

2 November 2018

Mr Karl Bloxham
fyi-request-8624-834ef080@requests.fyi.org.nz

Dear Mr Bloxham

Ref: 0052884

Official Information Act Request

Thank you for your email of 4 October 2018 asking after a response to a previous request dated 5 September 2018. As advised in our acknowledgment email of 9 October 2018, ACC has no record of receiving your request previously. ACC only became aware of your request on 4 October 2018 and acknowledged this as the date of receiving your request.

Your request

You requested the following information under the Official Information Act 1982 (the Act):

Please provide the guidelines relating to;

- acceptance of cover criteria for medical mishap.

Please provide the number of claims;

- received for medical mishap involving spine surgery, for the years 2013, 2014, 2015, 2016, 2017.

- declined for medical mishap involving spine surgery for the years 2013.,2014,2015,2016,2017

Background

Before responding to your request, we would first like to provide some background information. ACC has provided cover for treatment injuries since 1 July 2005. The treatment injury provisions replaced the medical misadventure provisions of the Accident Compensation Act 2001 (the AC Act 2001), bringing it more in line with the 'no fault' nature of the scheme. As such, we are interpreting the terms you use in your request "medical mishap" to relate to claims ACC has received for treatment injuries. Each claim lodged with ACC is considered and decided on an individual basis according to the provisions of the AC Act 2001.

It is important to note that the number of claims lodged with ACC cannot be taken as an accurate indication of the occurrence of injury during treatment. This is because, among other reasons, claim lodgement is dependent on the familiarity of health providers and clients in recognising treatment injuries.

Our response

A treatment injury is defined as a personal injury caused as a result of seeking or receiving treatment from a registered health professional. In some cases, the treatment is a failure to provide treatment or a failure to provide treatment in a timely manner. In order to fulfil the criteria for cover, there must be a clear causal link between the treatment and the injury, and the injury must not be a necessary part or ordinary consequence of the treatment. We also refer you to the AC Act 2001, Section 32, for legislative details on what is classed as a treatment injury.

Treatment injury claims involving spine surgery

The table below shows the number of claims accepted, declined and decided between 1 January 2013 and 31 December 2017 for treatment injury involving spinal surgery.

Treatment injury claims related to spinal surgery			
Decision calendar year	Accept	Decline	Decided claim count
2013	147	40	187
2014	156	56	212
2015	192	61	253
2016	215	77	292
2017	239	68	307
Total	949	302	1,251

Notes about the data

The following treatment events have been included in the definition of spinal surgery:

- Lumbar fusion
- Spinal fusion
- Discectomy
- Lumbar discectomy
- Spinal decompression
- Spinal surgery
- Thoracic spine surgery

The treatment injury data provided was extracted on 15 October 2018 for cover decisions made between 1 January 2013 to 31 December 2017.

Further Information

If you have not done so already you may like to refer to the 2017 and 2018 *Treatment Injury Information* publications, which can be found online through ACC's website at: www.acc.co.nz/treatmentsafety. The publications include a brief overview of treatment injuries and the treatment injury claim process. Further commentary regarding Treatment Injury (some of which can also be found from page 101 of the 2018 publication) is provided as an Appendix to this response.

Queries

If you have any questions about the information provided, ACC will be happy to work with you to resolve these. Please send any questions by email to GovernmentServices@acc.co.nz.

You also have the right to seek an investigation and review if you are unhappy with our response, by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or by phoning 0800 802 602.

Yours sincerely

Government Engagement & Support

Appendix: Information on Treatment Injury

The Accident Compensation Corporation (ACC) has provided comprehensive, no fault cover for people injured in accidents since 1974.

The right to take legal action for personal injury covered by ACC is removed other than for exemplary damages.

Levies from workers, employers, vehicle registrations, motor fuel and taxpayers support the recovery of people with injuries and are managed to fund the future needs of people with long term injuries.

ACC assistance is available to all New Zealand residents and temporary visitors. New Zealanders who are ordinarily resident may also be covered if they are injured while overseas, with assistance available on their return to New Zealand. New Zealand residents who suffer an injury from medical treatment overseas may be covered although restrictions apply. ACC assistance is available in New Zealand.

Once a claim is approved by ACC, an injured person may have access to a range of entitlements from treatment and rehabilitation aids, to weekly compensation and lump sum compensation, depending on the injury and the person's circumstances.

From medical misadventure to treatment injury

Law changes since the scheme's introduction have also seen the criteria for cover evolve. The Accident Compensation Amendment Act 1974 added "medical, surgical, dental, or first-aid misadventure" as a category of personal injury by accident.

Between 1992 and 2005, cover was available for medical misadventure. The Accident Rehabilitation and Compensation Insurance Act 1992 included specific categories of medical misadventure, namely "medical error" and "medical mishap" - injuries that were both a rare and severe outcome from properly given treatment.

Changes in 2005 reduced the need to find fault as the cause of an injury, but finding that a health professional could and should have taken an alternative treatment pathway is still one of several 'causes' of a treatment injury.

Injury caused by accident

Cover is provided for "personal injury" that is caused by:

- an accident
- a work-related gradual process, disease or infection (WRGPDI)
- treatment that was provided by a registered health professional (treatment injury)

Personal injury

Personal injury is defined in the Accident Compensation Act 2001 as:

- death
- physical injury
- damage to dentures or prostheses that replace a part of the human body.

With limited exceptions, such as an WRGPDI mentioned above, wear and tear or injuries due to the ageing process are not covered by ACC.

Mental Injury

Cover is also available for mental injuries that result from a physical injury, including treatment injuries. A mental injury is a *clinically significant behavioural, cognitive or psychological dysfunction*. It does not include emotional effects such as hurt feelings, stress or loss of enjoyment.

Complex claims

ACC legislation describes some claims for cover as “complicated”. These claims take more time to assess because of the additional information needed. Complicated claims include personal injuries caused by treatment and claims lodged more than 12 months after the date the personal injury occurred.

When assessing complicated claims, ACC may seek the consent of the patient to contact treatment providers seeking additional information.

What is the “accident” for treatment injury claims

A treatment injury is a physical injury caused by treatment from a registered health professional — but some exclusions apply.

The “accident” event is treatment by, or at the direction of a registered health professional. The definition of treatment is broad and includes diagnosis, treatment decisions, as well as omission or failure to provide treatment.

There is no requirement to find fault, although in some cases the cause of the injury will be treatment that is inappropriate in the circumstances.

Examples of treatment injuries range from a deep tissue infection at the site of an injection to operating on the wrong limb.

Exclusions from treatment injury

Both the underlying disease and other pre-existing diseases are not covered, although a significant worsening of disease caused by treatment may be covered.

Also excluded:

- a necessary part of the treatment (for example a skin puncture or surgical incision or the removal of a body part when those are a necessary part of the treatment required)
- the ordinary consequences of treatment (for example hair loss following chemotherapy or radiotherapy burns are unlikely to be covered)
- injury caused solely by decisions about allocating health resources (such as waiting list delays for joint replacement surgery)
- injury caused because a patient unreasonably delayed or refused to give consent for treatment
- treatment that does not achieve the desired result, this is not a treatment injury.

The claims process

Registered treatment providers to lodge a claim with ACC with consent of the injured person. This involves completing an ACC45 Injury Claim Form and submitting this to ACC together with an ACC2152 Treatment Injury Claim Form.

If more information is needed, ACC may contact the treatment provider with the injured person’s consent.

Once the claim is approved ACC will pay the treatment provider’s invoices and give appropriate entitlements to the injured person. Only a registered doctor or a nurse practitioner can certify work incapacity.

Information on the process is available from the ACC website. www.acc.co.nz/im-injured/claim-help/cover-decisions/.