CHAPTER 12

Accident compensation

*Peter Jansen* is a general practitioner and Senior Medical Adviser for the Accident Compensation Corporation.


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Overview

The Accident Compensation Corporation (ACC) has provided comprehensive, no fault cover for people injured from accidental causes since 1974. Levies from workers, employers, vehicle registrations and taxpayers are applied to facilitate the recovery of those injured and to fund the future needs of those injured long term.

The scheme applies to all New Zealand residents and temporary visitors to New Zealand. New Zealanders who are ordinarily resident may also be covered if they are injured while overseas. ACC, a crown entity, administers the scheme according to the Accident Compensation Act 2001 (the Act).

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

Once a claim is approved by ACC the 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 person’s injury and circumstances. The information that follows relates to current legislation and new claims. Changes to legislation since 1974 mean that the criteria for continuing cover and entitlements on existing claims may vary from that available on new claims.

Accident claims to ACC

Most of the approximately 1.8 million ACC claims made each year are lodged through general practitioners. Other health providers such as osteopaths and physiotherapists also lodge claims alongside their role in providing treatment or assisting in the rehabilitation of those who are injured. ACC has a network of call centres, branch offices and specialist units to assess claims and administer entitlements.

Once a claim has been approved by ACC, the injured person may be entitled to a range of assistance such as contributions toward the costs of treatment by doctors and other providers. These contributions are usually claimed by the treating practitioner on the client’s behalf (bulk billing) under the treatment costs regulations which specify the amount ACC will contribute. This may not equate to the full cost of treatment so the treatment provider may request a copayment from the patient.

ACC also contracts for a range of services from elective surgery, to psychological services and rehabilitation. In general these contracts are intended to meet the full cost of the service and no copayment can be charged.

The legislation also supports good clinical practice — stating that ACC should fund services that are necessary and of the quality required to achieve a return to independence. To ensure that the health services ACC purchases meet these legislative requirements, it monitors the delivery of health services.

More information on ACC’s performance and monitoring framework is available at www.acc.co.nz
Personal injury

Accident cover is available for “personal injury” that is caused by:

- an accident
- a work related gradual process, disease or infection (WRGPDI)
- treatment provided by or at the direction of a registered health professional (treatment injury).

Personal injury is defined in the Act as:

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

With limited exceptions wear and tear is not covered by ACC. One example where cover may be available is a work related gradual process.

Mental Injury

Cover is also available for mental injuries that result from:

- a physical injury
- sexual abuse or assault (sensitive claims)
- first hand experience of sudden traumatic events in the workplace (WRMI).

A mental injury is a clinically significant behavioral, cognitive or psychological dysfunction. It does not include emotional effects such as hurt feelings, stress or loss of enjoyment.

When a mental injury is caused by a physical injury, the claim will usually be lodged by a doctor or nurse practitioner. However, the disorder must be diagnosed by a registered psychiatrist or psychologist.

Definition of accident

The definition of an accident is important if claims are to be lodged appropriately. 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
- is not a gradual process
- involves 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
- involves a burn or exposure to radiation on a specific occasion (other than exposure to the elements)
• involves the absorption through the skin of any chemical for a period of not more than one month

• involves 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 by legislation as neither accidents (unless work related) nor personal injuries are:

• any ectoparasitic infestation

• contraction of a disease through an arthropod as the active vector

• cardiovascular and cerebrovascular events

• conditions caused wholly or substantially by the ageing process.

**Hearing loss**

Cover for hearing loss may be available where it is:

• a personal injury caused by accident

• the result of a work related gradual process, disease or infection (WRGPDI)

• a treatment injury.

For hearing loss claims lodged after 1 July 2010 the person must have suffered at least a 6 percent hearing loss from accidental causes for the claim to be approved. Ear, nose and throat specialists are engaged by ACC to assess claims including the apportionment of accidental and nonaccidental causes for the loss of hearing.

**Complex claims**

AC legislation describes some claims for cover as “complicated”. Generally these claims require additional information before ACC can make a cover decision, and ACC may take more time to assess the claim. These claims are for:

• mental injuries caused by certain criminal acts (sensitive claims)

• personal injuries caused by work related gradual process, disease or infection (WRGPDI)

• personal injuries caused by treatment (before 1 July 2005 this was called medical misadventure)

• claims that are lodged more than 12 months after the date the personal injury occurred

• work related mental injuries as a result of witnessing a traumatic event while working.

When assessing complicated claims ACC may contact treatment providers seeking additional information. This is done with the consent of the patient. By responding in a timely fashion and providing all relevant information the patient’s claim can be processed quickly including arranging any expert assessments that are required.
**Sensitive claims**

Sensitive claims are mental injuries caused by sexual assault or sexual abuse. The events which amount to sexual abuse/assault are included in a list of crimes contained in Schedule 3 of the Act. Claims approved as sensitive claims have entitlement to the full range of ACC services, although the main treatment offered is counselling or psychotherapy 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. When a mental injury is caused by sexual assault or abuse, the person can lodge their claim through either a doctor, nurse practitioner or an ACC registered counsellor. Once ACC receives the claim a case manager will contact the client to facilitate the collection of relevant information or to arrange for any ACC funded assessments that may be required. Any information collected is treated as highly confidential and is only seen by the Sensitive Claims Unit staff or the expert independent assessor.

Further information and guidance can be obtained from the Sensitive Claims Unit on 0800 735 566.

**Work related mental injury**

Since 1 October 2008, claims for work related mental injury can also be considered, providing the injury was first treated on or after this date and the mental injury:

- was caused by a single, sudden traumatic event
- has been directly experienced, seen, or heard during the course of their work
- resulted from an event which could reasonably be expected to cause mental injury in people generally.

**Treatment injuries**

A treatment injury is a physical injury caused as a result of treatment from a registered health professional — but some exclusions apply. 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. Both the underlying disease and other pre-existing diseases are not covered, although a significant worsening of disease might attract cover. Also excluded are:

- a necessary part, or the ordinary consequences of treatment (for example hair loss following chemotherapy or radiotherapy burns would be unlikely to be covered)
- injury caused solely by decisions about allocating health resources
- injury 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.

ACC must report to the Director General of Health and may report to the Medical Council when the investigation of the claim leads to a conclusion there is a risk of harm to the public. All claims, approved and declined are reviewed for reporting of harm.
Work related gradual process (WRGP) claims

From 1 July 2010 claims for WRGPDI return to the provisions in effect before 1 August 2008.

There are two types of claims under this heading:

1. A person is exposed at work to one of the substances or agents listed in Schedule 2 of the ACC Act and then develops the listed occupational diseases.

2. Other work related gradual process claims that meet the 3 part test, namely:
   - there must be a particular property about the person’s work task or work environment which has caused or contributed 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.

To investigate these claims ACC will collect additional information from the client, their employer and their treatment provider. The client may also be assessed by an occupational medicine specialist before a decision is made.

Lodging a claim with ACC

Only 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 or not cover is granted or if further investigation is required. In most cases the decision takes no more than two days.

If more information is needed ACC may contact you as the treatment provider lodging the claim, the client or their employer, or arrange for further assessment. Complicated claims require investigation, so the Act allows ACC more time to make decisions in some circumstances.

Once the claim is approved ACC will pay the treatment provider’s invoices and give appropriate entitlements to the client. 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 ACC45. 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 client and this part should be filled in as accurately as possible. Only a registered doctor or a nurse practitioner can certify work incapacity.
Each ACC45 has a unique number which is then assigned to that injury.

The completed ACC45 should be posted in the reply paid FastPost envelopes or electronically lodged as soon as possible. Treatment injury, work related gradual process and sensitive claims each have specific processes. Information on these is available from the ACC website.

**Entitlements**

Patients who suffer injuries that are covered by the Act may be entitled to a number of financial, treatment and rehabilitation benefits depending on their injury and circumstances.

Types of assistance include:

- rehabilitation — treatment (including pharmaceuticals, imaging, elective surgery, public health acute services), home based care, transport, equipment, consumables and other services aimed at restoring the client to maximum health and independence
- compensation for lost earnings — clients may be eligible for weekly compensation for earnings lost as a result of their 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.

**Criminal injuries and self inflicted injuries**

ACC is required to disentitle clients whose injuries are sustained after 1 July 2010 during the course of committing a serious offence. The circumstances require that the offence is punishable by a maximum term of imprisonment of 2 years or more, and the client is sentenced to a term of imprisonment or home detention. In such cases ACC is only permitted to contribute to the cost of treatment. Special provisions apply to surgery.

From 1 July 2010 similar levels of disentitlement apply to those who commit suicide or a wilfully self inflicted injury. This provision does not apply to those whose injury is the result of a covered mental injury.
Time off work — work incapacity certificates

Patients who require time off work because of their injury will need a medical certificate from a medical provider. Some injuries necessitate time off work. The certificate used by a registered doctor or nurse practitioner (the only treatment providers 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 their employer.

For that reason it is preferable, when completing the forms, to focus on the capacity of the client to undertake work, whether that means their usual tasks or alternative duties or limited hours.

All patients should be examined before they are issued with a new medical certificate. The patient should be asked relevant questions such as:

- the type of work they do and the tasks involved
- how long they have been doing that job
- what their working conditions are like
- any problems or injuries they had before the accident
- any concerns or fears they have about returning to work
- the tasks they are still able to do.

Use this information and other findings to estimate the time in which you expect your patient to be fit for normal work, and the range of tasks they can do now as well as the number of hours the patient can attend work.

A certificate that reports on fitness to work (work capacity) helps case managers to negotiate with employers on behalf of the patient, and to develop rehabilitation programmes that best suit their needs.

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 clients will return to work sooner, and guidelines are available for expected time off related to specific injuries.

Note: retrospective certification is not good practice.
Obligations of treatment providers

Before you can lodge claims for, or treat under, ACC you must register with ACC and maintain relevant practising certificates. Information about registering, including application forms, is available on line at www.acc.co.nz in the “For Providers” section. Once accepted you can claim and treat under the AC 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. Treatment providers are monitored and ACC can investigate if there are any concerns about the treatment being provided.

Resources and where to go for more information

ACC has produced several publications to assist you, including:
• the Treatment Provider Handbook, a comprehensive guide to working with ACC
• Treatment Profiles which provide a guide to managing individual injuries.

This and additional information is available on the ACC website www.acc.co.nz and through the Provider helpline: 0800 222 070.

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