

## How to submit this form

# Submission form: Proposed amendments to the Accident Compensation (Review Costs and Appeals) Regulations 2002

The Ministry of Business, Innovation and Employment (MBIE) would like your feedback on proposals on updating the Accident Compensation (Review Costs and Appeals) Regulations 2002. Please provide your feedback by **5pm, on 28 March 2022**.

When completing this submission form, please provide comments, evidence, and any data that may aid your submission. Your feedback provides valuable information and informs decisions about the proposals.

We appreciate your time and effort taken to respond to this consultation.

## Instructions

**To make a submission you will need to:**

1. Fill out your name, email address, phone number and organisation.
2. Fill out your responses to the discussion document questions. You can answer any or all of these questions in the [discussion document](#). Where possible, please provide us with evidence to support your views. Examples can include references to independent research or facts and figures.
3. If your submission has any confidential information:
  - i. Please state this in the email accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 (Official Information Act) that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
  - ii. Indicate this on the front of your submission (e.g. the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
  - iii. Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

## How to submit this form

### 4. Submit your feedback:

i. As a Microsoft Word document by email to [ACregs@mbie.govt.nz](mailto:ACregs@mbie.govt.nz) with subject line:  
*Consultation: Review Costs Regulations*

ii. By mailing your submission to:

The Manager, Accident Compensation Policy  
Ministry of Business, Innovation and Employment  
PO Box 1473

Wellington 6140  
New Zealand

## Submitter information

## Submitter information

MBIE would appreciate if you would provide some information about yourself. If you choose to provide information in the section below it will be used to help MBIE understand the impact of our proposals on different occupational groups. Any information you provide will be stored securely.

### Your name, email address, phone number and organisation

Name:	Kym Koloni
Email address:	Privacy of natural persons
Phone number:	
Organisation:	I.C.E. Insurances Ltd

- The Privacy Act 1993 applies to submissions. Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE may publish.
- MBIE may upload submissions or a summary of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do **not** want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below:

I do not want my submission placed on MBIE's website because... [insert reasoning here]

### Please check if your submission contains confidential information

- I would like my submission (or identifiable parts of my submission) to be kept confidential, and **have stated** my reasons and ground under section 9 of the Official Information Act that I believe apply, for consideration by MBIE.

## Proposed updates to the Accident Compensation (Review Costs and Appeals) Regulations 2002

### Proposed updates to the Accident Compensation (Review Costs and Appeals) Regulations 2002

#### Questions on the proposed objectives

1. Do you agree with the presented objectives?

Yes       No       Not Sure

2. Are there alternative objectives that should be considered to help shape the discussion? (please provide detail on any alternative objectives you consider relevant)

Ensure claimants receive fair reimbursement of costs per km of travel at review.

#### Questions on the proposed cost categories

3. What do you think about the proposed cost categories?

I disagree with the proposal to simplify the cost categories. The prescriptive nature of the current 14 categories provides certainty so the award of costs can be consistent.

The proposed changes will allow discretion by the reviewers and may end up with inconsistencies that increase the number of appeals on costs.

4. Do you agree with the proposed categories?

Yes       No       Not Sure

Why/ why not?

It is too simplified, and I believe it will end up with confusing situations based on complexities, and the reviewer's discretion to award costs will be appealed.

5. Are there any other alternative options for grouping the cost categories that could be used? Please provide supporting information.

I believe there needs to be an additional step to consider including – that between the case conference and the review hearing, where additional information may be sought, and representation is needed to assist here. This could be in the time involved in seeking a second opinion (requests for additional information), as well as attendance at specialist appointments with claimants etc.

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**Questions on Category 1 – Application costs**

6. Should Application Costs (Category 1) remain separate from Representation Costs (Category 2)?

- Yes       No       Not sure

Why/ why not?

Application Costs involve not only the completion of ACC33 Application for Review form, but the pre-application time involved in investigating whether there is indeed a reasonable review to be lodged in the first place. The Representation Costs can be incurred prior to the lodgement and between the Case Conference and the actual Review Hearing.

The addition of the Way Finders scheme etc has assisted claimants prior to review, so the information from their involvement of time and effort will assist in understanding the extent of the representation costs needed.

7. Do you agree with the proposed increase in maximum costs awardable for Application Costs? (please circle or highlight your response)

Strongly Disagree
<b>Disagree</b>
Neither
Agree
Strongly Agree

**Questions on Category 2 – Representation costs**

8. Based on the options provided in this document, what is your preferred option? (please circle or highlight your response)

**2.1 One maximum limit for all representatives**

OR

2.2 Sliding scale based on complexity and/or time and, qualification of the representative.

Please provide the reasons for your view

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The ACC scheme was never set up to the extent that New Zealanders would need to engage the services of the legal fraternity to represent them in a dispute process – it was introduced to be a partnership of utmost good faith and where disputes processes were informal and friendly. The legal aid available to claimants that engage the services of lawyers to represent them is not available to advocates. The costs never cover the full extent of the time and attendance, but lawyers have other avenues to increase the repayment of their fees – whereas advocates don't. I believe the increase in these costs should indeed be supported – but not distinguished between advocates and lawyers.

9. Do you have any other suggested options or groupings to categorise Representation Costs (Category 2)?

Yes – I suggest there should be an extra step in the categorise to recognise the representation costs PRIOR to the lodging of the Review Application, but also the representation between the Case Conference and the Review Hearing itself.

There also needs a distinction to be made where a hearing is adjourned part-heard. The additional time at appearance of the adjourned hearing should be on the basis of the same First Hour of Hearing, especially as it's often the reviewer or ACC that are requesting this, not the claimant. Lawyers already charge this way so it's only fair.

It would make sense to allow the reviewer the discretion to agree to the costs involved in seeking a second medical opinion prior to the review – in seeking further evidence. With the proposed breakdown of changes, and lumping some of the 14 cost categories together, it leaves it up to the discretion of the reviewer as to the award of costs up to \$4,150. I think this could be abused, and it makes it more transparent and consistent so that everyone is on the same page (while still allowing an element of discretion if needed).

10. Is there any information to support or reject the distinction that is made between lawyers and advocates (Option 2.2)?

I reject the proposed distinction being made between advocates and lawyers. It would take a lot more than these increases to attract lawyers into the ACC space, as these cases can be very complex, and nothing is straight forward when dealing with injuries, and individuals. The work involved does not change, regardless of whether you are an advocate or a lawyer.

11. Do the proposed new rates reflected in Option 2.2 reflect appropriate market rates for lawyers and advocates?

Yes     No     Not sure



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If not, is there any information that can be shared to inform this discussion.

The increases are welcome, but still do not reflect the hourly rate based on the amount of hours involved in taking some of these complex cases to review. Lawyers are only interested if you can pay their hourly rate up front, or if you qualify for legal aid (in addition to any award of costs they may get at a review). Unfortunately, there are many people that do not fall into either of those categories. I believe the current hourly rate for a lawyer is \$400 + GST per hour.

12. Do you agree with the proposed new maximum costs awardable for Representation costs (both options)? (please circle or highlight your response)

Strongly Disagree
Disagree
Neither
Agree
Strongly Agree

13. Do you think the proposed changes will increase access to justice (and therefore improve outcomes) for claimants?

- Yes    
  No    
  Not sure

If not, why not?

The increases that were proposed in the April 2021 advice document proposed Option 2 having 3 levels – A, B and C. This would make more sense, however there is still going to be disagreement as to which complexity or timeframe the current review would fit under. The proposal you have made for just 2 options is much lower than that proposed in the April 2021 paper, and in fact REDUCES the amount awarded to an advocate for a simple review of one-hour hearing – and appears to be an error. I certainly do not support any suggestion or recommendation where the award of costs is LESS THAN what is currently now provided for – and believe there must have been an error.

14. Is there any evidence/data or precedence that could be used to determine the complexity of a review (i.e. which cases should sit in which categories (ie A or B))?

I don't know of any additional evidence, apart from the information you could already gather from the the statistics held – e.g. the adjourned part-heard hearing data, along with the number of reviews that run past the one, or two hour hearings would be minimal.

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### Questions on Category 3 – Medical and Other Report costs

15. Currently, the medical reports categories can be used for multiple reports. Is there any information to suggest the capped approach is inappropriate? Please provide supporting information.

I would like to see an element of discretion being given to the Reviewer at the Case Conference stage, so that the obtaining of further medical evidence can be agreed to, and costs can be discussed, so access to this can be agreed by all parties, and the claimant has certainty that even if the review decision is not granted in their favour, the costs associated with obtaining this evidence can at least be approved for payment.

16. Do you think the proposed new rates will increase access to medical reports (and therefore access to justice) for claimants?

Yes     No     Not sure

Please explain your view.

The costs associated with obtaining medical advice has increased year on year and is not set to decline (with the pressure on medical opinion being at an all-time high due to the shortage of specialists in NZ). The increase in rates for reports will give comfort to the medical fraternity that the cost of providing reports for claimants will be reimbursed.

17. Do you agree with the proposed new maximum costs awardable for Medical and Other Report Costs? (please circle or highlight your response)

Strongly Disagree
Disagree
Neither
Agree
<b>Strongly Agree</b>

18. Do you think removing the distinction between registered specialist reports and other reports will improve claimant's access to reports?

Yes     No     Not sure

Please explain your view.

I hope so – but I would also hope that the discretion of agreeing to the award of costs at a Case Conference could also be considered, so there is comfort and agreement with all parties for these expenses to be reimbursed prior to the review



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hearing.

I think the limit is great, but that the prescriptive nature of the award of costs (and the distinguishing between reports) can be over-ridden by an agreed level of discretion, so common-sense and future proofing can prevail.

**Questions on Category 4 – Other expenses**

19. Do you think the new rates will increase access to in-person reviews for rural communities?

- Yes     No     Not sure

Why/ why not?

In light of my comments below around my suggested travel costs, (increase by 3x current amount and include air travel), this could allow the rural community access to in-person reviews too.

20. How can ‘Other Expenses’ (Category 4) be improved to enhance support for rural communities?

Please provide supporting information.

I think at a Case Conference, the reviewer could have the discretion to award and agree to certain costs paid up front, in seeking a second opinion, or gathering additional evidence, or agreeing to the costs of travel to be reimbursed. This would give claimants the comfort and take away the uncertainty of waiting for a reviewer's decision following a hearing, before knowing if certain costs have been awarded to reimburse out of pocket expenses to date. I don't believe the current system is fair – and leaves the claimant with the burden of finding the money to pay for things upfront, on the HOPE that these expenses are reimbursed following a decision in the future.

21. Do you agree with the proposed new maximum costs awardable for Other Expenses? (please circle or highlight your response)

Strongly Disagree
Disagree
Neither
<b>Agree</b>
Strongly Agree

## Proposed updates to the Accident Compensation (Review Costs and Appeals) Regulations 2002

### Questions on the overall proposed changes to the Regulations

22. Are there any other costs, benefits, or unintended consequences of the proposed changes that have not been considered in this document?

I think the proposed increase is fair – as long as the total travel costs is increased at least 3 x the current maximum and reflect an increase to 0.63c per kilometre travel (as per other suppliers/providers within the ACC framework), and also takes into account air travel. Also, there could be a discretionary award here for additional costs that are outside these descriptions, on a case by case basis (and only if needed).

23. Do you think MBIE should conduct regular reviews of the maximum cost caps in the regulations?

Yes     No     Not sure

24. Do you have any comments on the alternative approaches considered?

I think this should take place every year, based on inflation. The proposed changes that have been made in the past have reflected inflationary adjustments – but countering these increases based on a past rate of inflation doesn't address the future cost-proving that is needed.

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### Questions on Alternative Dispute Resolution (ADR)

25. If the regulated timeframes are extended while clients are engaged in ADR, what effect do you think it will have on claimant's decisions to use ADR and the external review process? Please provide supporting information.

I do not support extending the timeframes if a client is engaged in ADR. There is already flexibility to move the timeframes with the agreement of all parties.

26. Have you incurred costs as a result of undertaking ADR? What are these and did it impact on decisions to proceed with an external review?

Yes, I've incurred costs, but these were awarded on the same basis as if it was a review.

27. If a level of reimbursement for costs was to be included for ADR in the Regulations, what should be taken into consideration?

I think the award of costs would be on the same basis as the regulated costs for a review.

28. Would the inclusion of a level of reimbursement for ADR costs change your position on undertaking ADR in comparison to an external review?

I think it depends on the circumstances as to whether ADR or review is the best option for the claimant. The award of costs would ordinarily follow on the same basis as if it had been a review.