



Inquiry report

Inquiry into
aspects of ACC's
Board-level
governance

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Inquiry into aspects of ACC's Board-level governance

This is an independent assurance
report about an inquiry carried out
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Act 2001.

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Auditor-General's overview

In April 2012, I decided to inquire into aspects of the interaction between the Accident Compensation Corporation (ACC) and one of its claimants, Bronwyn Pullar. I wanted to know whether the ACC Board had policies and procedures for managing interaction between Board members and individual claimants who might be known to them. I wanted to be sure that a claimant could not gain any advantage by approaching a Board member.

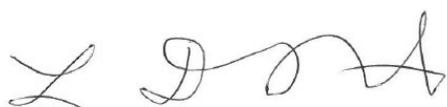
My inquiry found no evidence that Ms Pullar's approach to one of ACC's Board members affected her claim to ACC. However, the Board had no formal policy to guide Board members on communication with individual claimants, a deficiency it is rectifying. The handling of the matter depended on the long experience in governance of ACC's Chairman and Deputy Chairman, who were the two Board members concerned.

Of greater concern was ACC's failure to recognise Ms Pullar's wider allegations of illegality and fraud as risks to the organisation. I have no view as to whether there is any justification to the allegations, because that was not the subject of my inquiry. However, a public entity should always take allegations that threaten public trust in the organisation seriously. ACC is one of New Zealand's largest public entities and an important part of public services for New Zealanders.

My inquiry team concluded that ACC management and the Board members concerned failed to appreciate the risk that those allegations presented. It seems that the Board and ACC management were so focused on the appropriate separation of governance and operational matters that they did not recognise these issues as possible symptoms of systemic failure.

The events that gave rise to my inquiry occurred when the Board was relatively new and there was extensive change in senior management. Change in ACC will continue, because it will have a new Chairperson, several new Board members, and a new chief executive in the next few months. I consider that a new Board member, even if that person is an experienced director, will take two to three years to understand key actuarial and financial aspects of ACC, as well as its culture.

I asked my Deputy, Phillippa Smith, to carry out my inquiry. Because my inquiry concerned issues of practical governance, we engaged James Ogden, an experienced company director, to advise her on those matters. I am grateful to Mr Ogden for his assistance. I also thank the ACC personnel we interviewed and Ms Pullar, for their assistance with my inquiry.



Lyn Provost
Controller and Auditor-General

20 August 2012

Part 1

Introduction

- 1.1 On 4 April 2012, the Auditor-General announced an inquiry into some aspects of the governance of the Accident Compensation Corporation (ACC) at the Board level. Our inquiry focused on those matters that had given rise to suggestions that an ACC claimant, Bronwyn Pullar, had gained an advantage through her approach to the Deputy Chairman of the ACC Board, John McCliskie.
- 1.2 A number of people, including Kevin Hague MP and Andrew Little MP, had asked the Auditor-General to consider inquiring into those matters. Appendix 1 sets out the terms of reference for our inquiry.
- 1.3 Our inquiry began during extensive media coverage of ACC's breach of the privacy of a number of its claimants.
- 1.4 On 13 March 2012, the *Dominion Post* published an article alleging that ACC had released "private details of more than 9000 ACC claims" to an unnamed ACC claimant. The article said that the recipient had told:
 - senior management at ACC of the breach of privacy three months earlier; and
 - ACC's Board and the former ACC Minister (Hon Dr Nick Smith) about "systemic failures of the corporation's processes for respecting the privacy rights of claimants" before that.
- 1.5 On 14 March 2012, ACC briefed its Minister (Hon Judith Collins) about the breach of privacy. On 16 March, ACC gave the Minister a written briefing on the privacy breach and on a meeting on 1 December 2011 at which the claimant had disclosed the breach to two ACC senior managers.
- 1.6 On 18 March 2012, the *Herald on Sunday* wrote about the 1 December meeting between the claimant and the ACC senior managers. The article revealed that the claimant was named Bronwyn Pullar and that she had been supported at that meeting by Michelle Boag, a former President of the New Zealand National Party.
- 1.7 On 20 March 2012, media stories focused on a letter of reference for Ms Pullar that the former ACC Minister, who knew Ms Pullar, had written on Ministerial letterhead. After a second, earlier, letter that he had written about Ms Pullar's claim was identified, the Minister resigned from his portfolios on 21 March 2012.
- 1.8 About this time, the Chairman of the ACC Board, John Judge, confirmed to media that the 1 December meeting was held in response to Ms Pullar's approach to Mr McCliskie, the Deputy Chairman, in September 2011.
- 1.9 The ACC Board and the Privacy Commissioner then jointly commissioned an inquiry into ACC's release of information to Ms Pullar, which would also review ACC's policies and

practices for the privacy and security of client information (“the privacy inquiry”). The Privacy Commissioner also received a number of complaints from individuals alleging breach of their privacy by ACC, which she is investigating.

- 1.10 Our inquiry does not directly address ACC’s breach of privacy or its handling of client privacy more generally, because those matters are the subject of the privacy inquiry. We comment briefly on those matters where they are relevant to the governance issues with which we are concerned.
- 1.11 Further, because our inquiry focused on the ACC Board, it avoided as far as possible anything particular to Ms Pullar’s injury claim or ACC’s handling of it.
- 1.12 We carried out our inquiry in June and July 2012. Our inquiry involved interviewing several ACC officials and Ms Pullar, and reviewing a range of documents. Appendix 2 lists the people we interviewed.

Structure of this report

- 1.13 Parts 2 and 3 discuss events before and after two meetings with Ms Pullar, because those meetings directly or indirectly involved Board members. Part 4 discusses ACC’s Board-level policies and practices, and we set out our conclusions in Part 5.
- 1.14 We have not corrected the text of any of the emails quoted in this report.

Part 2

Meeting of 14 September 2011

- 2.1 On 1 September 2011, at 6.18 pm, Ms Pullar emailed Mr McCliskie, saying:
- I have a number of issues regarding ACC – compliance and personal. I would like the opportunity to discuss these issues with you personally next time you're visiting Auckland.*
- 2.2 Mr McCliskie had known Ms Pullar in the 1990s, when he was Chairman of ENZA Limited and she was employed by that organisation in a marketing role. Ms Pullar told us that she made a proposal to Mr McCliskie in 2002 to do brand development work for his business. Mr McCliskie told us that he cannot recall the proposal. Ms Pullar did not pursue the proposal because of her accident.
- 2.3 Mr McCliskie replied to Ms Pullar's email at 7.02 pm:
- I could meet with you, but I need to say it's not good form for directors to discuss individual issues. I would refer them to the appropriate manager anyway, but it's your call. The best person for claims is Denise Cosgrove, and I could arrange for you to talk to her?*
- 2.4 Ms Cosgrove is ACC's General Manager, Claims Management.
- 2.5 Ms Pullar responded at 7.38 pm:
- I totally respect your position. I am aware of Denise. However, I would like to meet with you. Let me know what suits and where.*
- 2.6 Mr McCliskie offered the afternoon of 13 September 2011, when he planned to be in Auckland. The meeting took place at 8 am on Wednesday 14 September. It was attended by Mr McCliskie, Ms Pullar, and Ms Pullar's support person.
- 2.7 There is no formal record of the meeting on 14 September, but the documents and other evidence that Mr McCliskie, Ms Pullar, and ACC gave us provide a reasonably consistent account of Ms Pullar's complaints about ACC. Mr McCliskie told us that he was careful not to discuss Ms Pullar's claim. Ms Pullar was clear that she did not ask Mr McCliskie to intervene in her claim and had no expectation of his doing so.
- 2.8 Both Ms Pullar and Mr McCliskie were clear that Ms Pullar did not inform Mr McCliskie of the privacy breach revealed by the *Dominion Post* in March 2012. Ms Pullar explained to us that she did not discover that she had the information from the privacy breach until about 26 October 2011.
- 2.9 Mr McCliskie considered Ms Pullar's complaints serious enough to ask her to put them in writing, so that he could refer them to the Chairman, Mr Judge.
- 2.10 Mr McCliskie and Ms Pullar each left the meeting with the view that Ms Pullar should meet Mr Judge.

- 2.11 Later on the morning of 14 September, Ms Pullar emailed Mr McCliskie:

Thank you for meeting with [my support person] and I this morning. I appreciate being listened to. I would welcome the opportunity to meet with John Judge to raise my concerns. In preparation for this I will prepare a 1 page summary of concerns that I believe need to be addressed &/or investigated in terms of ACC's direction, and resulting processes and operations. I will aim to get that to you in the next few days.

- 2.12 Ms Pullar's written version of her complaints was not prepared and sent to Mr McCliskie until 14 and 15 October, because she fell ill shortly after 14 September and was unwell for several weeks.

- 2.13 After receiving Ms Pullar's email of 14 September, Mr McCliskie emailed Mr Judge, forwarding Ms Pullar's email and summarising her allegations. He described his past business acquaintance with Ms Pullar and noted that she had been very competent in her work. He explained how the meeting of 14 September came about, including Ms Pullar's rejection of his suggestion that she should meet Ms Cosgrove. He continued:

Without going into all the issues which she claims there are many, she feels that she has been made a target of our new tough stance with regard to [] injury, illegal access by staff to her files, incompetent specialists who are referred to her by ACC, fraudulent activities by staff at ACC, poor process and many other very strong accusations.

She has written to Nick Smith requesting action, but because of her national party involvement, feels that Nick wont enquire as to her issues.

I was particularly careful not to engage with her on her gripes, but made it clear that we as a board would not condone any staff actions as suggested by her if they proved to be true.

Given that she claims to be able to work only half days due to her [], she is about to take legal action that could become an issue in the press given her other support.

My note to you, is that, I recommended to her that she should summarise her issues in one page and meet with you as Chair. I suggested this, that I as a director have no authorisation to take up any individual case grievances, and that we are between CEO's you could at least give the opportunity to air her concerns. I don't know any ACC history relating to her, and she may well be over the top in what she claims, but if she is correct, or even partly correct, then we need to put this to bed.

I will give you a call tomorrow to discuss further, but I feel that this has the potential to blow up in the media and that we should to avoid that in the first instance.

- 2.14 Mr McCliskie also sent a copy of this email to Ms Pullar.
- 2.15 When Mr McCliskie spoke to Mr Judge, they agreed that the proper course of action was to ask ACC management to review Ms Pullar's file. Mr Judge sent Mr McCliskie's email to Kurutia Seymour, then ACC's Board and Corporate Secretary. Mr Seymour forwarded the email to Ms Cosgrove on 16 September 2011. Mr Seymour advised Ms Cosgrove that "John [Judge] would like us to look at the case and confirm whether or not we believe that everything has been undertaken appropriately."
- 2.16 The review of Ms Pullar's file resulted in a briefing report dated 3 October 2011, prepared by ACC Claims Management staff for the Head of Business and Programme Management to brief Ms Cosgrove with. The briefing report outlined ACC's management of Ms Pullar's claim and listed the issues that had arisen between Ms Pullar and ACC, ACC's actions to resolve those issues, and ACC's assessment of whether it had appropriately fulfilled its obligations.
- 2.17 The briefing report acknowledged there had been "some valid operational issues", including "inappropriate email communication between a health provider and [Branch Medical Adviser]" and "illegal access to client file by a health provider".
- 2.18 The briefing report concluded that:
- ACC is undertaking the management of this client in line with its claims management processes. This will ensure an appropriate diagnosis is ascertained and the relevant treatment and entitlements are provided to ensure the effective rehabilitation of this client.*
- There have, however, been some valid operational issues outlined above which ACC has managed or is currently managing in line with operational systems, processes and policies. Furthermore, from a relationship management perspective, ACC has arranged meetings with the client at both a National and Area management level within [ACC's Recover Independence Service] to endeavour to resolve this situation.*
- 2.19 The briefing report finished with the recommendation that:
- It is recognised that the client still perceives there to be issues at hand. These are, however, operational in nature and should not be handled by the Chair. It is recommended that a meeting with the National Manager, ACC Claims Management is offered to the client as a way forward.*
- 2.20 On Wednesday 5 October, Mr Seymour received an oral briefing on the contents of the 3 October briefing report prepared for Ms Cosgrove. Mr Seymour reported back to Mr Judge by email, noting that the Recover Independence Service was handling Ms Pullar's claim and briefly describing the stage that her claim had reached.

- 2.21 Mr Seymour reminded Mr Judge:
- You will recall more than a year ago the board were advised that as the claims that fell under the Recover Independence Service progressed through the case management and assessment processes, there would be an increase in the number of clients who would be unhappy with the direction of their rehabilitation.*
- 2.22 On the management of Ms Pullar's claim, the email commented:
- I was advised that it would be fair to say that the management of Ms Pullar's claim early on was not as good as we would normally expect, however I am also advised that the Recover Independence team are comfortable with the decisions that have recently been made regarding assessments and the management of her claim.*
- 2.23 The email also noted:
- On discussing Ms Pullar's claims with Claims Management, her case is being managed and progressed in the same manner as most other claims that have been identified as suitable for intensive case management.*
- 2.24 On the wider issues that Ms Pullar had raised, Mr Seymour noted that Ms Pullar had raised "the ongoing and quite particular concerns" previously and that "in a number of areas, Ms Pullar and ACC have a different view".
- 2.25 Mr Seymour concluded by telling Mr Judge that he had forwarded the matter to the National Manager, Claims Management, who would respond to Ms Pullar and invite her to meet him in Auckland. Mr Judge responded by email that he agreed with Mr Seymour's suggestion.
- 2.26 Mr Seymour told us that he suggested a meeting to give Ms Pullar an opportunity to discuss her entitlements and the management of her claim with a senior representative of ACC who had the authority to make decisions. Mr Seymour hoped that the outcome would be an improvement in the relationship and communication between Ms Pullar and ACC.
- 2.27 At this point, Hans Verberne, ACC's Northern Area Manager, was acting as National Manager, Claims Management, while the incumbent, Mike Tully, was on leave. An ACC Area Manager has no responsibility for the Recover Independence Service, but the National Manager, Claims Management does. Although Mr Tully returned to work at the beginning of November, Mr Verberne, having become involved in the issue, agreed to continue with arranging the meeting, which Mr Verberne would attend.
- 2.28 We asked whether it was unusual for managers of Mr Verberne's seniority to meet claimants. We were told that, although unusual, it was not without precedent. For example, Mr Verberne said that he had attended "a dozen or so" claimant meetings, usually where there were "ongoing issues", but in his substantive position as an Area

Manager Mr Tully, the National Manager, Claims Management, told us that he had not had any meetings with claimants.

- 2.29 Mr McCliskie emailed Ms Pullar on 12 October, telling her that Mr Judge had asked Mr Seymour to address the issues she had raised at the meeting on 14 September and that Mr Seymour had asked Mr Verberne to meet her. Mr McCliskie emphasised again that, as directors, it was not appropriate that he or Mr Judge intervene in her claim.
- 2.30 On 14 and 15 October (the second email was a corrected version of the first), Ms Pullar emailed Mr McCliskie, copying Mr Judge and Mr Seymour, the written statement of her concerns that she had told Mr McCliskie she would prepare after their meeting on 14 September. Mr Seymour forwarded the emails to Mr Verberne.
- 2.31 The emails covered a range of issues under the headings of “fairness”, “privacy”, and “public/claimants perception of the Corporation”. The emails described the issues in general terms, with only infrequent references to Ms Pullar’s claim.
- 2.32 Ms Pullar thanked Mr McCliskie for his response and for taking up the matter. She noted that:
- My purpose for contacting you was to highlight my concern as to the Corporations current approach (policies, processes etc) whereby claimants are not being treated in accordance with the spirit of the Code – which is one of ‘fairness’, respect, courtesy and in a manner which preserves the claimants dignity. It was not specifically just in relation to my claim.*
- 2.33 Ms Pullar thanked Mr McCliskie for the introduction to Mr Verberne and said that she would contact him to arrange a time for Ms Boag and her to meet him “to discuss my personal issues with my claim”. She said:
- I totally understand it is not appropriate for you, John Judge or the Minister to be seen to be influencing any outcomes on my behalf.*
- 2.34 Ms Pullar emailed ACC again on 20 October 2011 with more information about her allegations. Her email was addressed to her case manager and copied to several ACC managers, including Mr Seymour and Mr Verberne, and also to Mr Judge and Mr McCliskie.
- 2.35 Neither Mr McCliskie nor Mr Judge acknowledged any of the emails described in paragraphs 2.30 to 2.34, both believing that ACC management was appropriately handling the matter.
- 2.36 We understand that neither Board member heard any more of Ms Pullar until the media stories in March 2012, other than advice from Mr Seymour to Mr Judge in early December that the planned meeting between Ms Pullar and Mr Verberne had taken place.

Part 3

Meeting of 1 December 2011

- 3.1 The meeting between Ms Pullar and Mr Verberne took place on 1 December 2011. It was also attended by Michelle Boag and Ms Pullar's support person, and by Phil Murch, ACC's National Manager, Recover Independence Service. Ms Pullar had met Mr Murch about her claim previously.
- 3.2 It has emerged that the meeting of 1 December was recorded without the knowledge of Mr Verberne or Mr Murch. We have not heard the recording nor seen the transcript of it. We have not asked for access to either. Ms Pullar has given us written information about the meeting.
- 3.3 Ms Pullar prepared an agenda for the meeting, which she tabled at the outset. The agenda listed four headings, the first three of which concerned Ms Pullar's claim. The fourth item was "a full list of all ACC breaches of legislation, guidelines and codes will be provided".
- 3.4 We have interviewed Mr Verberne and Mr Murch. They told us that:
- the main subject of the meeting was Ms Pullar's injury claim and her proposal for settling that claim;
 - the breach of privacy was disclosed to them, but it was not clear to them exactly what had been sent to Ms Pullar or who at ACC had sent it; and
 - they were given a three-page document entitled "Legislation, Guidelines & Code Breach by ACC with Bronwyn's claim", which listed 45 issues (including the breach of other claimants' privacy).
- 3.5 We understand that Mr Murch unsuccessfully searched his email system for the claimant information that had been sent to Ms Pullar, in the mistaken belief that it was he who had sent it to her. He did not search ACC's email systems more generally to try to identify the breach.
- 3.6 Mr Verberne told us that, after the meeting, he left telephone messages for Mr Seymour and Mr Tully. He emailed Mr Seymour, copying Mr Tully, reporting that the meeting had taken place and saying:
- We listened to [Ms Pullar's and Ms Boag's] concerns and they submitted a proposal to resolve these and move forward. They also gave us a list of alleged breaches by ACC of the Code, ACC legislation and other legislation. We agreed to consider the information provided and their proposal and get back to them by the end of next week (9 December).*
- I will try and call you again later to discuss further.*

- 3.7 That email did not explicitly mention the privacy breach, but we understand that Mr Verberne later discussed the meeting and the privacy breach with Mr Tully, who briefed Ms Cosgrove. Mr Tully also talked to Mr Seymour. Mr Seymour told us that his advice to Mr Tully was:
- that Ms Pullar's claim should be managed like any other claim; and
 - to ask for the material from the breach of privacy to be returned.
- 3.8 Mr Seymour said that he told Mr Judge when they next met that the meeting between Ms Pullar and Mr Verberne had taken place.
- 3.9 Mr Murch wrote to Ms Pullar on 8 December 2011 regarding the proposal discussed at the meeting on 1 December. The letter also requested the return of the information about other clients that she said ACC had sent to her.
- 3.10 We asked ACC managers whether there had been any investigation of the list of 45 breaches. We were told that the breaches were so general that it was not possible to investigate them and that Ms Pullar had raised many of them before about her claim.
- 3.11 We understand that there was continuing correspondence between ACC and Ms Pullar through December and in February, but no progress was made on either resolving Ms Pullar's requests or the return of the client information. The next development was the *Dominion Post* article about the privacy breach on 13 March 2012.
- 3.12 We note that Ralph Stewart, who started as ACC's chief executive on 19 September 2011, had no involvement in, or knowledge of, any of the matters described above until 9 March 2012 when the *Dominion Post* contacted ACC concerning the privacy breach.

Part 4

Board policies and practices

- 4.1 The focus of our inquiry was on ACC's Board and its approach to governance. Our terms of reference concern the Board's management of risks arising from conflicts of interest. We wanted to establish whether ACC's Board had clear policies and procedures:
 - to manage conflicts of interest with claimants; and
 - to transparently apply those policies.
- 4.2 Given that most New Zealanders will be ACC claimants at some time, the chance that Board members will know claimants is high. We expected to find policies and procedures that reflected that likelihood and that removed the possibility for a claimant's personal relationship with a Board member to result in special treatment or benefit.
- 4.3 ACC's governance policies and practices are set out in the Board Governance Manual 2012 (the Manual). The Manual sets out the governance structures, responsibilities, policies, and processes of the organisation and its subsidiaries. The purpose of the Manual is to help Board members and directors of subsidiary companies to carry out their duties and responsibilities effectively and to the highest professional standards.
- 4.4 The Manual covers Board policies on disclosures of significant financial interests and conflicts of interest. The Manual notes that a conflict of interest can arise when a Board member or a person in a close relationship with a Board member can gain a financial benefit from a decision made by the Board. The Manual says that, if there is any doubt about a potential conflict of interest, the possible conflict should be brought to the Chairperson's attention at the earliest possible date.
- 4.5 The board secretary (at the time, Mr Seymour) maintains an Interests Register to record all declared conflicts. We understand that Mr McCliskie did not declare his meeting with Ms Pullar on 14 September as an interest because he did not have a close relationship or friendship with her.
- 4.6 The Manual does not provide guidance for managing risks with communications between Board members and claimants. Nor does the Manual describe the policies or practices that should apply when claimants contact Board members directly.
- 4.7 Mr Seymour told us that he managed the induction of new Board members. It was his practice, as part of that induction, to give the new member an oral briefing on what to do and how to act if a claimant contacted them directly. Mr Seymour acknowledged, in hindsight, that the importance and significance of that message could be lost in the detail of the other induction material. However, Mr Seymour also told us that, in his experience, ACC claimants rarely raised issues directly with Board members.

- 4.8 We have recommended to ACC that it prepare a formal written policy to guide Board members' interaction with claimants and ACC staff. This policy has been prepared and will be presented to the Board for approval at the Board meeting of 23 August 2012.
- 4.9 It became clear to us during our inquiry that the lack of formal ACC policies or practices on how a Board member should act when approached by a claimant could create inconsistent practice. We consider that it contributed to two experienced directors (Mr McCliskie and Mr Judge) holding differing views on the appropriate way to act in the situation with which Mr McCliskie was presented.
- 4.10 Mr McCliskie told us:
- My general policy has always been to listen to what the relevant person has to say. I see it as the responsibility of me a Director of an organisation to be available to hear what people want to say on matters about which they wish to talk to me as a Director.*
- 4.11 He noted that he considers that matters concerning the culture and reputation of an organisation are the proper concern of a Board member. However, he also told us:
- Equally I am acutely aware of the importance of a director remaining uninvolved in management decision-making, and restricting my involvement to appropriate matters of overarching Board policy. I am always very clear about making this distinction plain to anyone to whom I talk about an organisation of which I am a director.*
- Having heard what the relevant person wants to say to me then if I think the matter should be considered by the organisation my invariable practice is to refer the relevant matter to management for consideration.*
- 4.12 We note that Mr McCliskie's first reaction was to refer Ms Pullar to ACC senior management. He suggested Ms Cosgrove as the General Manager, Claims Management. Mr McCliskie agreed to the meeting of 14 September only after Ms Pullar indicated that she would prefer not to meet Ms Cosgrove.
- 4.13 In contrast to Mr McCliskie's view, Mr Judge believed that Mr McCliskie should not have met Ms Pullar without first obtaining his permission as Chairman. Mr Judge expressed to us his disappointment that Mr McCliskie accepted the meeting without first consulting him:
- ... it is ACC Board policy (consistent with good governance practice) that members of the Board not become involved in operational matters or other matters that are properly the domain of management.*
- The reality is that ACC touches, directly or indirectly, many New Zealanders (probably most of them) at some stage of their lives. What this means is that member of the ACC Board can expect to become involved, whether by way of approaches or otherwise, in discussions outside the Boardroom about ACC matters from time to time. ACC is*

something on which many people (including claimants, health professionals and others) have views, and in my experience often those views are strongly held and voiced.

When I received Mr McCliskie's 14 September 2011 email I became aware of the fact that he had met with someone who seemed to be an ACC claimant without first consulting me, as Chairman of the Board, or, it seemed, consulting with ACC senior management. Because I know Mr McCliskie to be someone who is very concerned about ACC doing the right thing (and, I noted from his email, he knew Ms Pullar from his days at ENZA) I was not completely taken aback by the fact that he had met with her. Nevertheless, I certainly thought that best governance practice meant that he should have first consulted with me and obtained my permission to meet with Ms Pullar and I was disappointed that he had not done so. But the meeting had already taken place without my knowledge and I took comfort from the fact that Mr McCliskie advised me that (as I would expect of him) he had not engaged in any discussion about the details of her claim and that he had referred the matter to me immediately after his meeting. If, as seems to be the case, Mr McCliskie copied to Ms Pullar his e-mail to me of 14 September 2011 then that certainly does not accord with appropriate Board practice.

- 4.14 Mr Judge acknowledged that the Manual did not address communications between Board members and claimants, but he believed that general principles about Board conduct should apply. He explained that common principles require a Board member to not discuss operational matters with a claimant and, if further action or response is required, to refer the matter to the Chairman and, through the Chairman, to the chief executive or (as in this instance) to the board secretary to take up with management.
- 4.15 We agree with Mr Judge that it is best practice for a Board member to clear with the Chairperson of the Board any meeting with a claimant (about ACC issues) before it takes place.
- 4.16 We note that both Mr Judge and Mr McCliskie were clear that matters relating to individual claimants are strictly the concern of management. Mr McCliskie said:
- I am acutely aware of the importance of a director remaining uninvolved in management decision-making, and restricting my involvement to appropriate matters of overarching Board policy.*
- 4.17 Mr Judge said:
- My practice when approached about any ACC operational matter is to refer the matter to ACC management. Plainly, it is not the role of the Board Chairman or any other Board member to become involved in management or operational matters, including ACC claimant matters.*

Part 5

Our conclusions

- 5.1 In this Part, we set out our overall conclusions and comments about:
- whether the ACC’s Board’s policies and procedures adequately provided for the management of conflicts of interest that could arise where a claimant was known to a Board member;
 - whether Ms Pullar obtained any advantage from her approach to Mr McCliskie; and
 - the possible reasons why the wider allegations that Ms Pullar made apparently became subsumed in discussions related only to her claim – that is, why ACC apparently failed to appreciate the risk those allegations presented.

Board policies and practices

- 5.2 The Board’s Manual covered conflicts of interest generally. However, it did not prescribe the practices that should apply when a claimant contacts a Board member directly. We accept that Mr Seymour covered the matter orally in his induction session for each new Board member.
- 5.3 We recommended to ACC that the Manual contain such a policy. The policy should require a Board member in those circumstances to notify the chairperson, who will decide whether the Board member should meet the claimant or whether the matter should be referred directly to the chief executive or the board secretary.
- 5.4 Although there was no written policy, both the Board members involved were clear that matters about individual claimants were strictly the concern of management. They clearly understood the risks that would arise if a Board member were to intervene in an individual claim.

Did Ms Pullar obtain any advantage from her approach to Mr McCliskie?

- 5.5 We have considered whether Ms Pullar obtained any special treatment from ACC by approaching Mr McCliskie. In our view, the offer of a meeting with the (acting) National Manager, Claims Management was special treatment. Although meetings with such senior ACC officials are not without precedent, few claimants have that opportunity. The meeting did not, in fact, give Ms Pullar any special benefit or concession.
- 5.6 We accept that the decision to have the (acting) National Manager, Claims Management offer to meet Ms Pullar was intended to try to progress a longstanding and complex claim. Mr Verberne and Mr Murch told us that they understood that the purpose of the 1 December meeting was to give Ms Pullar a hearing. Even though the meeting resulted from Ms Pullar’s approach to ACC’s Deputy Chairman, they did not believe that they were expected to resolve her claim.
- 5.7 In our view, Mr Verberne and Mr Murch were not influenced by the 1 December meeting taking place because Ms Pullar had approached a Board member, nor were they influenced

by the former Minister's support for her, of which Mr Murch was aware. We consider that they understood that Ms Pullar was to be treated as any other claimant. In our view, they saw the meeting as an opportunity to try to repair the relationship between ACC and Ms Pullar and, if possible, to progress ACC's plan for Ms Pullar's continuing rehabilitation.

Why did ACC not identify the risks posed by Ms Pullar's wider allegations?

- 5.8 When Ms Pullar met Mr McCliskie in September 2011, the issues that she raised with him were arguably general issues about ACC, rather than (or not only) specific to her claim. However, the matters that ACC investigated because of Ms Pullar's approach to Mr McCliskie focused on its handling of her claim.
- 5.9 In our view, the matters that Mr McCliskie recorded in his email of 14 September (illegal access to files, incompetent ACC specialists, fraudulent activities by ACC staff) are areas of risk with which a Board should be concerned. That was Mr McCliskie's original reaction.
- 5.10 Mr Judge asked management for "appropriate investigations". Mr McCliskie, in his email to Ms Pullar of 12 October, referred to an agreement that ACC management would review Ms Pullar's file, because both he and Mr Judge were "very reluctant to go any further into the specifics of your case". Mr Seymour understood that management were to look at the claim and confirm whether they believed that it had been handled appropriately.
- 5.11 Mr Seymour told us that, when he and other ACC personnel looked at the issues raised by Ms Pullar (as set out in Mr McCliskie's email of 14 September), it became clear to them that Ms Pullar had raised them with ACC about her claim before. They interpreted her comments to Mr McCliskie as pertaining simply to her claim. Management advice to the Chairman on 6 October was that the issues were "operational in nature and should not be handled by the Chair".
- 5.12 We note that ACC's review in September and early October 2011 was based on Mr McCliskie's email of 14 September. Ms Pullar's fuller explanation of the issues was not sent until 14 and 15 October, and she gave the list of 45 alleged breaches to ACC only at the meeting on 1 December.
- 5.13 Mr Verberne and Mr Murch thus attended the meeting on 1 December expecting to discuss Ms Pullar's own claim. Their intention was to find a way to progress a complex and longstanding matter. Ms Pullar told us that, when she knew that Mr Murch would be attending the meeting, she too decided to take the opportunity to try to deal with her claim, as well as with the broader issues she had first raised with Mr McCliskie.
- 5.14 After the 1 December meeting, any management attention given to the matter was about:
- ongoing attempts to resolve differences with Ms Pullar over the way in which her claim would be handled; and
 - retrieving the client information disclosed to Ms Pullar.

- 5.15 None of the managers concerned appeared to recall that the more general issues set out in Mr McCliskie's email of 14 September might remain to be considered.
- 5.16 From the Board's point of view, it was important that the issues were investigated. However, once Mr Judge referred the matter to ACC management and management confirmed that it was operational in nature, management assumed responsibility for Ms Pullar's claim. Consistent with their understanding that the complaint to Mr McCliskie was a purely operational matter about Ms Pullar's claim, neither Mr Judge nor Mr McCliskie inquired about the outcome of the 1 December meeting, although Mr Seymour informed Mr Judge that it had taken place.
- 5.17 We looked for some reporting back to the Board, or to Mr Judge and Mr McCliskie, on the issues raised by Ms Pullar. This included issues raised at her meeting with Mr McCliskie, in her emails to Mr McCliskie of 14 and 15 October, and in the list of 45 issues presented at the 1 December meeting. We did not find any evidence of this. The reporting back after the meeting, including about the privacy breach, seems to have stopped at Ms Cosgrove as General Manager, Claims Management. Even so, neither Ms Cosgrove nor Mr Tully saw the list of 45 issues until the time of this inquiry.
- 5.18 The absence of reporting back to the Board seems to be because management believed that the issues raised by Ms Pullar were operational and solely about Ms Pullar's claim. Management did not recognise these issues as possible symptoms of systemic failure. For that reason, management saw no reason to report back to the Board.
- 5.19 We note that privacy breaches have not routinely been reported to the Board. Indeed, it is not clear to us whether information regarding privacy breaches is systematically collected and collated for senior management to assess.

Comment

- 5.20 We have some observations about why ACC might have failed to appreciate the risks arising from the privacy breach and the allegations of systemic wrongdoing.
- 5.21 ACC is a Crown entity. This model supposes that the pivotal relationship is between the responsible Minister and the Chairperson. ACC is one of the largest public organisations in New Zealand and touches the lives of most of New Zealanders at some point. Because of its significance, a Minister responsible for ACC tends to treat it almost as if it were a government department – for example, meeting weekly with the chief executive and senior management. Ministers will also have regular but less frequent meetings with the Chairperson. The Crown entity governance model requires the Minister, Chairperson, and chief executive to be aware of the complexity of the model.

- 5.22 Secondly, ACC is a large and complex organisation. We consider that a new Board member, even if that person is an experienced director, will take two to three years to understand key actuarial and financial aspects of ACC, as well as its culture. Board members need to understand these matters to be able to balance ensuring the fair and equitable treatment of its claimants and keeping ACC financially viable.
- 5.23 The ACC Board at the time was reaching this point of maturity. Most of its members had served about three years. Its primary focus for that period, at the direction of the previous Minister, had been to address ACC's long-term liabilities, to ensure ACC's viability into the future. It had carried out that task, and was at the point of broadening its focus to ensure equal attention to all aspects of the business.
- 5.24 ACC also experienced significant management changes during 2011/12. Mr Stewart took up his position as chief executive only on 19 September 2011, at the time Ms Pullar met Mr McCliskie. Six of the eight direct reports to the chief executive changed in 2011/12.
- 5.25 Clear lines of communication between the Board and the chief executive and between the chief executive and senior managers are unlikely to have been in place in September 2011. Cohesion between Board and management in an organisation depends largely on communication through the chief executive. As we have noted, the McCliskie/Pullar meeting, the privacy breach, and Ms Pullar's other allegations did not come to Mr Stewart's attention until March 2012.
- 5.26 In this environment of change and transition, Ms Pullar's allegations, and the privacy breach in particular, were not recognised for the risks they presented. We have no view as to whether Ms Pullar's wider allegations are in any way justified. We have not inquired into those matters. However, we consider that accusations of systemic illegality and fraud are issues that any public sector organisation should take seriously.

New direction

- 5.27 Under Mr Stewart's leadership, ACC has prepared a business plan for 2012-15, which the Board adopted in February 2012. The plan is built on five core principles:
- improved customer centricity by focusing on better service for injured people;
 - better service for levy payers;
 - better engagement with the health sector to improve care and rehabilitation for injured people;
 - better co-ordination across ACC to ensure that the organisation operates as "One ACC"; and
 - ensuring delivery of world-class results to clients, levy payers, and government.

- 5.28 This plan is consistent with the Service and Purchase Agreement between the Minister and ACC released in late June 2012. The Agreement sets out the Government's key priorities for ACC:
- improved trust and confidence;
 - improved management and security of private information;
 - maintaining a focus on levy stability and financial sustainability;
 - providing high quality services for clients;
 - ensuring early resolution of disputes; and
 - reporting on the performance of the Accredited Employer Programme.
- 5.29 We consider that this approach will lead to a more balanced and comprehensive approach to the governance and operation of ACC.

Appendix 1

Terms of reference for our inquiry

The Auditor-General, Lyn Provost, has decided to carry out an inquiry into how the Accident Compensation Corporation (ACC) manages risk at the Board level of the organisation. This document sets out the terms of reference for our inquiry.

Background

During March 2012, concerns were raised about a significant breach of privacy by ACC, and about the interaction between ACC and a particular client (Ms Pullar). We received several requests for the Auditor-General to inquire into aspects of that interaction and into ACC's general operations.

The Privacy Commissioner and the Board of ACC have already begun to investigate the privacy breach and to assess ACC's policies and practices for the privacy and security of information. The Police are considering a complaint about a related matter.

The Auditor-General has decided to inquire into aspects of ACC's governance that will not be examined by the other investigations.

The inquiry

The inquiry into ACC will examine:

- the policies and practices at ACC for managing risks relating to conflicts of interest, legal compliance, and communications between Board members and clients and staff;
- the policies and practices that apply when claimants personally contact Board members;
- how any matters relating to Ms Pullar that came to the attention of the Board or individual Board members were dealt with; and
- any other matters that the Auditor-General considers it desirable to report on.

The inquiry is being carried out under section 18(1) of the Public Audit Act 2001. We will publish a report when the inquiry is completed.

Contact for queries

For media queries, please contact Tamar McKewen (Communications Advisor, Media) on (04) 917 1879.

Appendix 2

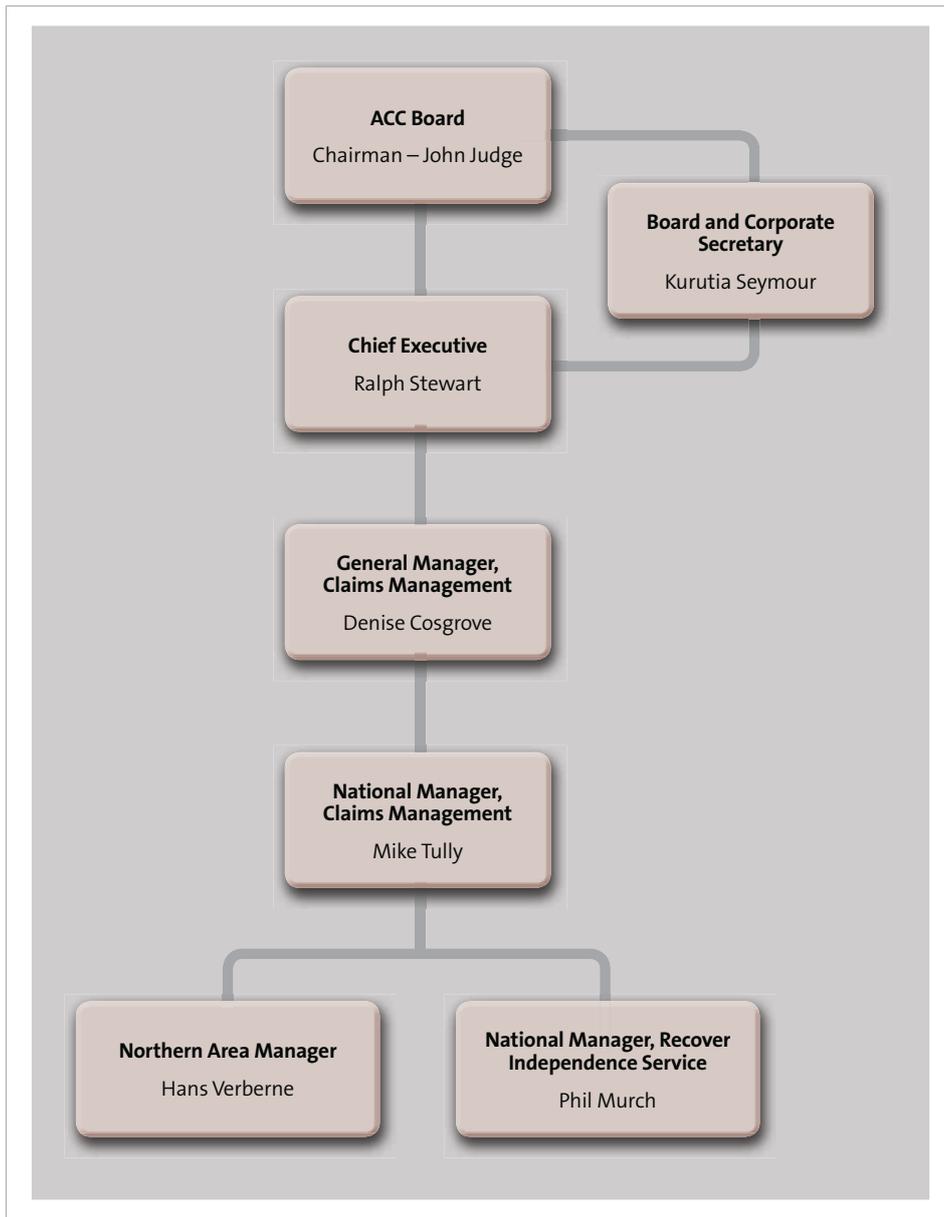
People we interviewed during our inquiry

We interviewed Bronwyn Pullar as part of our inquiry into ACC's Board-level governance. The ACC Board members and staff we interviewed during our inquiry were:

- John Judge, Board Chairman;
- John McCliskie, Deputy Chairman;
- Ralph Stewart, Chief Executive;
- Kurutia Seymour, Board and Corporate Secretary;
- Denise Cosgrove, General Manager, Claims Management;
- Mike Tully, National Manager, Claims Management;
- Phil Murch, National Manager, Recover Independence Service; and
- Hans Verberne, Northern Area Manager.

Appendix 3

ACC's organisational structure



Publications by the Auditor-General

Other publications issued by the Auditor-General recently have been:

- Education for Māori: Context for our proposed audit work until 2017
- How the Far North District Council has administered rates and charges due from Mayor Wayne Brown's company, Waahi Paraone Limited
- Reviewing financial management in central government
- Realising benefits from six public sector technology projects
- Annual Plan 2012/13
- District health boards: Quality annual reports
- Fraud awareness, prevention, and detection in the public sector
- Institutional arrangements for training, registering, and appraising teachers
- New Zealand Qualifications Authority: Assuring the consistency and quality of internal assessment for NCEA
- Statement of Intent 2012–2015
- Public entities' progress in implementing the Auditor-General's recommendations 2012
- Inquiry into how Christchurch City Council managed conflicts of interest when it made decisions about insurance cover
- Overview of the Auditor-General's work in the transport sector
- Local government: Results of the 2010/11 audits
- Severance payments: A guide for the public sector
- Health sector: Results of the 2010/11 audits
- Central government: Results of the 2010/11 audits (Volume 2)
- New Zealand Blood Service: Managing the safety and supply of blood products

Website

All these reports, and many of our earlier reports, are available in HTML and PDF format on our website – www.oag.govt.nz. Most of them can also be obtained in hard copy on request – reports@oag.govt.nz.

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We offer facilities on our website for people to be notified when new reports and public statements are added to the website. The home page has links to our RSS feed, Twitter account, Facebook page, and email subscribers service.

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