

5 Accident compensation

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The Accident Compensation Corporation (ACC) plays a major part – up to 20 percent of the work of general practices – in the fabric of healthcare in New Zealand.

Accident Compensation Corporation

ACC is the crown entity that administers New Zealand's accident compensation scheme. The legislation covering the scheme is the Injury Prevention, Rehabilitation and Compensation Act 2001.

In 1974 New Zealand enacted legislation that provided a universal comprehensive 24 hour no fault compensation insurance scheme. The scheme covers all New Zealand citizens, residents and temporary visitors to New Zealand. New Zealanders may also be covered if they are injured while overseas, as long as they meet the ACC "ordinary resident" criteria. Such cover usually only applies to treatment provided in New Zealand. The right to take legal action for personal injury is removed other than for exemplary damages.

There are six accounts that fund different types of injuries across the ACC scheme. These are the Work, Earners, Motor Vehicle, Treatment Injury, Residual and Non Earners. The scheme is funded by levies for the Work, Earners, Motor Vehicle, Treatment Injury and Residual accounts and by government through a non departmental appropriation for the Non Earners account.. Levies in the Work Account are weighted according to industry groupings—for example a construction worker's levy is higher than a librarian's. The levies for earners are paid by the employer or the self employed. Levies for earners are paid by employees as part of PAYE to cover accidents outside the workplace. Levies for the Motor Vehicle Users' Account are applied to petrol, motor vehicle licences

and commercial driver registrations. for the non earners account is funded from general revenue. About 1.8 million claims are lodged each year.

Personal injury

ACC cover is available for “personal injury” that is caused by an accident, a work related gradual process, disease or infection, treatment injury or criminal injury ssuch as sexual abuse.

Personal injury is defined in the Act as

- Death
- Physical injury
- Mental injury because of physical injury
- Damage to dentures or prostheses

Once a claim has been accepted by ACC a range of treatments and financial entitlements are available as well as contributions toward medical practitioner costs. These contributions are usually claimed by the treating practitioner on the claimant’s behalf (bulk billing). Except under specific contracts ACC subsidies do not usually cover the full cost of treatment provided and the treatment provider is entitled to charge a copayment.

Definition of accident

The definition of an accident is important if claims are not to be lodged inappropriately. Those definitions include a specific event (or series of events) that

- Involves the application of a force (including gravity) or resistance external to the human body, or involves the sudden movement of the body to avoid such a force or resistance external to the human body; and
 - Is not a gradual process; or
 - Inhalation or oral ingestion of any solid, liquid, gas, or foreign object on a specific occasion, except for inhalation or ingestion of a virus, bacterium, or protozoan, unless it is as a result of criminal conduct by another person; or
 - A burn or exposure to radiation on a specific occasion (other than exposure to the elements); or
 - The absorption through the skin of any chemical for a period of not more than one month; or
 - Exposure to the elements or to extreme temperatures for a defined period (not exceeding one month), where the exposure results in death or an inability for more than one month to perform an activity in a normal manner
- Specifically excluded as accidents by the legislation are
- Injuries that are a necessary part of treatment (i.e. not “treatment injuries”);
 - Any ectoparasitic infestation;
 - Contraction of a disease through an arthropod as the active vector.
 - Cardiovascular and cerebrovascular events.

Treatment injuries

New legislation became effective in July 2005 replacing medical misadventure with “treatment injury”.

There is now no requirement to find fault, and no criteria of severity or rarity to be met. If the ACC considers there is a risk of harm to the public from a doctor whose patient has suffered a treatment injury, it must report that to the Director General of Health.

A treatment injury, in essence, is an injury caused as a result of seeking or receiving treatment from a registered health professional – but some exclusions apply.

The objective of the change is to simplify the ACC scheme and streamline the claims process to improve rehabilitation outcomes for patients with treatment injuries through provision of assistance that is more timely and fair. Removing the fault finding requirement also makes treatment injury consistent with the rest of the ACC scheme’s “no fault” basis.

ACC no longer reports individual medical error decisions and trends to the Health and Disability Commissioner (HDC) or employers. It may report individual cases to registration authorities where appropriate after taking external and independent advice. This applies to all cover decisions made from 1 July 2005, including claims lodged prior to that date, but decided after the new legislation comes into effect.

The three main requirements for cover remain

- there must be a personal injury;
- the treatment must be by, or at the direction of a registered health professional; and
- there must be a direct causal link between treatment and injury.

ACC may not be able to accept a claim for treatment injury if it is

- related to a health condition present before the treatment, or
- a necessary part, or an ordinary result, of the particular treatment, or
- caused solely by a decision an organisation made when allocating health resources, or
- caused because a patient unreasonably delayed or refused to give consent for treatment.

The fact that treatment did not achieve the desired result does not in itself constitute a treatment injury. Examples of treatment injuries could range from a wound infection to operating on the wrong limb. Ordinary consequences of treatment such as hair loss following chemotherapy or radiotherapy burns would be unlikely to be covered.

Sensitive claims

Sensitive claims are made according to a list of twenty crimes associated with sexual abuse in Schedule 3 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (the current legislation under which ACC works).

Claims accepted as sensitive claims have entitlement to the full range of ACC services, although the main treatment offered is counselling for the mental injury suffered as a consequence of the criminal activity.

Sensitive claims are managed by ACC's Sensitive Claims Unit in a confidential process.

Lodging a claim with ACC

Only ambulance officers and registered treatment providers can lodge a claim with ACC. This simply involves completing an ACC45 Injury Claim Form and submitting this to ACC. The form is available in both paper and electronic format. Electronic forms can be submitted from a patient management system or via the web.

Once the ACC45 information is processed by ACC a decision is made as to whether cover is granted or not. In most cases this takes no more than two days. If more information is needed ACC may contact you as the treatment provider lodging the claim, the claimant or their employer.

Once the claim is accepted ACC will pay the treatment provider's invoices and give appropriate entitlements to the claimant. If cover is declined you and your patient will not receive any payments. In that event you are entitled to bill the patient for services provided.

It is important to complete the ACC45 as completely and as accurately as possible. Remember to record the Read codes for the patient's injury on the ACC 45. Where there are multiple injuries record the Read code for each injury. For manual forms ACC has produced a quick reference guide to the most commonly used codes. Electronic practice management systems will automatically help you assign the correct Read code.

The ACC45 also acts as a "sick note" for the claimant and this part should be filled in as accurately as possible. Only a registered medical practitioner can certify a person as fully unfit for work or able to undertake restricted duties.

Each ACC45 has a unique number which is then assigned to that injury. ACC45s should be posted in the reply paid FastPost envelopes or electronically lodged as soon as possible.

For further information and guidance please refer to the *Treatment provider handbook* produced by ACC or visit their website www.acc.org.nz.

Treatment injury, gradual process and sensitive claims each have their own particular lodging processes.

Treatment injury claims

Health professionals will need to fill out a treatment injury claim form (ACC2152) as well as the standard ACC45 claim form – preferably at the time the injury occurs—so ACC can decide cover and start providing rehabilitation as quickly as possible

Further information, including matters pertaining to the 2004 legislation on treatment injury, can be provided by the Treatment Injury and Patient Safety Unit on 0800 735 566.

Sensitive claims

Only general practitioners (GPs) and counsellors can lodge sensitive claims. The GP (or counsellor) completes an ACC45 noting it as a sensitive claim. Once ACC receive the ACC45, a case manager writes to the claimant to arrange an ACC funded assessment with a counsellor, who reports to ACC; ACC then makes a decision on the claim. An alternative (if a counsellor is unavailable) is that a Doctors for Sexual Abuse Care (DSAC) doctor, or any GP, can fill in the ACC 45 using the codes for the crime and for the mental injury.

Any information collected is treated as highly confidential and is only seen by the Sensitive Claims Unit staff and in some cases an independent assessor. Further information and guidance can be obtained from the Sensitive Claims Unit on 0800 735 566.

Work related gradual process claims

Before cover decision can be made on these claims ACC needs to collect additional information from the claimant, their employer and their treatment provider. The claimant may also be assessed at an ACC Workwise clinic before a decision is given.

To be granted cover as a work related gradual process, disease or infection there are several criteria that must be met

- There must be a particular property about the person's work task or work environment
- That property or environment must cause or contribute to the injury
- The property or environment must not be found to any material extent outside the workplace
- The risk of suffering the injury must be significantly greater for people who perform that task or work in that environment.

You should familiarise yourself with these processes which are described in the *Treatment Providers Handbook* and on the ACC website.

Entitlements

Claimants who suffer injuries that are covered by the Act will be entitled to a number of financial, treatment and rehabilitation benefits.

These will include

- Rehabilitation – treatment, social and vocational rehabilitation, equipment, consumables and other services aimed at restoring the claimant to maximum health and independence
- Weekly compensation – claimants may be eligible for weekly compensation for earnings lost as a result of their injury
- Independence Allowance for injuries that occurred before 1 April 2002
- Lump sum compensation for injuries that happened on or after 1 April 2002.

Time off work – work incapacity certificates

Some injuries necessitate time off work. The certificate used by a registered medical practitioner (the only treatment provider who can issue these certificates) is

- ACC45 for the first visit
- ACC18 medical certificate if an ACC45 has already been lodged.

This form should be filled in carefully with regard to the person's work capacity, the tasks involved in their job and the alternative tasks they might still be able to do at their work. At times it may be appropriate to talk, with the patient's consent, to the claimant's employer.

The maximum time off work allowable on the first certificate (usually the ACC45) is fourteen days. After that the maximum time off you can certify is thirteen weeks before another certificate is due. Many claimants will return to work sooner, and guidelines are available for expected time off related to specific injuries.

Obligations of treatment providers

Before you can lodge claims for or treat under ACC you must register individually with ACC and hold a current annual practicing certificate. To register you need to complete the registration application form available on line at www.acc.org.nz or by calling 0800 802 444. Once accepted you can claim and treat under the ACC scheme.

All treatment must be

- necessary and appropriate
- match the quality required
- be given the appropriate number of times
- be given at the appropriate time and place
- normally be provided by your type of treatment provider.

ACC has policies and procedures designed to ensure appropriate treatment and rehabilitation. It has produced treatment protocols and guidelines and will support evidence based practice. Treatment providers are monitored and ACC can investigate if there are any concerns about the treatment being provided. It can take steps to recover payments made for inappropriate claims and will prosecute if fraudulent claims are made.

I acknowledge the assistance given to me in the preparation of this chapter by Dr Kevin Morris, Director Clinical Services ACC

Resources

ACC has produced several publications to assist you in providing treatment under the ACC scheme. These publications include

- *Treatment Provider Handbook*, a comprehensive guide to working with ACC
- *Treatment Profiles* which provide a guide to managing individual injuries.

In addition there is comprehensive information on the ACC website www.acc.co.nz and a Provider helpline 0800 222 070.