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Privacy of natural persons

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

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Answers to questions in the proposal document

A brief history of my relationship with ACC:

In 1994 I set up Stu Macann @Associates Ltd and provided vocational rehabilitation services to ACC . From 1995 onwards I expanded my operation and had at one stage 8 offices throughout NZ providing vocational rehabilitation services to ACC. I later disagreed with ACC's vocational direction and withdrew my services from them in 2007. ACC had stopped real rehabilitation and went to a tick in the box approach to vocational rehab, which they still continue with today. I met with the minister, Nick Smith, on many occasions and the chairman, David Caygill, to discuss my concerns.

From 2015 I contracted to lawyers and advocates challenging ACC vocational independence decisions and wrote reports for them disagreeing with the VIOA reports written by ACC contracted providers.

During 2018 I became a medico legal advocate representing ACC claimants at reviews and appeals. I continue with this work today.

Since 2018 I have also been a member of the ACC scheme customer advisory panel (SCAP).

1. Do you agree with the presented objectives? [Yes/ No/ Not sure]

In principal I agree with the presented objectives.

*Under 'discourage frivolous and excessive litigation'
I believe this can be handled 'in terms of costs awarded' by not awarding any costs where it is deemed that the review is frivolous. This capability is currently available to reviewers but may not be administrated as well as it could be. Advocates who are taking frivolous case to review will get the message that it's not worth doing.*

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

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

I agree with the reduced categories. See question 6

4. Do you agree with the proposed categories? [Yes/ No/ Not sure]
Why/ Why not?
refer to question 6

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

Refer to question 6

6. Should Application Costs (Category 1) remain separate from Representation Costs (Category 2)? [Yes/ No/ Not sure]
Why/ why not?

Application costs should be included in representation costs. The allocation for this step should be set to the level to allow meaningful engagement between the claimant and the representative. This should allow an understanding to be gained of the possible merits of proceeding to review rather than simply the procedural step of lodging the review.

7. Do you agree with the proposed increase in maximum costs awardable for Application Costs?
Disagree

I think \$150 is too low and is only marginally higher than the current rate of \$136.35. I recommend that the time allocation (within the category of representation costs) be set at 1 to 2 hours at the time cost set for representatives to undertake an initial consultation and lodge the review application.

Please refer to my comment on point 6.

8. Based on the options provided in this document, what is your preferred option? (please provide the reasons for your view)

2.1 One maximum limit for all representatives

OR

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

I do not agree with the numbers in 2. 1 and 2.2.

In 2.2 The use of Carey is inappropriate as Carey was represented by a family member, his son, and not an experienced advocate.

As the High Court noted in *ACC v Carey*:

... “if a robust approach to costs is not undertaken, ACC – deliberately or unwittingly – externalises the financial burden of flawed decision-making processes onto claimants and the wider community” so obscuring the true cost for administering the scheme.

Similarly, in *ACC v Carey* the High Court stated:

Research has confirmed the complexity of the ACC jurisdiction and that representation is important to claimants. A claimant cannot obtain more than the statutory entitlement under the Accident Compensation regime even if successful, therefore a successful claimant should not be left out of pocket at the conclusion of the appeal process in which a non-legal advocate has provided assistance. Such an outcome would be antithetical to the purpose of the AC Act 2000 [sic]

I propose a 3 tiered payment structure as follows:

- *Family and friends not experienced in representing claimants(IE Carey) \$100 per hour*
- *Experienced professional advocates \$200 per hour*
- *Lawyers \$250 - \$400 per hour*

The figure you quoted of \$220 per hour for a lawyer is too low and will not attract lawyers to enter the ACC space. I suggest the rate that ACC pays it’s contracted lawyers should be used which I understand is in the order of \$400 per hour.

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

Please refer to my point under question 8

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

I reject the distinction as you have based it on Carey who was neither a lawyer or an advocate. Carey was supported by his son who had no prior experience of representation.

11. Do the proposed new rates reflected in Option 2.2 reflect appropriate market rates for lawyers and advocates? [Yes/ No/ Not sure]

No. The top rate is too low and the distinction of a 50% lower rate for anyone who is not a lawyer is too low. 70 – 75% for an experienced advocate is more appropriate. Please refer to question 8.

12. Do you agree with the proposed new maximum costs awarded for representation costs (both options)?

no

13. Do you think the proposed changes will increase access to justice for claimants?

No. It will not bring more lawyers into the ACC space and it does not increase the access to justice for many people who cannot afford to pay 'normal' lawyers fees.

14. Is there any evidence to determine the complexity of a review?

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

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.

Yes, as some medical reports cost up to \$4,000 EG psychiatrists and that has stopped reviews proceeding for some of my sensitive claim clients

17. Do you agree with the proposed new maximum costs awardable for Medical and Other Report Costs?

If it is a per report cost, yes. If it is a maximum when more than one report are required, no. (you refer to 2 reports for this figure) There are examples where more than two reports are needed. For example, in a complex case it is likely that a surgeon's report and a radiologist report as well as a occupational physician or an independent vocational opinion will be required. Many files I deal with, ACC has sort opinions from more than 5 different medical specialists and yet you propose to limit the claimant to 2 maximum. This is not a level playing field.

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 doubt it will make much difference

19. Do you think the new rates will increase access to in-person reviews for rural communities? [Yes/ No/ Not sure]

yes, if you increase the per km rate to the IRD recommended rate of 79 cents per km

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

Increase the per km rate

21. Do you agree with the proposed new maximum costs awardable for Other Expenses?

yes

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

23. Do you think MBIE should conduct regular reviews of the maximum cost caps in the regulations? [Yes/ No/ Not sure]

Yes, certainly should do so. but I am concerned that it has taken MBIE 6 years to get this review done. The Dean report said that costs at review were a barrier to justice.

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

No further comment



Stuart Macann