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# Consultation on Changes to the Review Costs Regulations

**Seeking your views on a general increase in payments in  
the Injury Prevention (Review Costs and Appeals)  
Regulations 2002**

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## **We are consulting on a proposal to increase the regulated costs in the Injury Prevention (Review Costs and Appeals) Regulations 2002 by 14.9 per cent.**

**Submissions are due by 5.00 pm on Monday 31 October 2016** (see page 4 for details)

The payments made under the Injury Prevention (Review Costs and Appeals) Regulations 2002 would increase by 14.9 per cent for costs incurred for an independent statutory review. These Regulations can be viewed at:

<http://legislation.govt.nz/regulation/public/2002/0081/latest/DLM117426.html>

### **Introduction**

Clients of ACC can claim costs they incurred during a review under the Accident Compensation Act 2001. These costs must be awarded to the clients if the review decision is made fully or partly in favour of the clients. If not fully or partly successful, a client may also be awarded costs if the reviewer considers that the case has been reasonably brought. Such costs are paid by ACC directly to the clients upon the direction of the reviewer. These payments are there to provide support to clients.

The Injury Prevention (Review Costs and Appeals) Regulations 2002 (the Regulations) prescribe the maximum amount that can be paid to ACC clients for costs incurred for an independent statutory review. The intent of the Regulations is not to absorb the full costs of claimants upfront but to maintain a margin of individual responsibility, with payment following costs incurred. This is important to address the risk of excessive litigation and cost inflation.

In 2014/15 roughly \$2 million was paid to clients in 2841 cases<sup>1</sup> at an average of \$710 per claim.

The Regulations have not been substantively reviewed since 2002. The two adjustments since then were for an inflation increase in 2008 and a GST increase in 2010. We want to ensure that the Regulations make a meaningful contribution to clients to access the statutory dispute resolution processes.

Over the years we have heard from stakeholders who are concerned that the prescribed costs are no longer in line with inflation and do not provide adequate support for clients, especially for more complex cases. There is also concern about the limited number of specialists and legal professionals providing services to ACC clients, which can potentially increase the costs of their services.

We believe these are valid concerns. The recent Independent Review of the Accident Compensation Otago report into the accident compensation dispute resolution system has confirmed that there are shortfalls in some areas, especially around costs of medical evidence.

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<sup>1</sup> Costs paid may be related to the cases completed in previous years, rather than those in the current year. 6280 reviews were completed in 2014/15.

However, current data does not allow us to accurately measure potential shortfalls against underlying cost drivers, or to assess where to direct resources as a priority across categories.

Work is underway to better understand the nature and extent of the issues and to inform assessment for substantive changes to the regulations. The proposals in this paper are limited to an inflation adjustment of the costs only.

It is important to ensure that any further changes are considered as part of a larger package so that the dispute resolution process will work better as a whole. However, we believe that it is both expedient and necessary to make inflation adjustments to the review costs to deliver better support to clients.

### *Question 1*

What do you think of the current scale of regulated costs, bearing in mind that it is not intended to cover the full cost in a review?

Are there particular areas where increased support is necessary?

Do you have any data that will help us to establish the extent of the shortfall more clearly?

### **Purposes of Regulatory Change**

The purpose of the proposal is to:

- Support access to medical, legal and other resources, taking into consideration resources available to ACC
- Ensure assistance to claimants is financially sustainable
- Provide the right incentives for all parties.

### *Question 2*

Do you agree with the objectives identified here?

### **Inflation Adjustment**

We propose to increase the regulated costs by 14.9%, based on the Consumer Price Index increase from the first quarter of 2008 to the first quarter of 2016. However, the per km rate for vehicle travel will remain at 29 cents.

It is envisaged that any regulatory change will be implemented in 2017.

The table below lists the new scale of costs:

**Table 1: Scale of costs under the Regulations**

<b>Injury Prevention (Review Costs and Appeals) Regulations 2002</b>		
	<i>Status Quo</i>	<i>Increase all categories by 14.9%</i>
Specialist reports	935.54	1074.94
Non-specialist reports		
- first report	467.77	537.47
- 2 or more reports	701.65	806.20
At the following rates:		
- 1st hour or part of preparation	175.41	201.55
- 2nd hour of preparation	43.85 per 15 mins	50.38 per 15mins
- 3rd hour of preparation	29.23 per 15 mins	33.59 per 15 mins
Preparation and lodging of application for review	116.94	134.36
Participation in case conference	58.47	67.18
Other preparation of case for review	350.83	403.10
Appearing at hearing on behalf of applicants	350.83	403.10
1 <sup>st</sup> hour or part of a hearing	175.41	201.55
2 <sup>nd</sup> hour of hearing	29.23 per 15 mins	33.59 per 15 mins
- 3 <sup>rd</sup> hour of hearing	14.62 per 15 mins	16.80 per 15 mins
- Other expenses	584.71	671.83
- For transport	153.33	176.18
For private transport <sup>2</sup>	0.29 per km	0.29 per km

<sup>2</sup> The per kilometre rate is unchanged so that it aligns with the rate used in the current regulations for ancillary services.

### *Preliminary analysis*

The proposed increases will enhance access to medical, legal and other resources for clients. Some upfront costs will still fall on clients themselves, for reasons discussed previously. There may be a small risk that prices may increase and offset the inflation adjustment.

Assuming an increase in case volume by 5% and no change in the complexity of cases, the proposed inflation adjustment is estimated to cost an additional \$415,931 per year. However this estimate will increase if either case volume or complexity changes.

The weighing of options is essentially a matter of balancing better support to clients with the financial cost and incentives effects of such proposals.

### *Question 3*

Is there another option(s) you would like to suggest?

Are there any other changes needed?

### **How to give feedback**

Your feedback is sought on the proposed regulation change. If you would like to have your views taken into consideration, please respond using the contact information below.

### **Where to send your submission**

**Email:** [ACregs@mbie.govt.nz](mailto:ACregs@mbie.govt.nz)

**Post:**

The Manager  
Accident Compensation Policy  
Ministry of Business, Innovation, and Employment  
PO Box 1473  
Wellington, 6140

### **Closing date for submissions**

Submissions must be received by 5pm Monday **31 October 2016**.

### **Official Information Act**

The Ministry of Business, Innovation and Employment and ACC are subject to the Official Information Act 1982, which means that your submission may be made available to those seeking information under that Act.