



## COVERSHEET

<b>Minister</b>	Hon Carmel Sepuloni	<b>Portfolio</b>	ACC
<b>Title of Cabinet paper</b>	Final Proposals – Approval for Updates to ACC Regulated Payments for Treatment	<b>Date to be published</b>	5 April 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
December 2022	Final Proposals – Approval for Updates to ACC Regulated Payments for Treatment	Office of the Minister for ACC
7 December 2022	Updates to ACC Regulated Payments for Treatment: Final Proposals DEV-22-MIN-0300 Minute	Cabinet Office
1 December 2022	Regulatory Impact Statement: Proposals for updates to ACC regulations dealing with treatment payments after 2020/21 review	MBIE

### Information redacted

**YES / NO [select one]**

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Office of the Minister for ACC  
Chair, Cabinet Economic and Development Committee

## **Final Proposals - Approval for Updates to ACC Regulated Payments for Treatment**

### **Proposal**

1. I am seeking Cabinet agreement to updates to ACC's regulated payments for treatment, including bespoke increases for individual professions, ranging from 4.6 percent to 9.36 percent and the introduction of a nurse practitioner and registered nurse combined rate.
2. The treatment rates proposed to be updated are regulated by the Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003 (the Cost of Treatment Regulations).
3. I am also seeking Cabinet agreement to a nil increase of audiology rates under the Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010 (Hearing Loss Regulations).

### **Relation to Government priorities**

4. The proposals in this paper are not directly related to Government priorities.

### **Executive Summary**

5. The ACC regulatory regime includes the Cost of Treatment Regulations, which specify the payments that can be made to treatment providers for treating ACC claimants. The regime also includes the Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010 (Hearing Loss Regulations).
6. ACC is required to undertake a biennial review of regulated treatment costs and Hearing Loss Regulations. The review must assess whether any changes to the rate of payments ACC makes to providers are required to take into account changes in the costs of rehabilitation. The 2020 review process was delayed by COVID-19 and the need for more detailed work to tailor the increases to the wage movements applying to different occupational groups in the health sector.
7. On 19 September 2022, I received Cabinet agreement to consult on my preferred increase, which included bespoke increases for individual professions ranging from 4.6 percent for the medical practitioners and registered nurses combined

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rate, to 9.36 percent for all allied health professionals like physiotherapists [CAB-22-MIN-0390 refers].

8. This consultation ran from 21 September to 18 October 2022 and received 45 submissions from a variety of health professionals. Nearly all submitters supported the need for increased payment rates, with some wanting more substantive increases to the proportion of treatment costs covered by ACC. Following the consultation, I recommend progressing the changes which were consulted on.
9. I propose the following changes to the Cost of Treatment Regulations:
  - **Bespoke increases for treatment providers** (excluding audiologists) ranging from 4.6 percent to 9.36 percent, and
  - **Introduction** of a nurse practitioner and registered nurse combined rate.
10. 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.
11. I am also proposing a nil increase for audiologist rates under the Hearing Loss Regulations. This is based on advice from ACC that at the time of the 2020 review, there had been no increase in cost-related access issues for audiologists
12. I understand that audiologists opposed this proposal in the consultation, stating an increase is needed due to a variety of factors, including rising labour costs in 2022. I expect ACC to consider audiologist rates in their upcoming 2022 review, due to me by 1 December.
13. If the proposed updates are approved, officials will work with Parliamentary Counsel Office to draft regulations to be considered by the Cabinet Legislation Committee. I am seeking for the increased rates to apply from 1 April 2023.

### Background

#### ***ACC regularly reviews regulated treatment payments to consider changes in the cost of rehabilitation***

14. The Cost of Treatment Regulations specify the payments made to treatment providers for treating ACC claimants. These apply where ACC does not have specific contracts with treatment providers. Costs paid under the Cost of Treatment Regulations typically represent approximately 17-19 percent of ACC's total funding for treatment annually. In the 2020/21 year, ACC spent \$331 million on regulated treatment payments (excluding audiology payments). Other funding mechanisms include contracts and Public Health Acute Services agreements.
15. Section 324A of the Accident Compensation Act 2001 requires ACC to undertake a biennial review of regulated treatment costs and make a recommendation to the

Minister for ACC by 1 December of the given year. 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.

16. ACC completed an initial review in December 2020, but the final review was deferred until late 2021. This deferral allowed ACC to make more comprehensive and bespoke pricing recommendations to take account of differences in labour cost pressures between professional groups. The impact of COVID-19 had prevented this work from being undertaken earlier. ACC made its final recommendations to me in January 2022.

***ACC explored four options to calculate increases for updating the regulated treatment rates***

17. ACC explored the following four options for calculating increases to the regulated treatment rates, including the status quo of making no increases:
  - **Option A:** No increase to the Cost of Treatment Regulations.
  - **Option B:** Use the increase in the Labour Cost Index (LCI) for health care and social assistance (approximately 6 percent), which was the method used in prior reviews.
  - **Option C:** Use the overall average former District Health Board (DHB) multiple employer collective agreement (MECA) increase of 6.61 percent.
  - **Option D:** Use tailored payment increases for each of the main occupational groups.
18. These options were assessed against the following policy objectives:
  - Claimants have access to treatment, meaning co-payments should be affordable.
  - Costs to ACC are sustainable, affordable and predictable (gradual increases).
  - Payments are not too dissimilar between the health and ACC systems.
19. Option D best met the policy objectives so was put forward as the preferred option for the consultation undertaken in September and October 2022. Option D is the final proposal I am seeking approval for in this paper so appropriate changes can be made to the Cost of Treatment Regulations.

***I consulted on bespoke payment increases for different types of treatment providers***

20. I consulted on the bespoke payment increases set out in **Table 1** on the following page.

**Table 1: Proposed payment increases**

Treatment provided type	Proposed increase to treatment rate
Counsellors	9.36%
Dentists	5.70%
Hyperbaric Oxygen Treatment	5.70%
Medical Practitioner and Nurse combined consultations	4.60%
Medical Practitioners	5.70%
Nurses	7.85%
Nurse Practitioners	7.85%
Radiologists	5.70%
Specialists	5.70%
Specified treatment providers	9.36%
Audiology	0.00%

21. The main driver of cost increases for treatment funded by ACC is increases in the cost of labour of those workers involved in providing ACC funded treatment.
22. ACC therefore looked at wage increases in relevant occupational groups in the health sector since 2016, calculated from movements in the wage scales in the former DHB MECAs.
23. While there were other MECAs in the health sector, it was considered that the DHB MECAs were the main driver of labour costs, with private sector MECAs tending to follow the DHBs.
24. The relevant MECAs were those for Doctors, Nurses, and Allied Health professionals. The calculations led to ACC's recommended bespoke payment increases for individual professions, ranging from 5.7 percent for medical practitioners to 9.36 percent for all Allied Health professionals like counsellors.
25. As an example, with the proposed changes, counsellors' rates would increase by 9.36 percent from \$76.57 an hour (non-specialists) and \$97.66 an hour (specialists) to \$83.74 and \$106.80 an hour. The standard treatment rate for specified treatment providers, which includes chiropractors, physiotherapists, and acupuncturists, would also increase by 9.36 percent from \$23.90 to \$26.14.

*Public consultation feedback*

26. Most submitters agreed with the need for an increase in payment rates to at least reflect wage increases in relevant occupational groups.
27. Some submitters considered a greater increase to rates is required to cover inflation until the next review takes effect. Other submitters wanted more substantive increases, sufficient to increase the proportion of cost covered by ACC, to reduce the co-payments faced by claimants.
28. Some also disagreed with the model for funding treatment more generally (the existence of co-payments where the claimant pays for some of the cost), rather than the specific proposals.

*I am seeking Cabinet agreement to make bespoke payment increases*

29. I am proposing to change the Cost of Treatment Regulations in order to include these bespoke payment increases set out in **Table 1** on the previous page.
30. I am not proposing to amend any of the proposals consulted on. I consider that the proposed increases to payment rates appropriately balance the objectives of ensuring ACC claimants have access to treatment against ensuring costs to ACC are sustainable and predictable. Furthermore, the increases are similar to those that have occurred in the broader health sector. The increases will facilitate continued access to treatment services.
31. In terms of the use of co-payments more generally, it is not within the scope of this review to assess the wider policy of how treatments are paid for under the Accident Compensation Scheme. I am continuing to focus on increasing the regulated rates that ACC pays providers for treatments and am not seeking to review the co-payment model at this stage.
32. I have discussed the issue of co-payment affordability, and the impact this has on access to healthcare, with the Minister of Health, Hon Andrew Little. We agreed it will be considered alongside implementation of the health reforms.

*I also consulted on a nil increase for rates payable to audiologists*

33. As part of the 2020/21 review, ACC recommended that no increase be made to prescribed rates payable to audiologists. That is because at the time of completing the 2020/21 review, ACC considered that there had been no increase in cost-related access issues for audiologists.
34. With ongoing technology changes, which included improving the ability of clients to self-programme hearing devices, an increase in device fitting fees was considered to be inconsistent with market trends.

*Public consultation feedback*

35. Of the submissions which disagreed with the proposals, the majority were from audiologists opposing the proposed nil increase to audiology payments. Most argued that the proposal showed a lack of understanding of how the industry operates and what works best for those needing treatment for hearing loss.
36. Many submissions from the audiology sector concerning this proposal also referred to cost pressures facing the industry, including the cost of living and increase in wholesale cost of hearing aid devices in 2022.

*I am seeking Cabinet agreement to a nil increase for payments to audiologists*

37. I do not propose to increase rates for audiologists in this 2020/21 review. However, this is not because I am convinced that an increase to the prescribed rates payable to audiologists is not required. I understand that submitters from the audiology sector have raised concerns with a nil increase.
38. ACC have provided their recommendations from the 2022 review of the Cost of Treatment and Hearing Loss Regulations. In the 2022 review, ACC have specifically considered audiology payment rates and recommended a bespoke increase. I will consult on this increase in 2023, and come back with further recommendations to be implemented in late 2023.

***I consulted on introducing a new rate for combined treatment by a nurse practitioner and registered nurse***

39. I also consulted on introducing a new combined treatment rate for a consultation that involves both a nurse practitioner and a registered nurse, as set out in **Table 2** on the following page. A combined rate encourages collegial work and avoids providers needing to bill in two parts and claimants potentially paying two co-payments. This is intended to function in the same manner as the current medical practitioner and registered nurse combined rate under regulation 15 of the Cost of Treatment Regulations.
40. The new rate was calculated from the rates currently applying to nurse practitioners and registered nurses. It will also be uplifted by the proposed 4.6 percent bespoke increase applying to combined treatment rates, with variations for the age of the claimant and whether they hold a Community Services Card.

**Table 2: Combined Nurse Practitioner and Registered Nurse Rate**

Definition	Proposed Nurse Practitioner and Nurse combined treatment rate	Rate after proposed bespoke increase
If the claimant is 14 years old or over when the visit takes place and is not the holder of a community services card or the dependent child of a holder	\$29.33	\$30.68
If the claimant is under 14 years old when the visit takes place	\$54.21	\$56.70
If the claimant is 14 years old or over when the visit takes place and is the holder of a community services card	\$50.88	\$53.22
If the claimant is 14 years old or over but under 18 years old when the visit takes place and is the dependent child of a holder of a community services card	\$55.71	\$58.27

41. There is an increasing number of nurse practitioners operating in general practice. They play a vital role in the delivery of primary health care, particularly in rural and lower socioeconomic areas.
42. To calculate the proposed new combined rate for nurse practitioners and registered nurses, ACC used the same methodology it uses to set the medical practitioner and registered nurse combined rate. It considered the individual rates of both nurse practitioners (as a base) and registered nurses (as an additional top up) and calculated a combined treatment rate for each class of claimant.

*Public consultation feedback*

43. All submissions providing feedback on the proposed combined rate for treatment by a nurse practitioner and registered nurse supported the proposal.

*I am seeking Cabinet agreement to introduce a new combined rate for treatment by a nurse practitioner and registered nurse*

44. I am seeking to introduce a nurse practitioner and registered nurse combined treatment rate in the Cost of Treatment Regulations, with the variations as set out in **Table 2** above.



## **2022 Review of Cost of Treatment and Hearing Loss Regulations**

45. ACC has provided their recommendations following a 2022 review of the Cost of Treatment and Hearing Loss Regulations. These have been developed using the same methodology as the 2020 proposals that I have sought approval to implement in this paper.
46. Proposed changes to the Cost of Treatment and Hearing Loss Regulations resulting from the 2022 review will require targeted consultation with industry bodies and any other interested parties. The Ministry of Business, Innovation and Employment will conduct this targeted consultation in 2023.

### **Consultation**

47. The Department of the Prime Minister and Cabinet and Te Puni Kōkiri have been informed about the 2020 review proposals in this paper.
48. The following agencies and Crown entities have been consulted on the 2020 review proposals: ACC, the Treasury, the Ministry of Social Development, Manatū Hauora, Te Whatu Ora, Whaikaha - Ministry of Disabled People, the Ministry for Women, and the Ministry for Pacific Peoples.

### **Financial Implications**

49. The proposed increases in payment rates will increase spending by ACC by \$23 million annually.
50. However, an estimate of inflation in treatment costs has already been factored into ACC's levy, appropriation, and Outstanding Claims Liability (OCL)<sup>1</sup>. The additional cost associated with this proposal resulted in an immaterial impact on levies, appropriations and the OCL.

### **Legislative Implications**

51. If the proposals in this paper are agreed to, the Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003 will be amended to implement the changes.
52. If approved, the amended regulations are expected to come into force on 1 April 2023.

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<sup>1</sup> The Outstanding Claims Liability is the actuarially-estimated lifetime cost (up to 80 years) of all claims incurred at a given point in time. ACC's OCL on 30 June 2020 was \$61.5 billion and the estimate of inflation calculations added \$95 million to the OCL in June 2022, which is approximately less than 0.5 percent of an increase.

### **Impact Analysis**

53. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement partially meets the criteria necessary for Ministers to make decisions on the proposals, noting that this is an established process and the scope is constrained to offsetting the potential impact of increases in wages on costs of treatment. It is noted however, that limited information is available to support the Regulations review.

### **Climate Implications**

54. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there is no direct emissions impact.

### **Population Implications**

55. Cost is more likely to be a barrier to accessing treatment for Māori, Pacific peoples, disabled people, ethnic communities, and rural communities.
56. The proposals aim to maintain access to treatment for these population groups, by minimising the risk that treatment providers will pass on increased costs by increasing the co-payments generally charged to ACC claimants. The proposals are not expected to increase barriers to treatment for any population groups.

### **Human Rights**

57. The proposals contained in this paper are unlikely to raise issues of consistency under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

### **Communications**

58. If Cabinet agrees to the proposed changes to the Cost of Treatment Regulations, I intend to make a public announcement shortly after Cabinet's decision.

### **Proactive Release**

59. MBIE will proactively release this Cabinet paper, along with the Cabinet minute and any relevant supporting documentation, within 30 working days of the final decision being made by Cabinet and with any appropriate redactions.

### **Recommendations**

60. I recommend that the Committee:

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1. **Note** that ACC completed a review of the Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003 and Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010.
2. **Agree** to the following two changes to the Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003:

2.1 *Proposal one*: implement bespoke payment increases ranging from 4.6 percent to 9.36 percent for treatment providers as per the table below.

<b>Treatment provided type</b>	<b>Proposed increase to treatment rate</b>
Counsellors	9.36%
Dentists	5.70%
Hyperbaric Oxygen Treatment	5.70%
Medical Practitioner and Nurse combined consultations	4.60%
Medical Practitioners	5.70%
Nurses	7.85%
Nurse Practitioners	7.85%
Radiologists	5.70%
Specialists	5.70%
Specified treatment providers	9.36%

2.2 *Proposal two*: introduce a nurse practitioner and registered nurse combined treatment rate with the following variations and rates (after the uplift):

<b>Definition</b>	<b>Rate after proposed bespoke increase</b>
If the claimant is 14 years old or over when the visit takes place and is not the holder of a community services card or the dependent child of a holder	\$30.68
If the claimant is under 14 years old when the visit takes place	\$56.70
If the claimant is 14 years old or over when the visit takes place and is the holder of a community services card	\$53.22
If the claimant is 14 years old or over but under 18 years old when the visit takes place and is the dependent child of a holder of a community services card	\$58.27

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3. **Agree** to a nil increase for audiology treatment rates which are under the Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010.
4. **Note** that these proposed changes are expected to have an annual cash cost of \$23 million to ACC.
5. **Note** that there is expected to be immaterial impact on ACC levies or the ACC appropriation because an increase in costs of this magnitude was already budgeted for.
6. **Invite** the Minister for ACC to issue drafting instructions to the Parliamentary Counsel Office giving effect to the decisions in this paper.
7. **Agree** for the Minister for ACC to make decisions, consistent with the proposals in these recommendations, on any issues which arise during the drafting process
8. **Note** that, if you agree to the proposals, the amended regulations are expected to come into force from 1 April 2023.
9. **Note** that, the Ministry of Business, Innovation and Employment will undertake targeted consultation with industry and affected stakeholders on any recommended changes to the regulations following ACC's 2022 review.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for ACC

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