



COVERSHEET

Minister	Hon Peeni Henare	Portfolio	ACC
Title of Cabinet paper	Updates to ACC Regulated Payments for Treatment: Final Proposals.	Date to be published	19 September 2023

List of documents that have been proactively released		
Date	Title	Author
10 July 2023	Final Proposals – Approval for Updates to ACC Regulates Payments for Treatment	Office of the Minister for ACC
18 August 2023	Updates for ACC Regulated Payments for Treatment: Final Proposals. SWC-23-SUB-0111 Minute	Cabinet Office
23 June 2023	Regulatory Impact Statement: Proposals for updates to ACC regulations dealing with treatment payments after 2022 review	MBIE

Information redacted

YES / **NO** [select one]

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.

In Confidence

Office of the Minister for ACC
Chair, Social Wellbeing 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 3.56 percent to 7.90 percent and the introduction of a new rate for internal examinations related to maternal birth injuries.
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 and the Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010 (together these are the Cost of Treatment Regulations).

Relation to Government priorities

3. The proposals in this paper are directly related to Government priorities as they will have an impact on the cost-of-living pressures faced by New Zealanders. The proposals address the cost of treatment for ACC claimants which contribute to cost-of-living pressures.

Executive Summary

4. 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.
5. ACC is required to undertake a biennial review of treatment costs under the Cost of Treatment Regulations and the 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.
6. Actioning the 2022 review is occurring soon after the completion of the 2020 review due to the 2020 review having been significantly delayed due to the Covid-19 pandemic. As a result, the decision was made to expedite the 2022 review (i.e., engaging in targeted consultation) to address cost pressures in the health sector. On 7 December 2022, Cabinet noted that officials from ACC would undertake "targeted engagement" with the affected sector groups [DEV-22-MIN-0300 refers].

7. As the 2022 review was completed in December 2022 and the 2020 review was delayed, the changes to the cost of treatment could only be considered for one year to mid-2022. The 2024 review will return to the normal cycle and will cover the full two-year period.
8. The targeted consultation ran from 3 April to 1 May 2023 and received 28 submissions from a variety of health professionals and professional health organisations. Nearly all submitters agreed with the need for an increase in payment rates, but most submitters thought the proposed rates were insufficient due to general inflation often being higher than sector wage increases during the covered period. Some submitters wanted much more substantive increases to increase the proportion of the cost of treatment 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:
 - i. **Bespoke increases for treatment providers** ranging from 3.56 percent to 7.90 percent.
 - ii. **Introduction** of a new rate for internal examinations (related to the extension of cover to maternal birth injuries).
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. If the proposed updates are approved, officials will work the Parliamentary Counsel Office (PCO) to draft regulations to be considered by the Cabinet Legislation Committee. I am seeking for the increased rates to apply from 1 April 2024.

Background

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

12. 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 2021/22 year, ACC spent \$321 million on regulated treatment payments.¹ Other funding mechanisms include contracts and the annual Public Health Acute Services agreement where ACC reimburses the Crown for ACC clients receiving acute services in publicly funded hospitals.
13. 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

¹ Including hearing loss and ancillary regulations, but excluding contracted ambulance services.

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.

14. ACC completed an initial review and provided recommendations to the then Minister for ACC, Hon Carmel Sepuloni in November 2022. Hon Sepuloni agreed to expedite the 2022 Cost of Treatment Review in order to progress proposals that would better support providers and claimants through the ongoing cost pressures in the health sector.

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

15. ACC explored the following four options for calculating increases to the regulated treatment rates, including the status quo of making no increases:
 - i. **Option One – Status quo:** the contributions ACC makes to treatment and rehabilitation services remain the same (as currently laid out in the Regulations) but may have to increase by a greater amount at a later date to address accessibility;
 - ii. **Option Two – Calculate flat rate increase using Labour Cost Index (LCI) for health care and social assistance:** the rates under the Regulations are increased by 4.08% to reflect the increase in the LCI for health care and social assistance (reported by Statistics New Zealand) for the year to 30 June 2022;
 - iii. **Option Three – Calculate flat rate increase using composite of LCI and the Consumer Price Index (CPI) indices for health services and medical equipment:** the rates under the Regulations are increased by 4.36% to reflect a combination of the increase in the LCI for health care and social assistance (60%) and the increase in the CPI indices for health services (20%) and medical equipment (20%) for the year to 30 June 2022;
 - iv. **Option Four – Calculate bespoke increases using Multi Employer Collective Agreement (MECA) increases for the relevant occupational groups:** bespoke increases are applied to professional groups based on health sector MECA increases (for the same period as Option Two). These increases range between 3.56 and 7.90%
16. These options were assessed against the following policy objectives:
 - i. Claimants have access to treatment, meaning co-payments should be affordable.
 - ii. Costs to ACC are sustainable, affordable, and predictable (gradual increases).
 - iii. Payments are not too dissimilar between the health and ACC systems.

17. Option Four best met the policy objectives so was put forward as the preferred option for the targeted consultation undertaken by ACC in April and May 2023. Option Four is the final proposal I am seeking approval for in this paper so appropriate changes can be made to the Cost of Treatment Regulations.

ACC consulted on bespoke payment increases for different types of treatment providers

18. ACC consulted on the bespoke payment increases set out in **Table 1** below.

Table 1: Proposed payment increases

Treatment provided type	Proposed increase to treatment rate
Audiology	4.89%
Counsellors	4.89%
Dentists	3.56%
Hyperbaric Oxygen Treatment	4.36%
Medical Practitioners	3.56%
Nurses	7.90%
Nurse Practitioners	7.90%
Combined Nurse and Medical Practitioner	4.17%
Combined Nurse and Nurse Practitioner	7.90%
Radiologists	4.36%
Specialists	3.56%
Specified treatment providers	4.89%

19. 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 treatment.
20. ACC therefore looked at wage increases in the relevant occupational groups within the health sector and based their calculations on the MECA increases in the year to July 2022 and other additional employer costs.²
21. The relevant MECAs were those for Medical Specialists, Registered Nurses, and Allied Health. The calculations led to ACC's bespoke payment increases for individual professions, ranging from 3.56% for medical practitioners, specialists, and dentists to 7.90% for Nurses and Nurse Practitioners.

² Other additional employer costs include the new public holiday (Matariki) and new sick leave requirements (an increase from five to ten days each year per Holidays (Increasing Sick Leave) Amendment Act 2021).

22. As an example, with the proposed changes, nurse practitioner consultation payment rates would increase by 7.90% from \$57.64 to \$62.19 an hour for claimants under the age of 14 years old when the visit takes place.

Targeted consultation feedback

23. The majority of the submitters wanted larger, more substantive increases than what had been proposed given high general inflation. The proposals were not changed on account of this as historical data shows that inflation is unlikely to keep outpacing wage increases in the long-term. The Cost of Treatment Regulations should consider the best measure of cost pressures. The recommended changes to the rates do consider recent cost variations for the 2022 review period.
24. Four submitters questioned the specific MECAs used in the increase calculation methodology, with some commenting that those chosen did not adequately reflect the skills and experience of the workforce. The public health MECAs have been used in the calculations as they contain publicly available sources of information regarding wage increases in the health sector. The MECAs chosen for the calculations were consistent with those used to inform relevant ACC contracts.

I am seeking Cabinet agreement to make bespoke payment increases

25. I am proposing to change the Cost of Treatment Regulations in order to include these bespoke payment increases set out in **Table 1** of this document.
26. 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 bespoke payment increases will facilitate continued access to treatment services.

ACC consulted on introducing a new rate for internal examinations for maternal birth injuries

27. ACC also consulted on introducing a new rate for internal examination procedures to cover the additional consumable and time requirements for GPs, Nurses or Nurse Practitioners undertaking an internal examination where it is clinically appropriate. This ensures that access to maternal birth injury treatment remains accessible for claimants as it is made clear that GPs can receive funding for undertaking an internal examination.
28. Following implementation of the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Act in October 2022, ACC made several operational and contractual changes to enable payment for a wider range of health and rehabilitation services for maternal birth injury claimants.

29. While many of the services required to support maternal birth injury claimants can be provided either under a contract or under existing rates in regulations, ACC identified the need for the addition of this new rate in regulations to cover materials and time requirements (where appropriate).

Table 2: Internal examination rate

Description	Details	Price
Internal Exam Procedure	<20 mins + consumables	\$41.34

30. The cost of this additional rate has already been factored into the overall cost associated with the Maternal Birth Injury amendment and the service is currently being made available through a non-regulated fee. Formalising this rate allows for it to be included in the biennial review process.

Targeted consultation feedback

31. There were four submissions related to this proposed new rate. There was general support for covering the cost of internal examinations, although some submitters wanted a higher rate, or wanted this available to a wider range of treatment providers.
32. I note that, for a maternal birth injury, the Cost of Treatment Regulations will provide for both the claimant’s consultation (with the GP, Nurse, or Nurse Practitioner) and the internal examination. In most cases, the new internal examination rate will be in addition to the consultation rate.
33. I also note that the internal examination procedure would be available to GPs, Nurses, or Nurse Practitioners. It is not available to Allied Health providers, given it is not in their general scope of practice.

I am seeking Cabinet agreement to introduce a new internal examination rate

34. I am seeking to introduce an internal examination rate in the Cost of Treatment Regulations, with the rate as set out in **Table 2** above.
35. This rate is intended to be grouped with other procedure costs for Medical Practitioners, Nurses and Nurse Practitioners in the Cost of Treatment Regulations and will be regularly reviewed along with the other regulated rates.

Consultation

36. The Department of the Prime Minister and Cabinet and Te Puni Kōkiri have been informed about the 2022 review proposals in this paper.

37. The following agencies and Crown entities have been consulted on the 2022 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

38. The proposed increases in payment rates will increase spending by ACC by approximately \$17.4 million annually.
39. However, an estimate of inflation in treatment costs has already been factored into ACC's levy, appropriation, and Outstanding Claims Liability (OCL)³. The additional cost associated with this proposal will result in a negligible impact on levies, appropriations and the OCL.

Legislative Implications

40. If the proposals in this paper are agreed to, the Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003, and the Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010 will be amended to implement the changes.
41. If approved, the amended regulations are expected to come into force on 1 April 2024.

Impact Analysis

42. 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 meets the criteria necessary for Ministers to make decisions on the proposals.

Climate Implications

43. 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

44. Cost is more likely to be a barrier to accessing treatment for Māori, Pacific peoples, disabled people, ethnic communities, and rural communities.

³ 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.

45. 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

46. 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.

Cost of Living Implications

47. The proposals in this paper are likely to have positive cost-of-living impacts, especially for the five groups identified to be most impacted by the costs of treatment: Community Card Holders, Māori, Pacific Peoples, Adults (18-25 years) and Adults (65+).⁴
48. This will be a positive impact as it means treatment providers are less likely to raise their co-payments which keeps treatment accessible. Access to treatment can help to maintain the standard of living for the population as a whole, with particular emphasis on those five key groups.
49. As the Accident Compensation Scheme works on the principle of fair not full compensation, there is almost always going to be an element of a co-payment when a claimant is accessing treatment. Each provider determines the co-payment they charge to the claimant, which is tempered by the competitive forces operating in provider markets.

Use of External Resources

50. This paper was undertaken with consultation from ACC as the operational agency for the Cost of Treatment Regulations (they were not contracted or remunerated for this work).
51. No external resources will be required to implement these changes.

Communications

52. 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.

⁴ Per the Research New Zealand Co-payments Survey 2021: <https://www.acc.co.nz/assets/provider/co-payments-survey-report.pdf> .

Proactive Release

53. 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

54. I recommend that the Committee:

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. **Note** that ACC undertook targeted consultation on my behalf from 3 April to 1 May 2023 on the proposed updates to the Cost of Treatment Regulations.
3. **Agree** to the following changes to the Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003 and Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010:

2.1 *Proposal one:* implement bespoke payment increases ranging from 3.56 percent to 7.90 percent for treatment providers as per the table below.

Treatment provided type	Proposed increase to treatment rate
Audiology	4.89%
Counsellors	4.89%
Dentists	3.56%
Hyperbaric Oxygen Treatment	4.36%
Medical Practitioners	3.56%
Nurses	7.90%
Nurse Practitioners	7.90%
Combined Nurse and Medical Practitioner	4.17%
Combined Nurse and Nurse Practitioner	7.90%
Radiologists	4.36%
Specialists	3.56%
Specified treatment providers	4.89%

2.2 *Proposal two:* introduce an internal examination rate for maternal birth injuries with the following variations and rates (after the uplift):

I N C O N F I D E N C E

Description	Details	Price
Internal examination Procedure	<20 minutes + consumables	\$41.34

4. **Note** that these proposed changes are expected to have an annual cash cost of \$17.4 million to ACC.
5. **Note** that there is expected to be a negligible 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 2024.

Authorised for lodgement

Hon Peeni Henare

Minister for ACC