored the time taken to communicate decisions to clients, and whether clear expectations were being set with staff. Mr Tully explained that this did occur for written decisions. In the tour around the branches he was doing with Mr Pickering, one of the key messages to staff was on communication with clients. Ms Powell explained how Heartbeat

and advanced analytics provided opportunities to get ahead of complaints, by predicting the customers from whom a complaint was highly likely to come.

The Board suggested that staff attitude appeared to be key to complaints, and that complaints be probed more deeply for insight as to whether the problems stemmed from particular areas, or teams, or from the customer.

In terms of managing client expectations, the Board noted that providers gave clients the first message that ACC would pay; later, ACC communicated decisions on the cases that are not covered. The Board suggested that medical professionals be encouraged to nuance their messaging to clients.

Mr Healy continued with the Quarterly Report, highlighting the year end audit process which was running smoothly. The KiwiBank valuation was also going quickly and smoothly.

Board discussion focused on the following.

- Whether the investment performance figure included private markets—it did. Mr Healy explained that June had been a poor performance month.
- Whether Management had set the wrong targets or whether the problem was operational performance—Mr Healy explained that rehab performance had been worse than expected, and lower targets had been set for 2019/20. ACC's ability to manage the increased volumes had been underestimated.
- The high growth numbers— Mr Healy explained that, from his perspective, the overall claims volumes historically, at 2-3%, aligned with population growth; the aging population, at 3% growth, aligned with the higher growth now in WC volumes. In 2014 it spiked at 12-13%, which coincided with ACC's service needs assessments, when it had proactively gone out to clients to ensure correct WC coverage. Since then, the correlation of 5-6% growth was in line with real GDP movement. WC growth was tailing off, and in July has fallen below 5%, correlating with economic growth which was dampening. Mr Healy explained that he was now comfortable with understanding why the volume was 5-6%. LEK would help with how to manage that volume.
- Whether Management was setting stretch targets or real targets— Mr Healy explained that rehab performance targets had now been set lower; they had previously been set at stretch, as Treasury had pushed for higher targets.

- That these insights should be included in the Report, to explain the data and Management's responses.
- Whether the data around levies should go to the Minister. The Board agreed that it was good for Treasury and the Minister to see this information.

Mr Healy then reported on the deficit ACC was facing. He reported on discussions he had had with the Australian Transport Accident Commission (TAC) which was expecting a similar proportionate increase in deficit as ACC had experienced. TAC presented two funding ratios: an accounting funding ratio and economic funding ratio. The accounting funding ratio used the risk free rate to value liability, while economic funding used expected investment rate of return. The Board suggested that ACC not muddy the waters by reporting on two funding ratios, as this would add to the myth that the low discount rate environment was not a problem.

Mr Healy reported on ACC's investment in the government's gun buyback scheme: \$10 million was recorded in 2018/19 as a prepayment. This corresponded to how the Police had accounted for receiving the \$10 million. In response to a Board a query, Mr Healy confirmed that the auditors had not indicated any concerns with the gun buyback funding. Mr Raubal explained the process that had been undertaken to determine the ROI.

The Board requested that the additional unbudgeted expenditure that the Board had approved after the June 2019 Board meeting, be recorded in the notes to the Annual Report.

RESOLVED: The ACC Board resolved to:

Approve, subject to any final changes, the presentation of the fourth quarterly report 2018/19 to the Minister by 31 July 2019.

5 External Speaker

5.1 Michael Barnett, Chief Executive of the Auckland Business Chamber of Commerce

The Board Chair welcomed Mr Barnett, who focused his presentation on the following:

- The Chamber and ACC shared the same constituency (businesses).
- Mr Barnett had recently focused on humanising the Chamber's brand through community engagements and empathising with businesses.

- The Chamber's work was now mostly focused on the community. Mr Barnett worked with MSD on youth unemployment. Under this partnership, around 1,000 youth a year are placed into employment. A joint Chamber and MSD programme was also underway for helping young people to pass their driver's licence before leaving school. This helped develop their independence.
- The Chamber provided a powerful, independent voice for business to central and local government.
- Reflecting on his and Jock Hobb's concurrent cancer diagnoses and the close relationship they developed through their treatment processes, Mr Barnett shared their key to a positive focus on life: change the things you can, and don't talk about the things you've done, talk about where you're going.

In response to Board queries and comments Mr Barnett explained that:

- He was constantly alerted by business to things that are wrong, and ACC had not been mentioned to him. However, ACC could do more to communicate with businesses. ACC could humanise its brand, and have purposeful community engagements.
- The way to improve businesses' trust and confidence in ACC was through storytelling. ACC could talk about the consequences of ACC's 'being there', and choose the language. By way of example, Mr Barnett reflected on a recent meeting of Chambers in Paris. Participants were talking about certifications for exporters, and he had proposed talking about trade facilitation instead.
- ACC should find a champion to tell the outcome story. Having the story come from a third party was very powerful. He referred to 'anchor bias': whatever people have first heard is overwhelmingly the way they will think of ACC. It will take effort for ACC to shift that perception.
- ACC should sift its own data to find who would be a suitable third party to champion ACC. The Board agreed that there was a need for ACC to personalise its message, as people don't remember statistics but they remember stories.

The Board Chair thanked Mr Barnett and asked him to let her know if ACC came onto his radar. That kind of critical friendship would help ACC to achieve its transformation.

6 Board Papers

6.1 ACC Responses to Emerging Transport Technologies

Ms Powell introduced the paper, noting some of the key pieces of work underway, including drafting a comprehensive e-scooter risk framework with Auckland Transport to assess where the greatest harm occurs. The Board Chair declared her interest in Auckland Transport.

The Board's discussion focused on the following:

- The Board's disagreement with the paper's comment on e-scooter use reducing the number of motor vehicle injuries and that care had to be taken to not discourage the uptake of new technologies. The Board indicated that ACC did want to encourage the uptake of e-scooters and other alternative modes of transport, so long as they were safe. If they were not safe, then ACC should be able to sheet home the cost to the operators, as owners of the risk.
- Injury statistics from the United States showed that 40% of e-scooter injuries were head injuries, with 50% of those being traumatic brain injuries. Only one out of 190 persons injured was wearing a helmet, 39% of the injuries happened at night, and speed was a factor in almost all of the injuries. The Board suggested that ACC be proactive—the statistics indicated the solutions to make e-scooters dramatically safer.
- ACC should manage the problem before it became too serious. There were new industries forming all the time, and ACC should act quickly. For e-scooters there was already plenty of evidence of the problems; ACC should get ahead of them, and advocate for setting the rules early and applying ownership of risk. Risk rated levies should be used wherever there was a viable charging mechanism. ACC could also make e-scooters safer by ensuring helmets were worn, there was no night-riding, and the scooters operated at a lower speed.
- The injury data related to e-scooters could be published, including the impact of e-scooter injuries on the various accounts. This would create public pressure about ACC having to pay the costs.

Mr Raubal noted that levies would not influence helmet-wearing, and that there were currently no legal mechanisms for levying e-scooters. The Board suggested that even asking for a law change would send a strong signal to the e-scooter companies.

ACTION: Management to bring a refined e-scooter levying paper to a future Board meeting.

RESOLVED: The ACC Board resolved to:

- (a) **Note** that e-scooter injuries to date have been low in number and cost relative to other forms of transport, though some injuries have been serious.
- (b) **Note** that Management has investigated a range of options for levying e-scooters, and that the changes required to achieve this are unlikely to be applicable to e-scooters in isolation from other devices or activities.
- (c) **Note** that changing patterns of transport use and safety risks raise questions about whether ACC's levying framework and/or Accounts remain fit for purpose.
- (d) **Note** that Management is undertaking a range of injury prevention activities in partnership with Auckland Transport, the Australasian Injury Prevention Network, and transport regulatory agencies to influence decision-making on e-scooter and pedestrian safety.

6.2 OCL Valuation Report

Mr Raubal introduced ^{9(2)(a)} of Taylor Fry to the Board, and together they took the Board through the presentation. Board discussion focused on the following:

- The movement in Non-serious injury Social rehabilitation. Mr Raubal explained that the drivers were a combination of capital and care costs.
- Sensitive claims. Mr Raubal explained that the volume of sensitive claims towards the end of 2018 had flattened, resulting in a small increase in sensitive claims volumes being assumed, and this had turned out to be a poor assumption. The integrated services strategy review for sensitive claims was underway now, and the contract was to be renewed next year. The Board asked that the OCL impacts be highlighted in the paper to the Board.
- Medical inflation for elective surgery. The Board noted that medical inflation was higher than 2% for the DHBs. Mr Raubal explained that, although it was unclear why, medical inflation was not higher than 2% for ACC; he had initially resisted reducing superimposed inflation, but it had been at lower levels for a consistent period.
- Physiotherapists. ^{9(2)(a)} explained that physio was quite small, from a liability perspective, as most treatment occurs in the first few months after an accident.

RESOLVED: The ACC Board resolved to:

Note the Report from Taylor Fry.

6.3 Annual Legislative Compliance Report

Mr Raubal introduced the paper noting that ACC's compliance processes were improving. The number of compliance exceptions was low for an organisation of ACC's size and complexity. The main concern was that there were nine Acts where compliance could not be verified, including two with a Very High inherent risk. Mr Raubal confirmed that these would be prioritised over the coming period.

The RAAC Chair asked that a recommendation be added to note that there was nothing identified in the Report that warranted disclosure in the accounts, including the note on contingencies.

The Board queried the Acts where compliance was unable to be verified and sought assurance that Management would be able to do this in 2019/20. This would be added to the RAAC agenda for follow up in November 2019.

RESOLVED: The ACC Board resolved to:

- (a) **Note** the FY19 Annual Legislative Compliance Report.
- (b) **Note** that the Chiefs' FY20 entity-level risk key performance indicator includes expectations regarding risk and obligation ownership in addition to the facilitation of effective key control testing in each Business Group.
- (c) **Note** that as the tariff for ACC's non-compliance with the Public Records Act 2005 is relatively minor and the potential for reputational issues is relatively moderate, the Executive owner of this exception should re-assess the risk rating or give focus to remediation commensurate with the high-risk rating.
- (d) **Note** no non-compliances required disclosure in the financial accounts or the contingencies note.

6.4 Annual Report

Mr Healy introduced the Annual Report. Regarding the OBEGAL view of the financial statements, Mr Healy reminded the Board that since 2011 the publicly available monthly performance reporting had split out economic factors and investment returns. He confirmed to the Board that, from an accounting perspective, either version was acceptable to the auditors. In response to a Board query, Mr Healy suggested that presenting the OBEGAL view was appropriate, as it would help the reader to better understand the drivers of the poor result.

The Board conveyed that the Report was not yet ready to send to external agencies. Mr Healy explained that the timeline had been brought forward this year because the Crown accounts were to be released on 9 October, and Management hoped to release the Annual Report before the Crown accounts. The Board suggested that more polished messaging and accounts in the draft would make the external agencies' job easier. The Board expressed the view that it was not problematic to have the Crown accounts announced first. Board Members would send their comments on the draft Annual Report directly to Mr Healy.

The Board discussed how best to approach the financials reporting—timing was very important when changing accounting presentation, and there needed to be a defensible reason. The choice was to leave the change to another year, or to use this year to transition to the OBEGAL presentation by including both versions of the income statement this year. The Board decided that a reconciliation should be included this year from the existing presentation to an OBEGAL presentation.

RESOLVED: The ACC Board resolved to:

- (a) **Provide** feedback on the first draft of the Annual Report 2019 (Appendix 3) and the provisional Financial Statements (Appendix 4).
- (b) **Note** the proposed timeline for AR19 (Appendix 2).
- (c) **Note** the new proposed changes to the presentation of the Financial Statement to be included in AR19 and the alternative presentation, aligning with the Crown's Financial Statements (Appendix 1).

6.5 Air Ambulance (Helicopter) Update and Funding Request

The Board noted a recently reported incident where only one air ambulance had been available for the whole of Northland and Auckland. ⁹⁽²⁾⁽ⁱ⁾

. He explained the arrangements that had been made to help with coverage, and the issues underlying the incident. He explained that this was the type of issue that Phase 1 of the Air Ambulance project had been trying to address. The Board noted the seriousness of the issue, and encouraged ^{9(2)(a)} to escalate to the Board if necessary.

^{9(2)(a)} summarised the key points from the paper:

- Phase 1 of the project had focused on moving to a professional service, removing the single engine helicopters, reducing the number of suppliers, setting up an air desk to coordinate activity, implementing a national governance framework and data collection.
- Still outstanding in Phase 1 was completing the negotiation with the South Island providers. Costs were higher because the providers had brought on extra staff, and the flying hours were well above the estimates. The costs had now been updated and were comparable with the providers in other regions. ^{9(2)(j)} [REDACTED]

The Board congratulated ^{9(2)(a)} [REDACTED] on the good work in consolidating the providers. Standardisation of equipment and aircraft was the goal.

RESOLVED: The ACC Board resolved to:

- (a) **Note** that in July 2018 the Board approved entering into agreements with the preferred air ambulance providers, and delegated to the Chair and Deputy-Chair the authority to approve the Recommendation to Select.
- (b) **Note** that the Board Chair and Deputy Chair approved the selection of HEMS as the preferred provider in the Southern region in December 2018.
- (c) **Note** that at the time of approval, costs had only been agreed for year 1 of the contract, while out years (2-4) were subject to continued negotiation.
- (d) **Note** that verbal agreement on costs has now been reached on years 2-4 of the contract and these exceed budget amounts.
- (e) ^{9(2)(j)} [REDACTED].
- (f) **Note** the future work for Phase 2.

6.6 Insurance Update

Mr Pickering declared his interest as a director of Chubb Ltd.

Mr Healy reported that the Board would now be updated yearly, at the RAAC Chair's suggestion.

Mr Healy highlighted the following:

- There were cluster arrangements for cross-government property insurance and business interruption insurance.
- There would be a refresh of business interruption insurance over the next few months.
- Most of the policies had an additional cost associated, particularly D&O.
- Some terms had changed, but Mr Healy was still comfortable with the level of cover.
- The overall cost had increased by more than 10% from last year.

The Board asked that annual updates come to the Board before the renewal decision. Mr Healy would make the level of self-insurance explicit in the updates.

9(2)(h)



The Board discussed whether ACC should fully self-insure. Mr Pickering proposed a ground up review of ACC's insurance. The Board agreed, asking that an independent reviewer be used, and that the review be completed before the next insurance renewal process.

ACTION: Management to implement an independent third-party review of ACC's insurance needs, including consideration of self-insurance and level of cover, prior to the next renewal process.


RESOLVED: The ACC Board resolved to:

Insurance Policies

- a) **Note** ACC's insurance cover as summarised in **Appendix 1**.
- b) **Note** specific areas of considerations during the renewal process.

Deed of Indemnity

- c) **Note** a Deed of Indemnity provides protection for a Board Member or independent Board Committee Member in addition to ACC's D&O insurance cover and to the statutory protections and immunity from liability provided under sections 120 and 121 of the Crown Entities Act 2004.

- d) **Note** ACC's Deed relating to Indemnity, Access and Insurance was externally reviewed and updated in July 2019 to ensure it is fit for purpose.
- e) 9(2)(h) 
- f) **Agree** that the Deed be amended to remove clause 2.2.
- g) **Agree** that all Board Members and independent Board Committee Members sign the updated Deed relating to Indemnity, Access and Insurance (the updated Deed).
- h) **Delegate** authority:
- i. To the Board Chair and one other Member to sign the updated Deed on behalf of the Board for each Board Member and independent Board Committee Member, except themselves;
 - ii. To the Temporary Deputy Chair and Chair of the Risk Assurance and Audit Committee (RAAC) to sign the updated Deed on behalf of the Board for the Board Chair;
 - iii. To the Chair of the RAAC and the Temporary Deputy Chair to sign the updated Deed on behalf of the Board for the other Member referred to in Resolution h) i.
- i) **Delegate** on-going authority to the Board Chair and the Deputy Chair (or Temporary Deputy Chair if no Deputy Chair has been appointed) to sign the updated Deed on behalf of the Board in respect of future Board Members or independent Board Committee Members who may be appointed to or by the Board.

7 Performance Reports

7.1 Health, Safety and Wellbeing Report

The Board received and noted the Report.

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 June 2019.
- (c) **Note** the health and safety performance indicators.

7.2 Legal Report and Policy Update

(a) Legal Report – LEGALLY PRIVILEGED

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

- The wider implications from the *Calver* judgment:
 - The Board needed to decide whether to seek leave to appeal the decision. ^{9(2)(h)} [REDACTED]
[REDACTED]
[REDACTED] The Board agreed that the case was tragic, but noted that ACC needed to apply the Scheme according to the law. The application should be filed, subject to Ms McDonald QC also agreeing that this was the right course of action.
 - The Board needed to decide how ACC should deal with the claims that may be received before the appeal decision. ^{9(2)(h)} [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Board agreed, subject to Ms McDonald QC’s view, that claims received before a decision from the Court of Appeal were to be treated consistently with the approach in *Ng*, and that impairment assessments should be undertaken as early as possible, including for current survivors whose claims had previously been declined.
- The OCL and new year cost implications of the *Ng* ‘ordinary consequences’ case: The impact had now been assessed and was large. The General Counsel emphasised that it was likely that the number would be even larger than in the assessment, as claimant behaviour could not be predicated.
- The *Larkin* case, which would be heard in the High Court in August 2019.

RESOLVED: The ACC Board resolved to:

- (a) **Note** that on 8 July 2019 the High Court in the case of *Calver v ACC* issued a decision that expands on the scheme boundaries of cover for disease by granting cover for

mesothelioma caused by non-work asbestos exposure, creating the potential for cover for other non-idiopathic diseases and:

- i. ^{9(2)(h)} [REDACTED]
 - ii. ^{9(2)(h)} [REDACTED]
 - iii. An application for leave to appeal the decision would need to be filed by Friday 2 August 2019.
- (b) **Approve** that ACC will seek leave to appeal the decision in *Calver v ACC*, subject to Ms McDonald QC agreeing that approach.
- (c) **Note** that on 15 August 2019 the High Court will hear an appeal in the case of *Hoare (Larkin) v ACC* that may set a precedent in relation to the transitional provisions applicable to the payment of backdated attendant care, with significant financial implications.
- (d) **Note** in relation to the *ACC v Ng* 'ordinary consequences' Test Case that:
- i. The Outstanding Claims Liability impact is very difficult to assess. Based on the information currently available, it is estimated to be in a range of \$399m to \$563m for claims based on treatment first sought on or before 30 June 2019, and the new year cost impact for claims based on treatment first sought after 30 June 2019 is assessed as a range of \$548m to \$573m per year. However, because of the high level of uncertainty, it is possible the actual impact is significantly more than indicated by these ranges.
 - ii. Management has considered exploring legislative change but is not currently progressing this work because, while a legislative change would contribute to certainty and cost containment, it is difficult to develop feasible options before the Court of Appeal has ruled on the matter (unlikely to be before the first quarter of the 2020 calendar year).
 - iii. Management will inform Treasury and the Minister for ACC of the financial impact assessment and the status of Management's exploration of legislative change.

(b) **Policy Update**

The Board received and noted the Report.

RESOLVED: The ACC Board resolved to:

- (a) **Note** that ACC is working with the Ministry of Health and National Ambulance Sector Office to provide the Government with four Cabinet papers over the next eight months, on the funding and future direction of ambulance services.
- (b) **Note** that the Minister for ACC will receive a report on exploring 'machine consumable' legislation, and ACC will seek his agreement that the report is made publicly available alongside other cross-government reports.
- (c) **Note** that ACC is engaged with cross-government work led by the Ministry of Health in response to the *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*.
- (d) **Note** that ACC will be consulted in August 2019 on a draft national strategy for eliminating family violence, sexual violence and violence within whānau.
- (e) **Note** that the Scheme Customer Advisory Panel continues to work with ACC and the Ministry of Business, Innovation and Employment to progress a work programme for 2019/20 that includes contributing to initiatives already underway or under development by ACC (including enhancing the Accredited Employers Programme and ACC's Health Outcomes Framework).

8 Board Administration

8.1 Minutes of Meeting held on 27 June 2019

APPROVED: the ACC Board approved the minutes of the meeting held on 27 June 2019.

8.2 Schedule of Matters Arising

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

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 20 June 2019 to 17 July 2019.

8.4 Annual Work Programme

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

9 General Business

As it was Ms Murphy's last ACC meeting, the Board Chair formally thanked her for her services to the ACC Board, noting that she had made a very significant contribution.

10 Confirmation of Next Meeting

To be held at the ACC Boardroom, Level 11, PwC Tower, 188 Quay Street, Auckland on Thursday, 29 August 2019 at 9.00 am.

Closure

The meeting closed at 3.45 pm.

Approved

Chair

Date