

Submitter information

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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:

Lesley Soper

Email address:

Privacy of natural persons

Phone number:

Organisation:

Southland ACC Advocacy Trust

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- 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

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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)

[insert response here]

The Court should actively support ongoing training + PD in the ACC Advocacy field by funding at least 1 Law School to offer a specialist post-graduate paper in ACC law - higher rates of Regs Sued. This can be tied to those who attain this paper.

Questions on the proposed cost categories

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

[insert response here]

Yes to the Reduction to 4 Categories. Less happy with proposal to split Representation costs by complexity + qualifications of representative.

4. Do you agree with the proposed categories?

Yes No Not Sure

See Separate Sheet.

Why/ why not?

[insert response here]

Proposal to Split Representation Costs by complexity + quals of representatives is unnecessarily complex + will be messy to administer.

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

[insert response here]

1 set of Representation costs, but requirement over time that Advocates have at least above suggested Specialist Paper.

See Separate Sheet.

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?

[insert response here]

Applications are sometimes made + then an Agreement with ACC changes the decision + they can be withdrawn. There should be at least a minimum filing cost able to be charged in such cases.

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

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

Strongly Disagree
Disagree
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 — with suggested additional PD for representative as suggested at 2
OR

2.2 Sliding scale based on complexity and/or time and, qualification of the representative. —
Complex + messy to administer.

Please provide the reasons for your view

[insert response here] *See Separate Sheet.*

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

[insert response here]

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

[insert response here] *The Trust has both a Lawyer and an experienced ACC Advocate on staff — they spend equal time on ACC files & Submissions.*

11. Do the proposed new rates reflected in Option 2.2 reflect appropriate market rates for lawyers and advocates? *Debatable. Need constant Review.*

- Yes No Not sure

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

[insert response here]

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

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

A cost improvement as long as there is legislated regular Review - suggest every 2 years.

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

Yes No Not sure

Hopefully will lead to more experienced lawyers taking ACC cases.

If not, why not?

[insert response here]

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)?

[insert response here]

Extremely complex to determine - a survey of just cases over last 5 years would rate 85% as complex.

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.

[insert response here]

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.

[insert response here]

The \$1090.84 current limit for Specialist Reports has made it impossible for many claimants to be able to fairly pursue a Review case. Many specialists [we have multiple examples] now charge \$2500 plus for Medical Reports - this puts the personal cost for a claimant (who may only be on a Benefit) out of reach for many claimants.

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

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 ✓
Strongly Agree

But must be regularly reviewed to ensure it stays in line with reality - the current costs have been allowed to remain unrealistic for too long.

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 *Possibly.*

Please explain your view.

[insert response here]

The Trust experience is that most Reports used for Review purposes come from Registered Specialists, and these carry most weight.

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 *Probably.*

Why/ why not?

[insert response here]

Current mileage rates are unrealistic + out of step with private sector + other govt dyts and the reality of travel costs.

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

Please provide supporting information.

[insert response here]

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

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

Strongly Disagree
Disagree
Neither
Agree ✓
Strongly Agree

Regular Review necessary.

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?

[insert response here]

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?

[insert response here]

Further notes and comments from Trust staff included on a separate sheet.

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

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.

[insert response here]

Will discourage use of ADR

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?

[insert response here]

The Trust undertakes ADR when we assess it will achieve better and swifter outcomes for the claimant. We have incurred additional travel costs when doing this - increase in mileage rate would assist.

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

[insert response here]

Preparation for ADR is as intensive as for Review. Reimbursement must be at least at same level in all categories.

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

[insert response here]

The Trust always assesses first and foremost what is the best outcome for the claimants we represent. In a number of cases we have therefore worked with ACC to achieve an outcome without ever filing an Application for Review and therefore not being able to apply for any costs, but have always expected ACC to pay for any specialist reports agreed to in such cases. A level of reimbursement alone would not alter our assessment of what is best for each claimant.

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ADDITIONAL PAGE TO SUBMISSION FORM

Objectives (2)

The Trust suggests it would be useful to add along the lines of:

- ‘To encourage & facilitate the right to a fair & independent review of ACC’s decisions.’
- ‘To improve claimant ability to obtain appropriate & affordable representation in order to present the best legal case, on an equal footing with ACC Review Specialists.’

Overall Proposed Changes : Further Comments (24)

Representation Costs:

Note: Table 3 on p.15 & Table 6 on p.19 of the Proposal Document contain different figures for Category A/Advocates. Presume the proposal intends that Advocates should be able to claim only 50% of what is proposed for lawyers?

The Trust points out that we employ 1 qualified lawyer & 1 experienced Advocate (15 years ACC Advocacy & Review Work). The 2 work together. The proposal would lead to a perverse incentive for the lawyer to sign off all Review work. If it is the proposal’s intention to attract more lawyers to practice ACC law & to discourage Advocates without legal qualifications, then the proposal should state this explicitly rather than pussyfoot around on it inventing a complicated formula to pay Advocates at 50% of a lawyer rate (which in itself may not be set at a sufficient level).

Which leads to our next point. The Trust maintains if this is the intention then the Government needs to be serious about funding at least one of NZ’s Law Schools to offer a specialist post-graduate paper in ACC Law; and only when time has allowed a reasonable number of practioners (both lawyers & Advocates) to attain this should higher rates of representation costs be tied to those who have legal qualifications (including that paper).

The Trust definitely agrees that the current Regulations are insufficient in all cases; particularly on Representation Costs and the cost of Specialist Clinical Opinions. The current Registered Specialist maximum of \$1090.84 has been ridiculously underpriced for some years. Very pleased the proposal recognises that, but please write in a regular check on the new maximum amount, or the reality is that the expenses will soon be out of sync with reality again.

The same goes for Current Representation costs, which have been ridiculously underpriced for some years. The proposal is a big improvement, but the Trust points out that many ‘complex’ cases take far more than 12 hours of work to formulate a reasonable Review Case for Hearing, & ‘less complex’ cases are relatively few & far-between; even those often take more than 6 hours to prepare.

The attempt to delineate ‘complex’ & ‘less complex’ cases in a complicated formula for representation costs will be administratively fraught, & will always leave a certain number of cases

'on the margins'. To 'Complex' cases we would add; Any Case involving Deemed Cover/revocation of Deemed Cover/reference to s.65 or ss. 57/58 of the Act; any Case involving Schedule 1 entitlements; any Case involving Complex/Chronic Pain Assessments; any Case involving LSIA Assessment Disputes where further clinical evidence is essential to the case.

Not at all convinced that the proposal gets this attempt to split by complexity & time and the qualifications of the representative right. Time & more research on the current Review processes; use of Advocates v Lawyers; success rates; followup of claimant satisfaction, may tell. It would have been good in the Proposal to see more explicit comment on the research that led to the split proposal for Representation Costs.

Please institute at least a 2-yearly Regulation Review of the Scale of Costs & Expenses as part of these Amendments.

The Trust looks forward to updated Regulations in the near future.

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