



## COVERSHEET

<b>Minister</b>	Hon Iain Lees-Galloway	<b>Portfolio</b>	ACC
<b>Title of Cabinet paper</b>	Consultation on Increasing Regulated Accident Compensation Treatment Payments	<b>Date to be published</b>	23 January 2020

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
13 November 2019	Consultation on Increasing Regulated Accident Compensation Treatment Payments	Office of the Minister for ACC
13 November 2019	Regulated Accident Compensation Treatment Payments: Release of Consultation Document DEV-19-MIN-0303	Cabinet Office

### Information redacted

**YES / NO** (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister for ACC

Chair, Cabinet Economic Development Committee

## Consultation on Increasing Regulated Accident Compensation Treatment Payments

### Proposal

- 1 I am seeking Cabinet agreement to release the attached consultation document on results of the 2018 review of Accident Compensation Corporation (ACC) regulated payments for treatment. The consultation document proposes an increase of 2.05% for payments made to most treatment providers, such as General Practitioners (GPs), Physiotherapists and Audiologists, and an increase of 1.72% for payments to Radiologists and providers of Hyperbaric Oxygen Treatment. It also proposes ending the ACC deduction to some payments for dental treatment and increasing the number of classes of treatment provider used in the regulations.
- 2 Payments for treatment are regulated by the *Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003* and the *Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010* (collectively referred to as the 'cost of treatment regulations').

### Executive Summary

- 3 ACC explored three options for calculating increases to regulated payments for treatment. I recommend consulting on their favoured Option one, which is a general increase of 2.05% for ACC regulated treatment payments and 1.72% for payments to Radiologists and providers of Hyperbaric Oxygen Treatment. The rates reflect that reviews are moving from annual to biennial. It is anticipated that the new rates would take effect from 1 July 2020. The next review would then take effect (if any increases are required) by 1 December 2021.
- 4 The increases are needed to maintain access to treatment, by minimising the risk that treatment providers will pass on increased costs by increasing the co-payments generally charged to claimants. As with prior reviews, the increases were calculated using recognised inflation indexes as an indicator of the increase in the cost of treatment and rehabilitation.
- 5 The proposed increase in regulated payment levels is estimated to cost between \$3.55 million and \$7.67 million annually, based on estimates for the next 5 years. Increases to the rates payable under the relevant regulations have been factored into ACC's annual levy and appropriation estimates. ACC advises that there will be no impact on the total amount of the levies or the ACC appropriation from the proposed increase.
- 6 It is also proposed to end the ACC deduction to some payments for dental treatment, and increase the number of classes of treatment provider used in the regulations.
- 7 I am required to consult on any proposed changes with appropriate people or organisations, given the subject matter of the regulations. I am therefore seeking Cabinet agreement to release the attached consultation document detailing the proposed changes to the ACC cost of treatment regulations.
- 8 After consultation, I will make a final recommendation to Cabinet early in 2020, taking into account public submissions.

## Background

### ACC regularly reviews regulated treatment payments to take into account changes in the cost of rehabilitation

- 9 The ACC scheme includes cost of treatment regulations that specify the payments made to treatment providers for treating ACC claimants. These apply where ACC does not have specific contracts with treatment providers. Examples are payment for treatment by General Practitioners and Physiotherapists. ACC spent \$313 million on regulated treatment payments in 2017/18.
- 10 Section 324A of the *Accident Compensation Act 2001* requires ACC to undertake a regular review of regulated treatment costs and make a recommendation to the Minister for ACC by 1 December. Each review must *assess whether adjustment to any of the amounts in the regulations is required to take into account changes in costs of rehabilitation*.
- 11 ACC completed an initial review for 2018 in December 2018 but requested that the final review be deferred to wait for various market developments. ACC completed the final review in mid-2019 and made some recommendations to me in August 2019.

### Reviews are moving to a biennial basis

- 12 The review of the regulated rates has been conducted annually but the Accident Compensation Amendment Act 2019 included an amendment that requires ACC in future to conduct the review on a biennial basis. That means the next review of regulated rates will have to be completed by 1 December 2020. New rates have generally taken effect about a year after the due date for reviews so I expect the results of that review to take effect by 1 December 2021.
- 13 The new biennial cycle will allow ACC to collect more comprehensive data on the cost pressures affecting providers. It will also enable ACC to better understand the impacts of previous rate increases. This should allow for more accurate and robust pricing recommendations in future that capture the underlying costs and needs of claimants.

### Proposals for increases have been calculated using inflation indexes with adjustments

- 14 The main driver of cost increases for treatment funded by ACC is increases in the cost of labour of those workers involved in ACC funded treatment.
- 15 For the 2018 annual review ACC used recognised inflation indexes as an indicator of cost of treatment and rehabilitation increases, as it has done for prior reviews. For labour costs this was the Labour Cost Index for health care and social assistance. However, for the time period used this index was affected by large upwards impact of the care and support workers' pay equity settlement. These workers do not provide ACC funded treatment so that effect was excluded.
- 16 In the same period, public sector Nurses and allied public sector health workers were still negotiating multiple employer collective agreements (MECAs). Their wages were largely frozen, so that had a downwards impact that was also excluded.
- 17 These public sector MECAs have subsequently had relatively large settlements that potentially could be recognised, but ACC-funded treatment is usually performed by private sector health workers. This means factoring in the MECA increases could over-compensate ACC treatment providers. While the MECAs may have a flow-through effect to private sector treatment providers, this is difficult to estimate. As such, it is suggested we wait to see evidence of the impact and address it at the next regulated rates review in 2020.

18 The adjusted annual movement for labour costs calculated by ACC is shown in Table 1.

**Table 1: Labour index calculations used for 2018 review**

Annual movement		Calculation	
Index name	Movement	Adjustments	Adjusted annual movement
Labour Cost Index (LCI) Health care and social assistance (SG51Q9)	3.36%	1. Adjustment to exclude impact of Care and Support Workers' Pay Equity Settlement + 2. Estimated inflation component had there not been a freeze on Allied Health and Nursing pay due to ongoing MECA negotiations	1.10%

19 Some services are impacted by both changing labour costs and equipment costs, such as radiology. For these services, ACC uses a composite of price indices. These indices show different movements, for example, the cost of medical products, appliance and equipment has been decreasing. When the relevant indices are appropriately weighted and added together, the annual adjusted movement is 0.78%. This calculation is shown in Table 2:

**Table 2: Composite index calculations used for 2018 review**

Annual movement		Calculation	
Index name	Movement	Weighting	Composite
LCI Health care and social assistance (adjusted)	1.10%	60%	0.66%
CPI Medical products, appliances, and equipment	-1.60%	20%	-0.32%
CPI Hospital services	2.20%	20%	0.44%
<b>Total</b>			<b>0.78%</b>

**An inflation forecast was added to compensate for the review period being lengthened**

20 With the review of regulated rates now biennial, the rates now have to cover a two year period. ACC has therefore added an additional six months of forecast inflation (0.95 percentage points) on top of the 12 month adjustments shown above. This gives a total increase equivalent to 1.5 years of inflation, which is fair because there is an advance payment of 0.5 years of inflation in the first year that is balanced out by the effective underpayment of 0.5 years of inflation in the second year.

**Three options to address cost pressures were explored**

21 Following the completion of the 2018 annual review, ACC explored three options for increasing the cost of treatment regulations to realign them with actual costs. The options are described in Table 3.

**Table 3: ACC explored three options for payment increases**

Option	Amount of increase	Reason
1	2.05% general increase (1.10 LCI + 0.95 forecast inflation) 1.72% for Radiologists and providers of Hyperbaric Oxygen Treatment (0.78 composite + 0.95 forecast inflation)	Excludes care worker and public health sector pay settlements because ACC treatment providers usually operate in the private sector. Uncertainty of flow-through can be addressed in 2020 review.
2	4.90% for Specified Treatment Providers 2.10% for Radiologists and providers of Hyperbaric Oxygen Treatment 1.07% - 5.59% GPs and Nurses 1.92% - 1.96% for Dentists, Specialists and Audiologists	Excludes care worker pay equity settlement but factors in the Allied Health and Nurses MECA pay settlements so could over compensate private sector ACC treatment providers. They might not experience a full flow-through of the settlements into their labour costs.
3	1.10% general increase 0.78% for Radiologists and providers of Hyperbaric Oxygen Treatment	Option 1 excluding the additional half year of forecast inflation (additional 0.95% to take account of the two-year time period). Less speculative but increases the risk of increased co-payments for ACC claimants.

### **I propose to consult on Option one**

22 I recommend consulting on the option one proposal that ACC regulated payments for treatment generally increase by 2.05% with an increase of 1.72% for payments to Radiologists and providers of Hyperbaric Oxygen Treatment. In making this decision I considered the following objectives:

- claimants have access to appropriate treatment
- costs to ACC are sustainable and affordable
- payments do not cause alignment issues in the health sector

#### **Objective one: Claimants have access to treatment**

23 ACC contributing to the cost of injury treatment is one of the most effective ways of encouraging claimants to seek treatment for their injuries in a timely manner. Delayed treatment can result in prolonged effects from an injury, which in some cases may be permanent.

24 Claimants need to be able to afford to pay the co-payment for treatment that most providers charge in addition to the ACC payment. I have no specific information available on how price increases affect ACC claimants' access to treatment. However, the last annual Health Survey<sup>1</sup> (for health not ACC costs) showed that 14.9% of adults were unable to go to the GP because of cost, and that had not changed significantly in the prior 6 years. The figure was higher for Māori (about 22 per cent) and for children it was 2%. People with low incomes may find it more difficult to pay for ACC visits.

#### **Objective two: Costs to ACC are sustainable and affordable**

25 Part of the purpose of a regular review is to ensure that the need for an increase in treatment payments is considered on a timely basis. Small increments on regular basis have a

<sup>1</sup> <https://www.health.govt.nz/publication/annual-update-key-results-2017-18-new-zealand-health-survey>

negligible effect on levies and a small increase in the Non-Earners' Account cash costs. ACC's recommended increase has the greatest increase in cash costs for:

- the Earners Account, of up to \$3.3 million each year, and
- the Non-Earners' Account, of up to \$3 million each year.

26 ACC has estimated that these costs are more sustainable and affordable than costs in Option 2. There will be no effect on ACC levies or the ACC appropriation.

27 Option 2's significantly higher cash costs include the cost to:

- the Earners Account, of up to \$4.6 million each year, and
- the Non-Earners' Account, of up to \$4.18 million each year.

### **Objective three: Payments do not cause alignment issues in the health sector**

28 Increases in ACC treatment payments should not materially affect payments being made in the health sector for similar services. This is less of a concern for this period than has sometimes been the case with the health sector having now had some significant 'catch-up' increases for some services. These arose from the settlement of the Nurses and allied health MECAs as discussed above.

### **I propose to consult on increasing the number of treatment classes now to allow for differentiation of payment rates in future reviews**

29 Currently, Acupuncturists, Chiropractors, Occupational Therapists, Osteopaths, Physiotherapists, Podiatrists, and Speech Therapists are all defined within the same category in the relevant treatment regulations (as 'specified treatment providers'), meaning that same rates of payment must be applied to all.

30 However, there are significant differences between the different providers included in the one large category of specified treatment providers. These include differences in the kinds of treatments offered, the average treatment duration and the market forces affecting each type of provider. This means that the payment rates may also need to be different or managed differently.

31 I propose to break up this grouping and specify payment rates separately for each provider type. These payment rates will remain identical for this review period but the change will enable future pricing recommendations to specify different rates for these professions, if appropriate.

32 I anticipate that revised rates for these professions will be developed prior to the next biennial pricing review, and that the revisions will be informed by ACC's Health Services Strategy and other relevant background work carried out by ACC.

### **I also propose to consult on removing dental deductions from treatment regulations**

33 Currently when a tooth is damaged in an accident and that same tooth received an earlier restoration or crown for non-accident reasons, the treatment regulations require that ACC deduct a percentage of the regulated amount paid.<sup>2</sup>

34 Affected claimants generally cover the dental deduction by paying a higher co-payment to the Dentist providing treatment (with most dental services already requiring co-payments).

<sup>2</sup> Regulation 10 (4) & (5) of Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003

- 35 However, because the provisions requiring the deduction apply only to crowns and dental restorations, they create additional costs for claimants who have taken care of their teeth through non-injury treatment. In contrast, claimants who have not obtained non-injury dental treatment (even though it might have been advisable) receive the full ACC contribution. This is unfair and inconsistent, and imposes an extra administrative burden on both ACC and dentists.
- 36 Removing the dental deduction provisions is estimated to cost ACC around \$1 million a year. This is not a significant amount, so given the issues associated with their administration it is proposed they be removed with effect from 1 July 2020.

## Consultation

### Government consultation

- 37 ACC, the Ministry of Health, the Treasury, the Ministry of Social Development, the Ministry for Women, and Te Puni Kōkiri have been consulted on the proposals in the public discussion document and on this paper. Their comments have been considered. The Department of the Prime Minister and Cabinet has been informed.

### Public consultation

- 38 If Cabinet agrees I will release the *Consultation on ACC regulated payments for treatment* consultation document. Public consultation will be held for a period of four weeks and my officials will focus on consulting with treatment provider organisations, DHBs, Māori organisations, and claimant representatives.
- 39 After the consultation period, submissions will be summarised, and I will present final recommendations to Cabinet early in 2020, taking into account public submissions.

## Financial implications

- 40 Regular price adjustments to regulated treatment payments are factored into ACC's levy and Non-Earners' Account estimates. ACC's recommended general increase of 2.05 per cent will not impact on ACC's outstanding claims liability as most payments under the treatment regulations occur in the year the injury claim is made. Estimated cash costs are set out in Table 4. ACC advises that there will be no impact on the total amount of the levies or the ACC appropriation from this increase.

**Table 4: Cash cost impacts of 2.05% increase in regulated payments**

Account	2019/20	2020/21	2021/22	2022/23	2023/24
Earners'	\$1.5m	\$3.1m	\$3.2m	\$3.2m	\$3.3m
Work	\$0.4m	\$0.8m	\$0.9m	\$0.9m	\$0.9m
Treatment Injury	\$0.1m	\$0.2m	\$0.2m	\$0.2m	\$0.2m
Motor Vehicle	\$0.1m	\$0.3m	\$0.3m	\$0.3m	\$0.3m
Non-Earners'	\$1.4m	\$2.9m	\$2.9m	\$3.0m	\$3.0m
Total (excluding AEP)	\$3.55m	\$7.38m	\$7.49m	\$7.59m	\$7.67m

## Human Rights

- 41 The proposals contained in this paper are consistent with the principles of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Legislative implications

- 42 There are no legislative implications as a result of the release of the consultation document. If the proposed increase is agreed following consultation, the *Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003* and the *Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010* would need to be amended. If approved, the amended regulations are expected to come into force on 1 July 2020.

## Regulatory impact analysis

- 43 A Regulatory Impact Statement will be prepared following feedback from the public consultation process. It will be provided to Cabinet with the paper that seeks decisions on the proposed changes to the cost of treatment Regulations.

## Gender implications

- 44 This proposal has no gender implications.

## Disability perspective

- 45 The proposals in this paper will help to provide people with disabilities, caused by injury, with access to appropriate treatment.

## Publicity

- 46 The consultation document will be made available on the Ministry of Business, Innovation and Employment website with a link from the ACC website. Consultation will be specifically targeted to treatment providers and their representative bodies, DHBs, Māori organisations, and claimant representative groups. Relevant stakeholders will be emailed a link to the consultation document.

## Proactive release

- 47 MBIE will proactively release this Cabinet paper and accompanying Cabinet minute. No redactions are proposed.

## Recommendations

The Minister for ACC recommends that the Committee:

- 1 **Agree** to release the attached public consultation document proposing a general increase of 2.05 percent for ACC regulated treatment payments, and 1.72 percent for payments to Radiologists and providers of Hyperbaric Oxygen Treatment, from 1 July 2020. It also proposes ending ACC deductions to some payments for dental treatment, and increasing the number of classes of treatment provider used in the regulations.
- 2 **Note** that these changes are expected to have an annual cash cost of up to \$7.67 million to ACC levies and \$3 million from the Non-Earners' Account each year;
- 3 **Note** that there is expected to be no impact on the total amount of levies or the ACC appropriation;
- 4 **Note** that these changes will not impact on the outstanding claims liability as most payments for treatment occur in the year the claim is made;



- 5 **Note** that after consultation, I will report back to Cabinet with a final recommendation, taking into account public submissions.

Authorised for lodgement

Hon Iain Lees-Galloway  
**Minister for ACC**

PROACTIVELY RELEASED