

# Providing External Advice

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## Introduction

In New Zealand the right to take action for injury caused by accident (or injury caused by treatment) has been replaced by the comprehensive cover provided by ACC. The impact of treatment injury falls on patient, while the monetary costs of cover are borne largely by taxpayers and earners.

To maintain a consistent and fair approach to treatment injury claims ACC draws on assistance from expert advisers both in-house and externally. High quality expert clinical advice is important in ensuring all claims for injury caused by treatment are assessed on their merits and considered fairly within the bounds of the AC Act. Reports from experts assist ACC in making decisions on claims and in deciding whether to notify relevant authorities of a risk of harm to the public, so assisting practitioners to learn from such events.

Providing external clinical advice involves providing a specialist opinion on the papers. We send a request letter (see example in appendix); usually with a brief synopsis of the basis of the claim and some questions that we need answered. Along with the letter; the expert clinical assessor ((ECA) is provided with relevant clinical records, and a purchase order number to quote when invoicing ACC.

## The legislation

This provides the framework under which we consider claims for cover. We do not expect the external clinical advisor (ECA) to apply or refer to the legislation, as that is ACC's role, however it is probably useful for you to have an understanding of the legislative criteria for treatment injury:

## Treatment Injury legislative criteria

In brief we need to determine:

- whether treatment was provided by a registered health professional or at the direction of a registered health professional
- whether there is a personal injury (and not just symptoms)
- whether the personal injury is caused by treatment
- whether the physical injury was a necessary part of treatment or an ordinary consequence of treatment taking in to account all the circumstances of treatment, including:
  - the person's underlying health condition at the time of treatment: (underlying condition may or may not be relevant to an injury) and
  - the clinical knowledge at the time of treatment (for example what is clinical knowledge now may not have been known at the time treatment was given)
- whether the injury is wholly or substantially caused by an underlying condition
- whether the client unreasonably withheld their consent to undergo treatment
- whether the injury is solely attributable to a resource allocation decision

## ACC treatment injury claim investigation

Once a treatment injury claim is lodged with ACC, we follow a process of establishing the basis of the claim from the client's perspective; we obtain a completed ACC2152 (Treatment Injury Claim form), relevant clinical reports and records and then in complex cases we request relevant external clinical advice from an advisor of the appropriate speciality/ies. In cases where there is potentially a failure to treat /failure to treat in a timely manner, we will seek ECA from a peer of whoever provided the treatment (or failed to provide the treatment). In addition, we may seek additional ECA to assist our understanding about the nature of the person's underlying health condition. An example of this,

with birth injury claims, we may seek an ECA report from a midwife, obstetrician and gynaecologist and a paediatrician.

The treatment injury cover specialists have the delegation to determine cover on treatment injury claims. They all have clinical backgrounds in various fields (nurses, midwives, pharmacists, physiotherapists and doctors). Our team managers have clinical backgrounds and they validate the cover decision once it is made. All claims are presented to a peer review panel to ensure there is consistency and robustness of the cover decision. For really complex/high cost/high risk claims; we put these claims to Complex Claims Panel. Panel comprises an ACC senior medical advisor, a treatment injury medical advisor, team manager for cover and technical advisory (Chair), a representative from legal services and a communications manager.

## ECA reports

In essence our Cover Specialists use specialist advice to **inform** their decision on whether a claim does or does not meet the legislative criteria for treatment injury or consequential injury cover (consequential injury cover is where the person has a covered ACC claim, they receive treatment for this covered injury and as a result of that treatment sustain another injury). It is not your role to decide if a claim did or did not meet the criteria for cover; your report would be used to assist us in understanding the clinical aspects of the claim to enable us to make a decision.

A writing guide used by our medical advisors is available as a useful resource for you. Also appended to this document is a copy of the letter that would come to you when we seek your advice. Your advice report can be emailed to the requesting cover specialist with an email address like this [firstname.lastname@acc.co.nz](mailto:firstname.lastname@acc.co.nz). We will provide you with feedback and at times may seek clarification if needing to understand an aspect of your report. This is not a challenge to your clinical knowledge; it is simply ACC seeking to understand all the clinical aspects of the claim as we apply the legislative criteria.

From our external clinical advisors we need:

- Good detailed advice; that gives regard to the particulars of a claim; advice of a general nature is difficult to rely on in a medico-legal context.
- A report that provides sound and relevant references to support the content carries weight; for example guidelines for practice should be relevant to the time the treatment was provided. Likewise any reference material should also be relevant to the time when treatment was given.
- A report that is balanced and gives regard to all the evidence will carry more weight.
- The report should not make comment on whether cover should or should not be given.
- A report that demonstrates the ECA understands the legal test on causation is the 'balance of probability' ( is it **more likely than not** that x caused y) rather than medical certainty.
- Presentation is important; giving attention to spelling and grammar and readability
- Qualifications and being of good standing in the medical community are important. A working specialist with up to date knowledge in their area of speciality is given more weight
- The external clinical advisor needs to be comfortable that their reports may at times be referred to or called for by the Ministry of Health, the Health and Disability Commissioner and the relevant professional body.
- Reports will from time to time also be part of evidence that is used when there are disputes on cover and or come before the Court and quoted in decisions of the Court where there is an Appeal of a review decision by either our client or ACC.

## Payment

ACC is able to provide payment of \$276.00 (inclusive of GST) per hour for ECA reports. You would need to invoice ACC via your own letterhead (and not say a DHB letterhead) and quote the purchase order number that will be found in the letter seeking your opinion. Any queries re invoice payment can be directed to <sup>9(2)(a)</sup> [REDACTED]@acc.co.nz. Disbursements are paid for the actual and reasonable cost such as for phone calls, typing and copying, internet access and research, postage and courier.

## Privacy

ACC places enormous importance in maintaining the privacy of the client information we are entrusted with. To that end,

- If a physical client file is required when providing advice, we send this by courier and it needs to go to a **street** address where someone will be there to receive the parcel and sign for it. If this means it is not suitable to send to your home address, do you have a secretary at your place of work that it could go to? Physical client files can be destroyed by you if you have access to secure destruction however if not, the file can be couriered back to ACC and you can charge ACC for the disbursement.
- If the information is being provided by disc, this will be password protected and the password emailed to you.
- If information is provided via email; files attached to email are password protected and a separate email will be sent with a password you can use to open any files you receive.

## Frequency of requests

This is for your determination. If you only want one request at a time to provide a report, please let us know as we appreciate that you are very busy. What is important is that you commit to providing your report by the due date noted in the letter of request; as overdue reports cause our clients significant distress. They are unable to access any assistance from ACC while cover is pending therefore the longer it takes to obtain all information required to determine cover (and this can include your advice report), the longer the client is waiting.

## Next steps

Please have a read of the attached and confirm you are ready to proceed. You can call or email if you would like further information about providing advice. You will also need to complete and send to the following (by hard copy or scanned):

- The completed vendor registration form
- A copy of your bank deposit slip
- A copy of your current CV

**Appendices:**

**Appendix I - Letter of agreement**

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## Appendix II - Background to ACC and Definitions

### Background to ACC

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 predicted needs of people with accepted claims.

ACC assistance is available to all New Zealand residents and temporary visitors to New Zealand. Residents *may* also be covered if they are injured overseas, with assistance available on their return.

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 an accident category.

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" (failure) or "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 several 'causes' of a treatment injury.

### 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.

## Exclusions from treatment injury

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

Also **excluded** are:

- 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 is not a treatment injury.

## The claims process

Information on the process is available from the ACC website. <http://www.acc.co.nz/making-a-claim/index.htm> With assistance from a registered health professional an injured person can lodge a treatment injury, with ACC. 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.

If 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.

## Complex claims

AC 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 their treatment providers seeking additional information.

## Entitlements

Once a claim has been accepted, ACC will contribute to the costs of rehabilitation and treatment, and provide financial support to the injured person. The amounts depend on the injury and circumstances of the injured person.

An entitlement is the term for ACC's contributions to rehabilitation and compensation. This includes:

- rehabilitation and treatment (including pharmaceuticals, x-rays, elective surgery), home-based care, and consumables
- support with transport, housing modifications, and equipment

- services aimed at restoring health and independence
- compensation for lost earnings as a result of the injury
- death benefits such as funeral grants and payments to dependants
- an independence allowance for injuries that occurred before 1 April 2002
- lump sum compensation for injuries that happened on or after 1 April 2002.

## Serious Injury

The term serious injury is a classification ACC created for people who will have a lifelong relationship with ACC due to the nature of their injury, eg damage to the spinal cord or brain.

## Reporting of risk of harm from treatment injuries

Since 1 July 2005, ACC is able to report a belief of risk of harm to relevant authorities. After making the decision on whether to accept a claim, ACC staff review information on file to consider if there is a risk of harm to the public.

Harm assessments are conducted on decided (both accept and declined claims) and notifications made based on the likelihood of the event recurring in the future and the potential consequence of the event. The claim notification date could be in the year following the claim cover decision date.

ACC reports injuries that are sentinel events or serious events with a high or moderate likelihood of reoccurring.

Sentinel events are events during care or treatment that have resulted in *an unanticipated death or major permanent loss of function not related to the natural course of the claimant's illness or underlying condition, pregnancy or childbirth.*

A serious event (or pattern of events) is an event that *has the potential to result in death or major permanent loss of function not related to the natural course of the claimant's illness or underlying condition.*

Sentinel and serious events may be notified to a health professional registration authority if ACC reasonably believes they pose a risk of harm, are clearly related to an individual professional and have peer advice regarding the appropriateness of care from either:

- The Health and Disability Commissioner's office,
- The Coroner's office, or
- An ACC External Clinical advisor.

## Selected definitions relating to 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 (WRGPD)
- treatment that was provided by a registered health professional (treatment injury)



## Personal injury

Personal injury includes death, a physical injury, and damage to dentures or prostheses that replace a part of the human body (hearing aids, spectacles and contact lenses are specifically excluded in the definition of prosthesis).

With limited exceptions gradually developing health conditions are not covered by ACC. Similarly personal injury caused by natural use of teeth or due to wear and tear or the ageing process are not covered by ACC.

## Physical injury

The most common type of personal injury is a physical injury – which is '**actual bodily damage**'. Pain by itself, or discomfort, or minor symptoms are not sufficient.

## 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.

## Treatment provider

Acupuncturist, audiologist, chiropractor, counsellor, dentist, medical laboratory technologist, nurse, nurse practitioner, occupational therapist, optometrist, osteopath, physiotherapist, podiatrist, medical practitioner, or speech therapist.

## Registered health professional

A chiropractor, clinical dental technician, dental technician, dentist, medical laboratory technologist, medical practitioner, medical radiation, technologist, midwife, nurse, nurse practitioner, occupational therapist, optometrist, pharmacist, physiotherapist, or podiatrist.

## Fatal claims

When someone dies from a treatment injury, ACC can provide financial support to the family of the deceased, including a contribution to the funeral costs and financial assistance to dependants.

## Date of injury

The date of a treatment injury is the date the person first sought or received treatment for the symptoms of the injury.

## Consequential claims

A consequential treatment injury is an injury that occurs during treatment for an already covered personal injury.

## Appendix III - AC Act 2001 (Oct 2016)

### 32 Treatment injury

- (1) Treatment injury means personal injury that is—
- (a) suffered by a person—
    - (i) seeking treatment from 1 or more registered health professionals; or
    - (ii) receiving treatment from, or at the direction of, 1 or more registered health professionals; or
    - (iii) referred to in subsection (7); and
  - (b) caused by treatment; and
  - (c) not a necessary part, or ordinary consequence, of the treatment, taking into account all the circumstances of the treatment, including—
    - (i) the person's underlying health condition at the time of the treatment; and
    - (ii) the clinical knowledge at the time of the treatment.
- (2) Treatment injury does not include the following kinds of personal injury:
- (a) personal injury that is wholly or substantially caused by a person's underlying health condition;
  - (b) personal injury that is solely attributable to a resource allocation decision;
  - (c) personal injury that is a result of a person unreasonably withholding or delaying their consent to undergo treatment.
- (3) The fact that the treatment did not achieve a desired result does not, of itself, constitute treatment injury.
- (4) Treatment injury includes personal injury suffered by a person as a result of treatment given as part of a clinical trial, in the circumstances described in subsection (5) or subsection (6).
- (5) One of the circumstances referred to in subsection (4) is where the claimant did not agree, in writing, to participate in the trial.
- (6) The other circumstance referred to in subsection (4) is where—
- (a) an ethics committee—
    - (i) approved the trial; and
    - (ii) was satisfied that the trial was not to be conducted principally for the benefit of the manufacturer or distributor of the medicine or item being trialled; and
  - (b) the ethics committee was approved by the Health Research Council of New Zealand or the Director-General of Health at the time it gave its approval.
- (7) If a person (person A) suffers an infection that is a treatment injury, cover for that personal injury extends to—
- (a) person A's spouse or partner, if person A has passed the infection on directly to the spouse or partner;
  - (b) person A's child, if person A has passed the infection on directly to the child;
  - (c) any other third party, if person A has passed the infection on directly to that third party:

### 33 Treatment

- (1) For the purposes of determining whether a treatment injury has occurred, or when that injury occurred, treatment includes—
- (a) the giving of treatment;
  - (b) a diagnosis of a person's medical condition;
  - (c) a decision on the treatment to be provided (including a decision not to provide treatment);
  - (d) a failure to provide treatment, or to provide treatment in a timely manner;
  - (e) obtaining, or failing to obtain, a person's consent to undergo treatment, including any information provided to the person (or other person legally entitled to consent on their behalf if the person does not have legal capacity) to enable the person to make an informed decision on whether to accept treatment;
  - (f) the provision of prophylaxis;
  - (g) the failure of any equipment, device, or tool used as part of the treatment process, including the failure of any implant or prosthesis (except where the failure of the implant or prosthesis is caused by an intervening act or by fair wear and tear), whether at the time of giving treatment or subsequently;
  - (h) the application of any support systems, including policies, processes, practices, and administrative systems, that—
    - (i) are used by the organisation or person providing the treatment; and
    - (ii) directly support the treatment.

## Document 2

Client's claim number: [Claim number auto]

Purchase order number: [PO number auto]

[Date auto]

[Vendor name auto]

[Vendor\_Address\_Line1 Auto]

[Vendor\_Address\_Line2 Auto]

[Vendor\_Address\_Line3 Auto]

[Vendor\_Address\_Line4 Auto] [Post Code Auto]

Dear [ATTENTION TO auto]

### We'd like to get your advice on a treatment injury claim

#### Client details

Client name:	[Client title auto] [Client full name auto]	Date of injury:	[Date of injury auto]
Address:	[Additional Recipient Reference Auto], [Client address line 1 auto], [Client address line 2 auto], [Client address line 3 auto], [Client address postcode auto], [Client address country auto]		
Date of birth:	[Date of birth auto]	Phone number:	[Client ph auto]
ACC45 number:	[ACC45 number auto]	NHI number:	[NHI no. auto]
Injury(s):	[injuries auto]		

To help us make a decision on [Client title auto] [Client full name auto]'s treatment injury claim, we'd like you to provide External Clinical Advice (the Services).

#### We've got consent to request this information

[OPTION 1 START]The Injury Claim form (ACC45) that [Client full name auto] has already signed gives us authority to collect this information.[OPTION 1 END]

[OPTION 2 START]We've included a copy of the authority for us to collect medical and other records to help make a decision about this claim.[OPTION 2 END]

#### The services we'd like you to provide

We've listed below the service(s) we'd like you to provide, along with what we'll pay you.

Service code	Service description	From	To	Qty.	Unit of measure	Rate per unit, excl. GST	Rate per unit, incl. GST
[Service code auto]	[Service description auto]	[88/88/8888 auto]	[88/88/8888 auto]	[Qty auto]	[Unit of measure auto]	[\$8888.88 auto]	[\$8888.88 auto]

You can also invoice us for additional costs as described in the enclosed service schedule.

[OPTION 1 START - if ECA01 approved]Please use the enclosed information to complete your assessment and the ACC2187 Treatment Injury Advice form and send it back to us by dd/mm/yyyy.[OPTION 1 END]

[OPTION 2 START - use if ECA02 approved]We'd like you to attend an advisory panel. We'll be in touch to provide more details about the time and location of the panel.[OPTION 2 END]

[OPTION 3 START - use if ECA03 approved]We'd like you to attend a review hearing in person / by teleconference. Fairway Resolution Limited will arrange the review hearing with [Client first name auto]. We'll be in touch to provide more details about the time and location of the review hearing soon.[OPTION 3 END]

### **Service requirements**

Thank you in advance for filling out the external clinical advice report. Your prompt reply will help us make a decision on this claim quickly.

If you're unable to meet the timeframe, please call me to organise a new time.

Please see below the service schedule for more details about what you need to know when providing the service.

### **How to invoice us**

You can invoice us using our online services. You just need to make sure that you include the claim number, purchase order number and service code(s) shown on this letter.

If you'd like more information about how to send us your invoices electronically, please get in touch with the eBusiness team on 0800 222 994 option 1 or email [ebusinessinfo@acc.co.nz](mailto:ebusinessinfo@acc.co.nz).

### **We're here to help**

If you'd like to talk about this letter or have any questions, please just get in touch with me using the contact details below.

Yours sincerely

[Current User auto]

**[Job Title auto]**

Telephone: [INSERT phone number]

Encl. ACC External Clinical Advice Service schedule, [OPTIONAL]ACC2187 Treatment Injury Advice template, [OPTIONAL]ACC6300 Authority to collect medical and other records

## ACC External Clinical Advice Service schedule

Please use the following payment schedule to invoice us:

Service code	Service description	Rate per unit, excl. GST	Rate per unit, incl. GST
ECA01	Written report: including preparation and emails	\$240.00 per hour	\$276.00 per hour
ECA02	Attendance at a panel: including preparation	\$240.00 per hour	\$276.00 per hour
ECA03	Verbal advice: including signing off record of advice	\$240.00 per hour	\$276.00 per hour
DISBUR	Disbursements: such as phone calls, typing and copying, internet access and research, postage and courier	Actual and reasonable cost	Per item
ECAT6	<p>Other travel;</p> <p>Costs for return travel by ferry, taxi, rental car, public transport and parking when:</p> <ul style="list-style-type: none"> <li>return travel is via the most direct, practicable route; and</li> <li>the return travel exceeds 20km</li> </ul> <p>Note 1: where the Supplier has no base or facility in the Service provision area return travel will be calculated between the "start point" and "end point" closest to the client as agreed by ACC</p> <p>Note 2: ACC will only pay for actual and reasonable costs and receipts must be retained and produced if requested by ACC. If more than one client (ACC and/or non-ACC) receives services then invoicing is on a pro-rata basis</p>	Actual and reasonable cost	Per trip
ECATA1	<p>Air travel when a Service Provider is:</p> <ul style="list-style-type: none"> <li>requested by ACC to travel to an outlying area that is not the Service Provider's usual area of residence or practice to deliver Services; and</li> <li>air travel is necessary and has been approved by ACC</li> </ul> <p>Note: ACC will only pay for actual and reasonable costs and receipts must be retained and produced if requested by ACC. If more than one client (ACC and/or non-ACC) receives services then invoicing is on a pro-rata basis</p>	Actual and reasonable cost	Per trip
ECATD10	<p>Travel distance</p> <p>A contribution towards travel:</p>	\$0.62 per kilometre	\$0.71 per kilometre

	<ul style="list-style-type: none"> <li>for return travel via the most direct, practicable route; and</li> <li>where the return travel exceeds 20km</li> </ul> <p>Note 1: where the Supplier has no base or facility in the Service provision area, return travel will be calculated between the “start point” and “end point” closest to the client (as agreed by ACC)</p> <p>Note 2: ACC does not pay for the first 20km of travel and this must be deducted from the total distance travelled. If travel includes more than one client (ACC and/or non-ACC) then invoicing is on a pro-rata basis</p>		
ECATT5	<p>Travel time - first hour</p> <p>Paid for the first 60 minutes (or less) of total travel in a day where:</p> <ul style="list-style-type: none"> <li>the travel is necessary; and the Service Provider travels via the most direct, practicable route between their base/facility and</li> <li>where the services are provided; and the distance the Service Provider travels exceeds 20km return; and/or</li> <li>the time the Service Provider travels exceeds 30 minutes</li> </ul> <p>Note 1: where the Supplier has no base or facility in the Service provision area return travel will be calculated between the “start point” and “end point” closest to the client (as agreed by ACC)</p> <p>Note 2: if travel includes more than one client (ACC and/or non-ACC) then invoicing is on a pro-rata basis</p>	\$120.00 per first hour	\$138.00 per first hour
ECATT1	<p>Travel time – subsequent hours</p> <p>Paid for return travel time after the first 60 minutes in a day paid under ECATT5, where:</p> <ul style="list-style-type: none"> <li>the travel is necessary; and</li> <li>the Service Provider travels via the most direct, practicable route available between their base/facility and where the services are provided; and</li> <li>additional travel time is required after the first hour of travel</li> </ul> <p>Note 1: where the Supplier has no base or facility in the Service provision area return travel will be calculated between the “start point” and “end point” closest to the client as agreed by ACC</p> <p>Note 2: the first 60 minutes must be deducted from the total travel time and if travel includes more than one client (ACC and/or non-ACC) then invoicing is on a pro-rata basis</p>	\$240.00 per subsequent hour(s)	\$276.00 per subsequent hour(s)

You'll need to provide evidence of any costs you incur plus get prior approval from us for any travel by air, bus or train. We'll usually make the travel booking for you unless we agree to do otherwise.

### **Things you should know when providing the service(s)**

If the Service changes, we'll talk to you about the changes and agree in writing, which might be by email. Along with the report we will own all the intellectual property in the materials you deliver to us relating to the Services.

Your name will be in our decision letter and report so if you get contacted by the client or health provider about the report, please direct them to ACC. It's important you don't enter into any discussions with them about this.

Let us know immediately if you become aware of a conflict of interest at any time. If this happens we ask that you return the request to us within five working days and we'll cancel it. The same applies if you become aware of any issue relating to ACC, the Services and/or the purpose of this letter which has or might have media or public interest.

For privacy reasons please make sure you keep all information about the client and your Services confidential unless agreed to by ACC or required by law. Either of us may for any reason terminate the Services on giving one weeks' written notice to the other party without being liable to the other party for any damages or compensation.

### **Acting as a Third Party Assessor**

As an external clinical advisor you will carry out services in a competent and professional manner and in accordance with all applicable legislation and professional standards, including the:

- High Court rules in Part 9, Subpart 5 of the High Court Rules 2016: Expert witness to comply with code of conduct (see <http://www.legislation.govt.nz/regulation/public/2016/0225/latest/DLM6951902.html>) (with appropriate modifications) Privacy Act 1993
- Health Information Privacy Code 1994.

# Treatment injury advice

Use this form to provide advice to ACC on a claim for Treatment Injury. When completed please send your report to the ACC Treatment Injury Centre.

Email: TIClaims@acc.co.nz. Please send the email with "Treatment Injury Advice" in the subject header.

Mail: Treatment Injury Centre, PO Box 430, Dunedin 9054;

## 1. Client details

Client name: [Client title auto] [Client full name auto]

Claim number: [Claim number auto]

Date of birth: [DOB auto]

## 2. Request for external clinical advice – to be completed by ACC

Specific questions that ACC requires clinical advice on.

1.

2.

3.

4.

5.

## 3. Claim details – To be completed by external clinical advisor

Provide a summary of clinical events that led to the claim.

## 4. External Clinical Advisor response

Provide a response to the specific questions listed in section two and describe how the evidence supports your conclusion. You're welcome to include extra pages if you need to.

1.

2.

3.

4.

5.



# ACC2187 Treatment injury advice

## 5. References

Provide a list of references to support your clinical advice.

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## 6. External clinical advisor's declaration and signature

If the Office of the Health and Disability Commissioner (HDC) requests a copy of this report, do you agree to be named in the HDC report if your advice is quoted? (The HDC report may be published on the HDC website.)  Yes  No

Signature:

Date:

Name:

Occupation/Speciality:

When we collect, use and store information, we comply with the Privacy Act 1993 and the Health Information Privacy Code 1994. For further details see ACC's privacy policy, available at [www.acc.co.nz](http://www.acc.co.nz). We use the information collected on this form to fulfil the requirements of the Accident Compensation Act 2001.

V3

# ACC-Treatment Injury Cover Assessment Centre: External Clinical Advice Guide

We rely on your clinical advice to assess complex treatment injury claims

May 2018

## 1. Purpose

This External Clinical Advisor Guide informs you of:

- your role as an External Clinical Advisor (ECA)
- ACC's role
- the treatment injury provisions.

## 2. External Clinical Advisor: your role

### *Impartial clinical advice helps us arrive at a decision for the client*

Your role is to provide impartial advice to ACC in keeping with professional requirements for honest, accurate, objective reports that are delivered promptly and are based on relevant information.

You should give opinions only on matters within your area of expertise. If you do not consider yourself suitably qualified to provide the advice, you should notify the person at ACC who requested it.

It is essential that your advice is free from bias or any appearance of bias. The test for bias is whether there is any risk, or perceivable risk, that the ECA might unfairly favour or disfavour the injured person they have been asked to advise on. Any personal connection with the injured person must be disclosed to ACC at the time advice is sought.

### *Quality of advice*

Your advice must be accurate and shouldn't be speculative or be based on insufficient or flawed information. If you are not satisfied that a medical opinion can be accurate, based on all the information provided in the file, you must clearly state this in the report.

If you use references to substantiate or qualify your opinion these must be from reputable medical journals, or medical webpages used by your profession.

### *Consultation and review*

It is acceptable to discuss issues with a professional colleague; provided the colleague has no connection to the claim and no identifying details are revealed. Where input of this nature helps to form your opinion, it needs to be referenced in your report, including the qualifications of the colleague.

### *Timeliness*

ACC recognises that as a registered health practitioner your first priority is to the patients you see and treat every day, as a result we understand that completing clinical advice for ACC can take up to a few weeks.

If for whatever reason your advice is likely to take longer than this please let us know. We will either make alternate arrangements, or at least we will be able to inform the client why there is a delay.

Similarly, where there is urgency in receiving your advice we will let you know.

In relation to frequency of requests, this is for your determination. If you only want one request at a time to provide a report, please let us know as we appreciate that you are very busy

## Privacy

Privacy is a core focus area for ACC. ACC's privacy policy (available [here](#)), publicly available on its website, sets out the principles used by ACC to collect, use, disclose and store personal and health related information. You should manage personal information carefully and respectfully.

## 3. ACC's role

### *We issue a decision based on all the relevant clinical information on file*

The role of an ECA is to provide clinical expertise to ACC. When asked to provide your opinion on a claim, ACC will provide you with copies of clinical records and any relevant reports from other providers. You will be asked specific questions to respond to. Please do not provide additional comment unless asked and do not provide a cover decision recommendation. This is ACC's role to determine cover.

### *Feedback: sometimes we may seek clarification or further comment*

On receipt of your completed report we assess the summary and opinion provided. If we have any outstanding questions or need to clarify a specific point with you, then we will get in touch as your report forms an important part of ACC's decision-making process.

### *How the process works*

All treatment injury claims are assessed by a **Treatment Injury Cover Specialist**, who typically has an allied health background, eg nursing, physiotherapy or midwifery. Once they have received all the relevant clinical information but outstanding questions remain, ECA advice may be sought.

The **Claims Administrator** facilitates this process by:

- contacting you and sending the report request (TI40 attached) via email
- depending on your preference emailing (password protected) or couriering the relevant clinical information to a secure address
- via email confirms receipt of the completed advice with your invoice attached.

All clinical information provided to you must be securely destroyed. Physical files that cannot be securely destroyed must be returned to ACC via courier.

ACC allows for up to five hours of reimbursement on a treatment injury report and this is set at \$276 per hour (incl. GST).<sup>1</sup>

Should you need to allocate significantly more time to complete a report then please inform the Treatment Injury Cover Specialist who manages the claim.

## 4. The treatment injury provisions at a glance

### *Background:*

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.

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<sup>1</sup> This is subject to change.

### *The move from medical misadventure to treatment injury*

The treatment injury provisions were introduced in 2005 following a government review which identified the ACC medical misadventure scheme had several inherent problems. These were; it:

- was inconsistent with the rest of the no-fault accident compensation scheme
- duplicated the role of other agencies – in trying to identify fault (for claims related to medical error)
- did not fit comfortably within the approach being promoted in the health sector to reduce adverse events.

Under the medical misadventure scheme, cover was granted if it was established that a failure by a registered health professional to observe a reasonable standard of care had resulted in a physical injury. This was known as **medical error**.

Alternatively cover would also be granted if a patient suffered a rare and severe consequence of treatment properly given – termed **medical mishap**. The definition of “rare and severe” was considered confusing and arbitrary in nature.

“Rare” was defined as occurring in less than 1% of cases in which the treatment in question was given. “Severe” meant injury resulting in death, hospitalisation for more than 14 days, or significant disability lasting more than 28 days.

### *Treatment injury*

This newer approach to patient injury is more in line with those victims of workplace, motor vehicle and other accidental injuries, where the element of fault does not need to be established for cover to be granted by ACC.

### *Complex claims*

ACC legislation describes some claims for cover as “complicated”. These claims can 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 their treatment providers seeking additional information.

The table below provides a summary of the key terms or phrases that relate to the treatment injury provisions. The treatment injury provisions in full can be found [here](#).

### *Key terms or phrases*

Term or phrase	Meaning
Personal or physical injury	Damage or harm to tissue
Treatment	Provided by (or at the direction of) a registered health professional as defined under the AC Act

<b>Causation</b>	A physical injury caused by treatment
<b>Necessary part</b>	A physical injury caused by treatment which was intentional
<b><u>Ordinary consequence</u></b>	A physical injury caused by treatment that was not unexpected given: the patient's underlying health condition and the clinical knowledge at the time of treatment
<b>Failure to provide treatment, or to provide treatment in a timely manner</b>	The registered health professional involved <i>could and should</i> have taken adopted a different treatment pathway or provided different treatment. What must be established is that a failure to diagnose materially impacted on the development of the disease to establish causation.

### **Reporting a belief of a risk of harm**

ACC has a legal obligation to make a notification to the authority responsible for patient safety when we **believe** there is a risk of harm to the public.

It is not ACC's role to make any definitive findings. Nonetheless where we have legitimate concerns regarding patient safety during the course of processing a claim we must pass this information on to the relevant authority.

The treatment injury provisions, in part, were introduced to ensure ACC did not duplicate the role of other agencies eg the Health and Disability Commissioner. The focus was on making the claim process simpler and quicker, ensuring there is a climate of learning when things go wrong, and protecting patient safety.

This may mean we make a notification without all the relevant medical information to the authority responsible.

## **6. Communication**

### ***If your circumstances or availability changes let us know***

It's really important that the decision-making process is not unduly delayed for our clients so please tell us how things are going and how many report request you can manage at a time. We understand that you may not always be able to complete reports for us (due to annual leave) or your capacity to do them may change – so just let us know.

Our aim is to foster a good working relationship as the role you play in helping us to assess claims for treatment injury and reach a decision is vital.

We look forward to working with you.

**Appendix - TI 40 Letter of agreement**

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT