

15 January 2019

Hon Andrew Little
Minister of Justice

By Email

andrew.little@parliament.govt.nz

Copy to:

Hon Ian Lees-Galloway
Minister for ACC

Dear Hon Andrew Little

Accident Compensation Appeals to the Supreme Court

1. ACC Futures is writing to you as Minister for Justice to raise the issue of the statutory bar on appeals to the Supreme Court in ACC cases.
2. Claimants cannot appeal ACC cases to the Supreme Court. The Accident Compensation Act 2001, subs 163(4) limits appeals of decisions made by ACC to the Court of Appeal. The Supreme Court in *J v ACC* confirmed that the effect of this section is that decisions by the Court of Appeal on leave or on appeal are final.¹
3. ACC Law is complex and consequential; the current Act has 401 sections and is the fourth major iteration of the Scheme's governing legislation. The scheme removes claimant's common law rights in exchange for a comprehensive scheme. As the Law Commission has highlighted, an accident compensation appeal to the Supreme Court on a point of law has the potential to affect hundreds of claimants, and that decisions in the Court of Appeal have done just that.²
4. New Zealand's top Court should be able to clarify important pieces of law in New Zealand's unique ACC jurisdiction.
5. The U.K. Supreme Court has stated 'impediments to the right of access to the courts can constitute a serious hindrance even if they do not make access completely

¹ *J v ACC* [2017] NZSC 3 at [10].

² Law Commission *Review of the Judicature Act 1908: Towards a Consolidated Courts Act* (NZLC IP29, 2011) at [11.15].

impossible.³ Therefore, even with a path of appeal to the Court of Appeal, a serious hindrance to access to courts still exists.

6. Limiting appeal to the Court of Appeal is a historical overhang. The Supreme Court in *J v ACC* found s 163 can be fairly taken to reflect the view that the Privy Council should not be troubled by appeals against or consequent upon decisions of the High Court.⁴ When subs 163(4) was legislated, the Court of Appeal was the final court of appeal on most civil and criminal proceedings originating at the District Court, most family law proceedings, Employment Court decisions, Environment Court decisions, Youth Court decisions, Courts Martial Appeal Court decisions, and tribunal decisions.⁵ Subsection 163(4) therefore reflects a different judicial landscape than today's.
7. The Senior Courts Act 2016, s 74 prevents the Supreme Court taking appeals that are not necessary in the interests of justice. An internal bar in the Accident Compensation Act on appeals to the Supreme Court is therefore unnecessary.
8. The Law Commission raised the counter-argument that a third tier of appeals may be too onerous on claimants.⁶ However, few cases actually reach appellant courts. Over a six-year period, the Understanding the Problem report estimated ACC made 600,000 adverse decisions against claimants.⁷ Only 25 substantive appeals during this period were delivered by the High Court, and 11 were made by the Court of Appeal. It is unlikely that a case will go to review, let alone to appellant courts. The clarification of matters of general or public importance will likely outweigh the burden on the individual plaintiff in the few cases that would be appealed to the Supreme Court.
9. Similarly, the few cases currently being appealed to the Court of Appeal dispel the risk of a flood of cases overburdening the Supreme Court.
10. Appeals from the Social Security Appeal Authority can be appealed to the Supreme Court.⁸ This was introduced through an omnibus bill in 2009,⁹ receiving cross-party support. While ACC and social security are conceptually different, there is no valid distinction justifying different levels of appeals between the two jurisdictions.

³ *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)* [2017] UKSC 51 at [78].

⁴ *J v ACC*, above n 1, at [4].

⁵ Justice and Electoral Committee *Supreme Court Bill* (16 September 2003) at 2.

⁶ Law Commission, above n 2, at [11.16].

⁷ *Acclaim Otago Understanding the Problem: An analysis of ACC Appeals Processes to Identify Barriers to Access to Justice For Injured New Zealanders* (Acclaim Otago, July 2015, Dunedin), at [132].

⁸ Social Security Act 2017, s 410.

⁹ Statutes Amendment Bill 2009 (101-1), cl 138.

11. Rectification of this issue could be undertaken in an omnibus bill.

12. *ACC Futures recommends that Accident Compensation Act 2001, subs 163(4) should be repealed.*

13. Thank you. We would welcome the opportunity to meet with you to discuss this further.

Yours sincerely,

Hazel Armstrong,

On behalf of ACC Futures.