



**Accident Compensation
Conciliation Service**

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Ms Kerin Leonard
Project Manager
Access to Justice Review
Department of Justice and Regulation
Level 24, 121 Exhibition Street
Melbourne VIC 3000

Via email: accesstojusticereview@justice.vic.gov.au

Dear Ms Leonard,

Re: Access to Justice Review

Thank you for the opportunity to make a submission at this late stage of the Review.

The Accident Compensation Conciliation Service (ACCS) has considerable experience in providing dispute resolution services for injured workers in Victoria since 1992. Although a conciliation service is not a tribunal or court, I trust that some of what we have done and found is of benefit to this vulnerable client group and assists your deliberations. Of particular interest to the Review may be that the ACCS has captured data and measures of what elements of information, communication and dispute resolution practice are considered most valuable by injured workers.

This submission focusses on 3 topics of the Review's Terms of Reference and makes brief comments from our experience based on our own operations and feedback from the injured worker client group. The topics commented on are (Terms of Reference numbering):

1. The availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems
2. Whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them
9. Options for providing better support to self-represented litigants throughout the Victorian justice system

Background to ACCS

The ACCS is an independent body corporate under the Accident Compensation Act 1985 (ACA) and the Workplace Injury Rehabilitation and Compensation Act 2013 (WIRC). Established in 1992 the function of the ACCS is to provide conciliation services to assist the parties to resolve disputes and is a key part of the Victorian workers' compensation scheme and, in most disputes, is a compulsory step before proceedings can be taken in court. In the last 12 months the ACCS conciliated over 19,000 cases with a resolution in 63% of cases.

The ACCS operates within the industry sector paid for by employer premiums but is independent of the regulatory body Worksafe, WorkSafe Agents (insurers), self-insurers, workers, employers, solicitors and unions. Conciliation facilitates the resolution of disputes by involving all parties – injured workers, employers and WorkSafe agents or self-insurers – in an informal, non-adversarial process to pursue an agreement that is fair and mutually acceptable.

The ACCS facilitates the exchange of relevant information between the parties to assist in the conciliation of the dispute. In the main, Conciliation Officers play a facilitative rather than a determinative role in relation to the dispute and its resolution. They facilitate the conciliation, provide information about workers' compensation legislation, may make recommendations for the terms and any associated consequences of agreement, and may actively encourage the participants to reach an agreement.

Where a matter cannot be resolved by agreement between the parties, Conciliation Officers have the power, in limited circumstances, to make directions that payments are made without admission of liability, refer medical questions to a Medical Panel for a binding opinion, or issue an Outcome Certificate disallowing a worker to proceed to court.

No fee is charged for conciliation services. In the majority of matters, the parties attend a conciliation meeting (conference). Injured workers and employers are entitled to have an assistant with them. There are two worker assistant agencies funded by WorkSafe, who attend in approximately 70% in regional and 80% of metropolitan conferences. Legal practitioners can only attend if all parties consent. They attend in 20% of regional and 10% of metropolitan conferences. Professional interpreters are provided by the ACCS free of charge, if required.

Responses to terms

1. *The availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems*

The ACCS experience is that the provision of information needs to be multi-various and simple in content. We provide information online, online lodgements of disputes via our webpage, a DVD that is sent to all first-time attendees assisting them to prepare for the conciliation conference, injured worker information sessions and written brochures. Our brochures are available in 12 languages and the DVD is subtitled. The DVD is also available online.

While the population of those who will obtain their information online has and will continue to increase, for our demographic in Victoria this is not always the preferred method of receiving information. Only 24% of injured workers use our website although those that do have high satisfaction rates with navigation (84%), content (80%) and an overall satisfaction rating of 90%. A personal approach via telephone remains a central part of the Conciliation Officer's and administrative staff support for injured workers' preparation for the conference, and liaison with the para-legal assistants who support injured workers during the process and attend conferences with them.

Our annual client surveys provide an insight into the experience that injured workers have of our processes before, during and after the conciliation conference. Their satisfaction with the ACCS communication and information strategies are a useful measure of what is most effective in providing accessible information:

Information type:	Satisfaction %	Elements of information:	Satisfaction %
Brochure	94%		
		Timeliness	96%
		Understanding	94%
		Relevance	92%
		Usefulness	92%
DVD	93%	Timeliness	96%
		Understanding	95%
		Relevance	95%
		Usefulness	91%
Communications	86%	Timeliness	86%
		Relevance	86%
		Contacts with office	81%
		Usefulness to situation	77%

The survey also undertook a “driver analysis” – the impact of an aspect of communication on overall injured worker satisfaction with communication. The results show that the strongest driver for communication satisfaction is the relevance of the information; that is, the way information is tailored to the injured worker’s situation. Usefulness (the actual application to a specific case) and timeliness were also drivers but much less so.

The drivers of satisfaction for injured workers during the conference are also communication and information factors. The strongest driver for conciliation conference is structure – injured workers knowing what happens next and an aversion to uncertainty or surprise. Other injured worker drivers are the ability to communicate their own views at conference and a clear understanding from the Conciliator about what happens next after the conference is concluded.

Post conciliation conference responses from injured workers also indicate what may be best practice for conveying information after the conclusion of a dispute resolution process. When asked what their satisfaction was with the receipt and content of outcome certification, injured workers reported an 85% satisfaction level. The particular elements of outcome certification information that was most appreciated was ranked in relation to what was important for the injured worker group:

Ranking of elements of outcome information for injured workers:	Satisfaction %
Ease of understanding	96%
Timeliness of receiving	94%
Relevance of the information	92%
Clearly reflecting the outcome	92%
Details of next steps	96%
Details of follow-up procedures	95%

3 *Whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them*

The following comments relate to “how” ADR mechanisms can be expanded to more Victorians. The ACCS experience of an ADR process prior to the opportunity of parties issuing in the courts has proven the value of a mandatory ADR process early in the history of a dispute. Research by Davis¹ mapped the pattern of settlement motivation of plaintiffs and defendants in personal injury cases and concluded that they were negatively correlated, resulting in a motivational mismatch. That is, many defendants are unwilling to attempt settlement early in a dispute’s history because they may be able to achieve more favourable terms later. Conversely, many plaintiffs are willing to accept less to resolve the dispute early in its history rather than later as the case approaches trial. The author speculates as to why this may occur, concluding for the injured plaintiff cohort that it is because they are resource poor and vulnerable early in a dispute and their lawyers reluctant to commit their resources too early.

What Davis noted is that there is a point relatively early in a dispute’s progression where the motivations actually cross over: the motivation of plaintiffs dips as an immediate resolution is unforthcoming and the motivation of the defendants increases as they prepare to defend their decision more robustly. The motivations diverge again as parties dig in to legal proceedings but overlap again at the door of the court where usually after considerable time, money and delay the legal representatives encourage their clients to settle rather than take the “lottery” of the courts.

This is a familiar pattern but it has particular relevance in an industry-based scheme where the objectives of the law are to return injured workers to the workforce as soon as possible. Where there are strong personal, economic and social policy objectives of this kind then a mandatory dispute resolution mechanism that acts as a circuit breaker to the normal litigious process is justifiable. The ACCS mandatory conciliation process is an example, therefore, of how dispute resolution processes can be extended without the escalation of unnecessary costs for the community.

¹ Davis R (1994) *Negotiating Personal Injury Cases: A Survey of the Attitudes and Beliefs of Personal Injury Lawyers*, ALJ Vol 68 pp 740-741.

9. *Options for providing better support to self-represented litigants throughout the Victorian justice system*

The legislation that governs the operation of the ACCS specifically precludes legal representatives attending conciliation conferences without the permission of all parties. This decision made early in the history of the Service has had a profound impact on the practice of dispute resolution in this jurisdiction. The fact that successive governments have continued to support this aspect of the scheme indicates the value of a non-litigious approach to the resolution of workers compensation disputes.

Part of the reason for continued political and stakeholder support is that lawyers have been replaced by injured worker "Assistants" funded by Worksafe and at no cost to the injured worker. 60% of lodgements by injured workers have a lawyer in the background (see above in "Background to the ACCS" for figures of actual lawyer attendance at conciliation conferences) but approximately 30% of workers and their solicitors decide to have an Assistant also support them through the conciliation process. 10% of injured workers proceed with the conciliation process without any assistance legal or otherwise. All injured workers are advised of the availability of the assistance prior to the lodgement of their appeal with the ACCS. Administrative Officers and Conciliation Officers also assess whether an assistant would be helpful in empowering an injured worker to manage the process early in the lodgement process.

What has occurred therefore with the ACCS is a blending of legal and para-legal support for the most vulnerable client group, an acceptance of the Assistant role by the legal industry over time. Their use of an Assistant for their worker client has increased from 25% in 2011 to 40% in 2016. Injured workers use Assistants with or without legal representatives being involved but increasingly lawyers are incorporating the Assistant role into their own business model.

I trust the information above is of value to your Review. I look forward to the conclusions and recommendations that result from the Review and thank you again for the opportunity to submit comments.

Please do not hesitate to contact me (anitakaminski@conciliation.vic.gov.au and 9940 1083) or David Bryson (davidbryson@conciliation.vic.gov.au and 9940 1079) if you wish to discuss any aspect of the above submission.

Yours sincerely



Anita Kaminski
Acting Senior Conciliation Officer
Accident Compensation Conciliation Service