



## COVERSHEET

<b>Minister</b>	Hon Carmel Sepuloni	<b>Portfolio</b>	ACC
<b>Title of Cabinet paper</b>	Updating the Review Costs Regulations: Approval to Consult	<b>Date to be published</b>	28 February 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
8 April 2021	Options for updating the Review Costs Regulations	Ministry of Business, Innovation and Employment
21 April 2021	Review Costs Regulations – detailed options for consultation	Ministry of Business, Innovation and Employment
24 November 2021	Updating the Review Costs Regulations: Approval to Consult	Office of the Minister for ACC
29 November 2021	Cabinet Minute of Decision, Updating the Review Costs Regulations: Approval to Consult [SWC-21-MIN-0193 refers]	Cabinet Office

### Information redacted

### YES / NO

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.

Some information has been withheld to protect confidential advice to Government.



## BRIEFING

### Options for updating the review costs regulations

<b>Date:</b>	8 April 2021	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2021-2742

Action sought		
	Action sought	Deadline
Hon Carmel Sepuloni <b>Minister for ACC</b>	<b>Agree</b> to the options proposed for public consultation on the review costs regulations	16 April 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Hayden Fenwick	Manager, Accident Compensation Policy	Confidential advice to Government	Confidential advice to Government	✓
Jessica Lee	Policy Advisor, Accident Compensation Policy	Confidential advice to Government	N/A	

The following departments/agencies have been consulted
ACC

**Minister's office to complete:**

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

**Comments**



# BRIEFING

## Options for updating the review costs regulations

<b>Date:</b>	8 April 2021	<b>Priority:</b>	High
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### Purpose

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To seek your approval to conduct further work with the Accident Compensation Corporation on the proposed options for inclusion in a public consultation paper to update the *Accident Compensation (Review Costs and Appeals) Regulations 2002*.

To provide you with an update on the timeline for consultation and seeking Cabinet approval for updating the review cost regulations (paragraphs 53-56).

### Executive summary

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The *Accident Compensation (Review Costs and Appeals) Regulations 2002* (the Regulations) set the maximum reimbursement rates for costs associated with claimants undertaking an Accident Compensation Corporation (ACC) review process (Review process). Currently, costs are set out in 14 categories in the Regulations with prescribed maximum rates.

In 2016, the Independent Review of Acclaim Otago's report into Accident Compensation Dispute Resolution Processes (the Dean Review) recommended the maximum rates under the Regulations be increased – and “by more than just inflation”.

In 2017, the maximum rates under the Regulations were increased by 16.6 per cent as an interim measure, which accounted for inflation from 2008 to 2017, so that more could be done to understand the costs that claimants incur as a result of the Review process. Following this, in 2017 the Ministry of Business, Innovation and Employment (MBIE) completed a further review.

In December 2019, MBIE provided the former Minister for ACC with an update of the work that had been undertaken in relation to review costs, along with a draft consultation paper (0469 19-20 refers). It was intended that a consultation paper be released in April 2020. However, due to capacity constraints affecting Cabinet's ability to consider this, work on releasing the consultation paper was paused until after the 2020 Election [3333 19-20 refers].

The current Regulations do not have a clear purpose. We propose that the Regulations should aim to:

- ensure adequate access to justice for claimants
- be transparent and consistent
- discourage frivolous and excessive litigation, and
- support an efficient and effective review process.

As such, we propose to realign the review cost categories into four broad categories with set maximum limits:

1. Application costs:

Costs associated with the preparation and submission of an application to initiate a review

2. Representation costs:

Contribution to costs associated with engaging a lawyer or advocate preparing for and attending a review

3. Medical and other reports:

Contribution towards expert reports that a claimant may require to support their case during the review process

4. Other expenses:

Contribution for expenses incurred by the claimant in the review process such as for travel, accommodation, and childcare.

Within these categories, it is proposed to increase maximum reimbursement levels, which reviewers can award as they see fit. Determining what an appropriate maximum cap for each of the categories looks like, will be a major focus for the consultation process.

## **Representation costs**

There are significant complexities involved with representation costs, as both lawyers (whose practice is governed by the New Zealand Law Society (NZLS)) and advocates (not governed by a professional body and can range from very experienced to not experienced) can represent claimants during a review. Given this, we propose to include two options for representation costs (Category 2) as part of the public consultation document:

Option (1): One maximum limit for all representatives (inclusive of both lawyers and advocates)

Option (2): Sliding scale based on complexity, time and effort involved, and qualifications of the advocate/lawyers, in recognition that lawyers and experienced advocates are more likely to focus on points of law, facilitating a more efficient review process. This would also recognise that lawyers are held to the standards of NZLS.

MBIE is currently working with ACC to finalise the details of Option (2). You will be provided with further advice detailing the design of the two proposed options for representation costs, prior to these being included in the consultation document.

## Recommended action

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The Ministry of Business, Innovation and Employment recommends that you:

- a **Agree** to the proposed approach to realigning the review cost categories into four broad categories with set maximum limits, which are:

1. Application costs
2. Representation costs
3. Medical and other reports
4. Other expenses

*Agree / Disagree*

- b **Direct** officials to progress work on two options for the representation costs category, for your later consideration and inclusion in the consultation document:

Option (1): one single set maximum limit for all representatives (including both advocates and lawyers)

*Agree/Disagree*

Option (2): splitting representation costs into a range or matrix dependent on complexity, time and effort involved, and qualifications

*Agree/Disagree*

- c **Note** that a further briefing will be provided in late April 2021, that will include the detailed design of the two proposed options for representation costs

*Noted*

- d **Agree** to the proposed timeline and process for undertaking consultation on the *Accident Compensation* (Review Costs and Appeals) Regulations 2002.

*Agree / Disagree*



Hayden Fenwick  
**Manager, Accident Compensation Policy**  
Labour, Science and Enterprise, MBIE

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Hon Carmel Sepuloni  
**Minister for ACC**

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## Background

1. Claimants who are dissatisfied with ACC decisions can either go through an Alternative Dispute Resolution process (eg mediation) or apply for an external independent review. A review decision is required before the case can be brought before the District Court. Decisions of the District Court can be appealed to the High Court and the Court of Appeal with leave.
2. Claimants can be reimbursed by ACC for external review-related costs, including legal fees and medical or other expert reports. The maximum rates of reimbursement are set by the Accident Compensation (Review Costs and Appeals) Regulations 2002 (the Regulations).
3. ACC contracts review providers FairWay and the Independent Complaint and Review Authority to undertake reviews.
4. The Regulations set out maximum rates in 14 cost categories for various tasks and procedures within the review process. The cost categories include, for example, legal preparation, attendance of the review, medical reports and travel costs.

**Table 1:** Prescribed costs under the Regulations

Cost categories under the Regulations		Max award	Rate
1	Preparation and lodging application for review	\$136.35	
2	Participation in case conference before review hearing	\$68.18	
3	Other preparation of case for review	\$409.07	
4	Appearance at hearing	\$409.07	
5	<i>First hour of hearing (or part thereof)</i>		\$204.53
6	<i>Second hour of hearing (per 15 minutes)</i>		\$34.08
7	<i>Later hours of hearing (per 15 minutes)</i>		\$17.05
8	Medical specialist report(s)	\$1,090.84	
9	Other report – one report only	\$545.42	
10	Other report – two or more	\$818.12	
11	<i>First hour of preparation</i>		\$204.53
12	<i>Second hour of preparation (per 15 minutes)</i>		\$51.13
13	<i>Third hour of preparation (per 15 minutes)</i>		\$34.08
14	Other expenses	\$681.77	
	Within this category, travel costs	\$178.78	

5. Importantly, any costs awarded through the review process are intended to be a *contribution* to a claimant's costs (as opposed to full reimbursement). This reflects the Accident Compensation Scheme's (the Scheme's) mandate to provide fair, but not full, compensation, the intention that the Review process be less formal, and incentivising individuals to minimise expenditure and avoid excessive litigation.

## **The Dean review recommended that reimbursement rates be increased to provide a more meaningful contribution towards the costs of review**

6. In 2016, the Dean Review found that the review cost rates did not provide a meaningful contribution to review costs. In addition, the Dean Review noted that the rates for medical evidence were significantly below the actual cost of many reports. It also highlighted that preparation costs were inadequate, which denied claimants' access to justice.
7. The Dean Review also emphasized that there was a barrier for claimants where appropriate representation was not easily accessible (with specific reference to lawyers). The outcome of cases was linked to the type of representation that claimants used (i.e. better outcomes where lawyers were involved in review processes). While there is causality present in this finding, there may be underlying reasons for this, including that lawyers may turn down unmeritorious cases (compared to some advocates who may take on a case, without fully understanding the law) or reasons why a decision has been made.
8. At the time, the Dean Review stated that this barrier existed because of a considerable imbalance in the resources ACC can access compared with those available to claimants. The Dean Review also noted that claimant demand for expert legal services often exceeded supply, with very few lawyers practising in the area of accident compensation law.
9. Furthermore, the Dean Review found that the prescriptive nature of the Regulations created complexity and unfairness. The Regulations currently list 24 'registered specialists' whose reports can be reimbursed at a higher rate than reports made by people not included in this category.
10. At the time of the Dean Review, the Regulations had last been adjusted for inflation in 2008.
11. Given the lack of data on the costs that claimants incurred above the regulated rates, in 2017 Cabinet agreed to increase the rates prescribed by the Regulations by 16.6 per cent to account for inflation in the period between 2008 and 2017, as an interim measure to allow further work to be completed before more substantive changes could be considered [SOC 17 MIN 0006 refers].

## **MBIE's subsequent review in 2017 found that the current rates are inadequate in some cases and are overly prescriptive**

12. MBIE's review supported the Dean Review's findings in so far as costs are inadequate for some claimants, particularly those with complex injuries and historical cases.
13. It also supported the Dean Review's findings that the 14 cost categories in the Regulations are overly prescriptive and that this limits flexibility for reviewers in some areas, particularly in awarding costs for medical reports.
14. However, MBIE's review found no strong evidence that reimbursement levels were insufficient in all cases, and that the maximum reimbursement is not reached in many cost categories.
15. In October 2018, MBIE provided a number of broad options for updating the Regulations and the former Minister for ACC agreed to consult publicly on these options [3809 17 18 refers].

## **COVID-19 delayed the release of the consultation paper**

16. Work was progressed on the proposed options, with an intended timeline for releasing the consultation paper in April 2020. However, due to capacity constraints affecting Cabinet's ability to consider the review costs consultation paper, work on releasing the consultation paper was paused until after the 2020 Election [3333 19-20 refers].

## **Proposed options in the consultation paper for updating the Regulations**

17. MBIE considers that access to justice should be the primary objective of the Regulations. The availability of costs is important to ensure that claimants are not denied access to legal expertise necessary to make their case when challenging decisions. Reimbursement of costs, when a claim is found to be justified, is important to ensure that claimants are not denied access to the medical expertise and appropriate effective representation necessary to make their case when challenging incorrect decisions.
18. Improving access to justice must, however, be balanced by the need to provide an efficient and effective review process for claimants, review providers, and ACC, while ensuring that reviews are not undertaken on frivolous grounds.
19. In order for claimants to be aware of the level of reimbursement to which they may be entitled, and ensure that costs are awarded on a consistent basis across all reviews, the review costs systems must be transparent and consistent. As such, we propose that the Regulations should aim to:
  - ensure adequate access to justice for claimants
  - be transparent and consistent
  - discourage frivolous and excessive litigation, and
  - support an efficient and effective review process.
20. Given this, the consultation paper aims to simplify the review cost categories in the Regulations and provide greater flexibility for reviewers in awarding costs. We propose to realign the current 14 review cost categories into the following four broad categories (Table 2 refers):
  1. Application costs:

Costs associated with the preparation and submission of an application to initiate a review
  2. Representation costs:

Contribution to costs associated with engaging a lawyer or advocate in preparing for and attending a review.
  3. Medical and other reports:

Contribution towards expert reports that a claimant may require to support their case during the review process
  4. Other expenses:

Contribution for expenses incurred by the claimant in the review process, such as travel and childcare.



**Table 2:** Proposed options for updating the cost categories under the Regulations

Cost Categories under the Regulations				Proposed Categories (option 1)		Proposed Categories (option 2)			
Category		Max Award	Rate (\$)	Category	Proposed Max (\$)	Category	Proposed Max (\$)		
1	Preparation and Lodging of Application for Review	\$136.35		1	Application costs	\$150.00	1	Application costs	\$150
2	Participation in Case Conference before Review Hearing	\$68.18		2	Representation Costs (inclusive of both lawyers and advocates)	\$2,640.00	2	Representation Costs	(scale to determine costs based on complexity, time, and qualifications of the representatives)
3	Other Preparation of Case for Review	\$409.07							
4	Appearance at Hearing	\$409.07							
5	First Hour of hearing		\$204.53						
6	Second Hour of hearing (per 15 minutes)		\$34.08						
7	Later Hours of hearing (per 15 minutes)		\$17.05						
8	Medical Specialist Report(s)	\$1,090.84		3	Medical and other reports	\$4,150.00	3	Medical and other reports	\$4,150.00
9	Other Report – One Report	\$545.42							
10	Other Report – Two or More	\$818.12							
11	First hour of preparation	\$204.53	\$204.53						
12	Second hour of preparation (per 15 minutes)		\$51.13						
13	Third hour of preparation (per 15 minutes)		\$34.08						
14	Other Expenses	\$681.77		4	Other expenses	\$1,500.00	4	Other expenses	\$1,500.00
	Within this category, travel costs	\$178.78							

21. Within these four categories, we propose to increase maximum reimbursement levels, which reviewers can award as they see fit. The current proposed maximum rates, as outlined in Table 2, will change through consultation. We will be seeking specific feedback on what appropriate maximum rates are, and what data submitters are able to provide that will help to determine the final rates. We will provide further information to you on the proposed rates, in the briefing that will accompany the draft consultation document. ‘
22. Increasing the maximum caps is intended to provide claimants with greater access to representation and medical reports, thereby increasing their access to justice where a review has been rightly brought. However, the effectiveness of the reviewers’ investigative role under the legislation should reduce the need for litigation and therefore avoid cost increases.
23. Maximum cost limits that are set too high may also incentivise claimants to pursue cases to higher review and appeal courts where there is not a definitive question of law. Incentivising disputes to be resolved quickly, efficiently, and at the lowest possible cost for claimants would free up the tribunals/courts capacity to deal with more complex disputes where there is a clear question of law. Finding the right balance for the maximum costs that can be reimbursed is complex.
24. Public consultation will provide a valuable opportunity for wider input into weighing up increasing costs above the current maximum against the risks of increasing unnecessary litigation, particularly given the current lack of data regarding claimants’ needs.
25. Further details on each of the different categories is provided in the relevant sections below.

## **Category 1 – Application costs**

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26. Under section 135 of the AC Act, an application must be made to initiate the review process. Section 148(3) also notes that if ACC revises its decision in favour of the applicant before review, after an application has been made, ACC must award costs and expenses on the same basis as a reviewer would should the review have occurred. As there are some claimants who choose to represent themselves in a review they should be able to be reimbursed for this cost, if they meet the criteria for review costs to be paid. For these reasons application costs has been placed in a distinct category separate from all other review-related costs.
27. Other costs associated with participation in the review process are explicitly ‘legal’ in nature. Therefore, they have been confined to advocates and lawyers who provide representation (Category 2).
28. There is a risk that separating out application costs from representation costs may encourage some claimants to submit frivolous claims in the hopes of recuperating application costs. It is also unknown if application costs were originally meant for representation only. Further research is required. For these reasons a question will be added into the consultation document asking whether Category 1 should continue to be separate from Category 2. Stakeholders will also be directly consulted on this matter.

## **Category 2 – Representation costs**

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29. There are significant complexities involved with representation costs, as both lawyers (governed by NZLS) and advocates (not governed by a professional body and can range from very experienced to not experienced at all) can represent claimants during a review. Given this, we propose to include two options for representation costs as part of the public consultation process:

Option (1): One maximum limit for all representatives (inclusive of both lawyers and advocates).

Option (2): Sliding scale based on complexity, time and effort involved, and qualifications of the representatives, in recognition that lawyers and experienced advocates are more likely to focus on questions of law, facilitating a more efficient review process.

30. MBIE is currently working with ACC to finalise the details of Option (2), and subject to your approval, this can be included in the consultation document.

### **There is a risk that using a single maximum award may create a new market of underqualified representatives**

31. Significantly higher maximum caps for representation costs could create a new market for representatives who are not experienced in the AC jurisdiction and may lead to an increase in unmeritorious reviews. While increasing the cap should ensure a greater access to justice for claimants there is a trade-off in that it may also encourage frivolous and excessive litigation and lower the effectiveness of the review process. More work needs to be completed, through consultation, to understand the true cost of this risk and what the best mitigation strategy may be.

### **.... while scaling representation costs based on complexity, time and effort involved, and qualifications of the representative may encourage more lawyers to practice in ACC area....**

32. In 2012 the Ministry of Justice reviewed the fees framework for civil (ACC) legal aid providers. In a submission, the New Zealand Law Society noted that in 2011 “where successful appeals occurred, claimants were represented by counsel in 56 per cent of cases, whilst success by advocates occurred in only 19 per cent of cases, and self-represented claimants were only successful in 23 per cent of cases.”<sup>1</sup> The Dean Review also found that those who used lawyers were successful 50 per cent of the time; those who represented themselves were successful 30 per cent of the time; and those who used advocates were successful 20 per cent of the time.
33. Implementing a matrix of costs will reimburse claimants for a more accurate depiction of the level of representation to which they sought. It is also hoped that more lawyers will enter the ACC area of practice as claimant demand for more highly trained representation is sought.
34. We are aiming to gain a greater understanding of the drivers of demand through targeted consultation with advocates and lawyers. This will also allow us to gather data on the true costs associated with different levels of expertise.

### **There is also a current court case (ACC v Carey) which may determine costs on appeal for advocates**

35. Mr Carey was represented by his son on his weekly compensation appeal to the District Court. Carey invoiced ACC for \$308,775, comprising of 520 hours at \$500 an hour, and \$8,500 disbursements. This was declined by ACC. ACC asked for the costs that Carey actually and reasonably incurred in the appeal. Carey had been using the District Court payment scale to determine his rates (this is the additional option that was removed due to complexity, refer paragraphs 46-48) and had put himself in category 3 which is meant for the most complex cases and the most qualified representatives. However, this scale is intended for lawyers and not advocates. The District Court Judge rejected his claim but did award him \$13,179 based on the District Court scale, on the basis that the appropriate cost category was category 2.

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<sup>1</sup> Page 11 of the LA-ACC Consultation Analysis Report: {HYPERLINK “<https://maorilandcourt.govt.nz/assets/Documents/Publications/LA-ACC-Consultation-Analysis-Report-Final.pdf>”}

36. As this decision raises an important point of principle, ACC sought and was granted leave to appeal. ACC's appeal to the High Court was heard on 23 February 2021.
37. The existing practise, for Accident Compensation court cases, is that successful advocates are paid two thirds of what a successful lawyer would be paid, dictated by the District Court scale on complexity and experience. However, it is unclear if this is the correct practise, and there have been conflicting judgments on whether the District Court scale applies to advocates. The judgement of *Carey* is expected to clearly outline what advocates should be paid, and what scale should be used (if any). The judgement is expected sometime within the next few months, although an exact date is unknown.
38. While this case may only be used as precedent by the courts (and not review decisions), the judgment will provide a solid bases and argument for which we will be able to base Option (2) on. It may also be referred to or cited in review decisions.

### **Category 3 – Medical and other reports**

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39. The Dean Review noted that a report by a psychiatrist can cost \$1,500 to \$2,500 and a neuropsychology report, which is classified as a non-specialist report currently, can cost \$1,500 to \$2,000. The current maximum reimbursements are \$1,090.84 for a specialist report and \$545.42 for a non-specialist report respectively.
40. The Regulations prescribe a higher rate for specialist reports and a lower rate for non-specialist reports. This is based on a list of 'registered specialists' of medicine defined by the Regulations. However, as noted by the Dean Review, other reports such as neuropsychology or occupational assessment reports can be equally costly, and require significant expertise, but currently fall under non-specialist category and paid at a lower rate because they fall outside the prescribed list.
41. Increasing the maximum reimbursement rate for medical and other reports aims to better reflect the actual cost to claimants in procuring reports. By simplifying the categories into one, the overly prescriptive rates for separate specialists and non-specialists is also removed. Category 3 sets a total maximum rate for one or more reports required by a claimant.

### **Category 4 – Other expenses**

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42. During the review process, a number of additional expenses may be incurred. These include, but are not limited to, travel costs, time off work, and accommodation costs. This category is therefore explicitly to provide claimants reimbursement for costs associated with attending the review. This category is not applicable to any additional costs associated with representation.
43. While not specifically addressed in the Independent Review, MBIE previously received a number of complaints that the per-kilometre rate, at 29c per km, for travel by private vehicle is too low. At the same time, only 1 per cent of cases were reimbursed at the maximum amount (\$681.77 currently) for the overall "other" cost category, averaging just \$103. A broader category would enable better utilisation of the support without undermining the substantive control over costs.
44. This category includes the mileage rate for private travel to cover costs associated with the use of a vehicle (such as petrol, insurance, registration, wear and tear etc.). We propose maintaining the mileage rate reference within the Regulations to ensure parity with the current mileage rates seen in other accident compensation regulations. Confidential advice to Government

## **Other options that were considered for consultation**

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### **Using the District Court Rules (DC rules) as a basis for representation costs (category two)**

45. The December 2019 iteration of the consultation document also included an additional option for representation costs. The DC Rules approach proposed that reviewers would apply a task-based approach to the reimbursement of legal costs, guided by the reasonable time allocations specified in Schedule 4 of the DC Rules, multiplied by a daily rate.
46. In January 2020, MBIE's Regulatory Impact Analysis Review Panel (RIARP) provided an assessment, in accordance with Cabinet Office Circular 17(3): Impact Analysis Requirements. RIARP raised concerns that the use of the DC Rules may create a perception that the processes used in the ACC review tribunal were comparable to other courts, when in fact they are not. Furthermore, the prescriptiveness and complexity of this option did not align with the broader objective of moving towards a more flexible approach for the award of legal costs.
47. The December 2019 draft consultation paper provided to the previous Minister for ACC explicitly invited respondents to provide feedback on the DC Rules option and any other potential options for the award of costs to ensure a diverse range of feedback. RIARP advised that the consultation paper would not meet the quality assurance requirement of the Regulatory Impact Assessment process if the DC Rules option remained. As a result, this option was removed from the Consultation Paper.

### **Annual Cost and Impact on the Non-Earners' Account**

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48. While there are expected to be cost increases associated with increasing costs available to claimants under the Review process, impacting both the levied and non-levied Accounts, the impact on the Outstanding Claims Liability (OCL) is currently not expected to be significant.
49. We expect that the public consultation process will yield further evidence on the extent of the current shortfall of costs in the Regulations. We are also looking to establish how large the increase will be in the additional number of reviews/appeals where lawyers and advocates are encouraging clients to pursue proceedings.
50. As such, we will provide an update to you on cost impacts (to levy payers) and any potential Budget implications following the consultation process. As a part of its stewardship role MBIE will monitor the impacts of the changes, including whether more regular or scheduled reviews of the level of costs reimbursed should be carried out.

### **Risks**

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51. We have considered the risks associated with the proposed options for consultation. A more thorough risk analysis is attached as Annex one.

### **Next steps**

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52. We are available to discuss this paper with you, and will liaise with your Office to incorporate any comments/feedback into the draft consultation document and Cabinet paper.
53. Agency consultation and the Regulatory Impact Analysis Panel review is expected to be completed by the end of April 2021. We will also consult with the Treasury and Ministry of Justice on our proposals.

54. It is anticipated that a Cabinet Paper and draft consultation will be lodged with the Cabinet Office by the end of May 2021. This will allow the paper to be considered by SWC in Early June 2021.
55. Subject to Cabinet agreement, we will undertake the consultation according to the following timeline:

<b>Milestone</b>	<b>Date</b>
Consultation paper published on MBIE website	End of June
Consultation starts	July
Consultation ends	July
Briefing on analysis of submissions and next steps	August

## **Annexes**

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Annex One: Risk assessment for key scenarios

Annex Two: Risk assessment matrix

## Annex One: Risk assessment for key scenarios

Key risk scenarios / events	Key Mitigations	Residual risk rating			Actions
		Likelihood	Impact	Rating	
Consultation gets pushed back, delaying the release of the consultation paper.	Ensuring that the consultation document is released as soon as possible	Possible	Moderate	Medium	Work together with ACC to finalise the consultation document
Providing specific rates in the consultation document may lead to distrust with some stakeholders if feedback and/ or data suggests a lower rate in the final proposal	Providing appropriate and succinct rationale for changing the rates	Possible	Moderate	Medium	Ensure that questions direct submissions to provide evidence and data as rationale for suggested rates
The proposed structure of the regulations will not have the desired effect	We plan on asking very open ended questions in the consultation document to allow submissions to propose alternative ideas	Possible	Moderate	Medium	Work through the proposal step by step to create appropriate questions
The proposal could create a new market of underqualified representatives	Ensuring that data collected through consultation is robust enough to make an informed decisions	Possible	Moderate	Medium	Ensure appropriate questions are in the consultation document
Flow-on implications for the court system	Consult with the Ministry of Justice	Possible	Minor	Low	Agency consultation

## Annex Two: Risk Assessment Matrix

	Likelihood					
		Rare	Unlikely	Possible	Likely	Almost Certain
IMPACT	Extreme	Medium	High	High	Very High	Very High
	Major	Medium	Medium	High	High	Very High
	Moderate	Low	Medium	Medium	Medium	High
	Minor	Very Low	Low	Low	Medium	Medium
	Insignificant	Very Low	Very Low	Low	Low	Medium