MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Carmel Sepuloni	**Portfolio**	ACC
Title of Cabinet paper	Regulated Rates Review 2018/19 Recommendations: ACC Implementation	**Date to be published**	18 March 2021

List of documents that have been proactively released		
Date	**Title**	**Author**
July 2020	Regulated Rates Review 2018/19 Recommendations: ACC Implementation	Office of the Minister for ACC
29 July 2020	Regulated Rates Review 2018/19 Recommendations: ACC Implementation DEV-20-MIN-0154	Cabinet Office
25 June 2020	Regulatory Impact Summary: Proposals for updates to ACC regulations dealing with treatment payments	MBIE
March 2021	Accident Compensation Cost of Treatment Amendment Regulations 2021	Office of the Minister for ACC
11 March 2021	Accident Compensation Cost of Treatment Amendment Regulations 2021 LEG-21-MIN-0018	Cabinet Office

Information redacted **~~YES~~ / NO** *[select one]*

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In Confidence

Office of the Minister for ACC

Chair, Cabinet Economic Development Committee

Regulated Rates Review 2018/19 Recommendations: ACC Implementation

Proposal

1 I am seeking Cabinet agreement to implement the results of the 2018 review of the Accident Compensation Corporation's (ACC) regulated payments for treatment. This proposes:

1.1 a general increase of 2.05% for treatment providers and 1.72% for Radiologists and providers of Hyperbaric Oxygen Treatment, to cover the two year review period

1.2 to remove provisions in the regulations that require funding deductions for dental treatment, where a claimant has received previous treatment on the same tooth for a non-accident related purpose

1.3 to separate 'Specified Treatment Providers' in the regulations to provide, in future, for separate payment rates for Acupuncturists, Chiropractors, Occupational Therapists, Osteopaths, Physiotherapists, Podiatrists, and Speech Therapists

1.4 to issue drafting instructions to the Parliamentary Counsel Office for regulations to give effect to the payment increases, removal of dental deductions provisions, and the separation of 'Specified Treatment Providers.'

2 The changes will require amendments to both the *Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003* (Cost of Treatment Regulations) and the *Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010* (Hearing Loss Regulations) (together these are the Treatment Regulations).

Executive Summary

3 ACC pays for rehabilitation, including treatment, for claimants under the Treatment Regulations and contracts. ACC is required to review payments in the Treatment Regulations biennially to consider cost increases.

4 On 1 August 2019, following the 2018/19 review, ACC recommended the following increases:

4.1 2.05% for Counsellors, Dentists, Specialists, Specified Treatment Providers, Nurses, Nurse Practitioners, Medical Practitioners, Combined services (Nurse/Medical Practitioner) and Audiologists (service-based codes only)

4.2 1.72% for Radiologists and providers of Hyperbaric Oxygen Treatment, being lower because of falling equipment costs.

5 Additionally, ACC recommended the following changes to the Treatment Regulations:

5.1 removing provisions in the Treatment Regulations that require funding deductions for dental treatment, where a claimant has received previous treatment on the same tooth for a non-accident related purpose

5.2 separating 'Specified Treatment Providers' in the Treatment Regulations to provide for separate payment rates for Acupuncturists, Chiropractors, Occupational Therapists, Osteopaths, Physiotherapists, Podiatrists, and Speech Therapists.

6 On 18 November 2019, Cabinet agreed [DEV-19-MIN-0303] that I consult on proposed increases and other changes to the Treatment Regulations by releasing a public consultation document detailing those proposed changes. I agreed that after consultation I would report back to Cabinet with a final recommendation, considering public submissions.

7 Having considered the submissions and finding no compelling reasons to depart from the original recommendations, I ask Cabinet to approve ACC's recommendations, and authorise me to issue drafting instructions to the Parliamentary Counsel Office to give effect to the regulatory changes.

8 The response to COVID-19 disrupted the planned timeline for amending the Treatment Regulations which means the recommended changes are not now able to be fully implemented before the election. However, going ahead and issuing drafting instructions now means the required amendments to the regulations can be ready for approval when a new government is formed after the election. It is anticipated that the increased payment rates and other regulatory changes could then come into force on 1 February 2021.

Background

Regulations prescribe certain rates that ACC pays to its treatment providers

9 A large portion of ACC rehabilitation services (approximately $1.7 billion) is purchased via commercial contracts with treatment providers. Some treatment is also paid under a 'non-contracted' one-off arrangement reflecting the unusual nature of the condition or treatment required. Otherwise, ACC pays the provider at a rate specified in the regulations shown in the following table:

Table 1: Regulations with prescribed rates for rehabilitation

Regulations	Who are rates set for?
Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003	Nurses, Nurse Practitioners, Medical Practitioners, Specialists, Dentists, Specified Treatment Providers (Acupuncturists, Chiropractors, Occupational Therapists, Osteopaths, Physiotherapists, Podiatrists, Speech Therapists), Hyperbaric Oxygen Treatment, Radiologists, Counsellors
Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010	Audiologists

10 ACC's expenditure on the regulated rates is detailed in Table 2 below:

Table 2: Expenditure on regulated rates 2016/17 – 2018/19

Regulations	2015/16 ($m)	2016/17 ($m)	2017/18 ($m)	2018/19 ($m)
Expenditure under COTR	$246.7	$258.1	$275.7	$290.2
Expenditure under Hearing Loss Regulations	$38.2	$37.0	$37.3	$35.1

11 The rates prescribed in the Treatment Regulations set out the contribution that claimants are entitled to receive from ACC towards the cost of their rehabilitation. In most cases, claimants will also have to make an additional payment (co-payment) directly to their provider to cover any remaining cost of the treatment they received.

12 Although the prescribed rates are what claimants are entitled to receive from ACC, they are usually paid directly to providers for ease of administration.

13 When setting rates under contracts, ACC can specify the maximum co-payment amount to be charged to claimants by providers (including zero – where ACC pays the full agreed cost). However, when setting rates under regulations, ACC cannot control the co-payment amounts set by providers. This means that rate increases made through regulatory change will not necessarily be passed on to claimants in the form of lower co-payments.

ACC undertakes a regular review of the rates prescribed in the regulations

14 Section 324A of the *Accident Compensation Act 2001* (the Act) requires ACC to undertake a regular review of the rates prescribed in the Treatment Regulations. The purpose of the review is to "assess whether adjustment to any of the amounts is required to take into account changes in costs of rehabilitation."[1]

The 2018/19 review is the last before becoming a biennial process

15 The *Accident Compensation Amendment Act 2019* included an amendment that requires ACC to conduct a review of regulated rates on a biennial basis, rather than annually.

16 The new biennial cycle will allow ACC to collect more comprehensive data on the cost pressures affecting providers. It will also enable ACC to better understand the impacts of previous rate increases. This should allow for more accurate and robust pricing recommendations that capture the underlying costs and needs of claimants.

17 ACC is due to provide recommendations to me to inform the next review cycle by 1 December 2020.

ACC recommended changes to the regulations following the 2018/19 review

18 Following the 2018/19 review, ACC proposed three options to increase regulated payments. These are outlined in Table 3 below:

[1] Accident Compensation Act 2001, Section 324A(2)

Table 3: Options for rate increases

Option	Increase amount	Rationale
1	2.05% general increase (1.10 Labour Cost Index (LCI) + 0.95 forecast inflation) 1.72% for Radiologists and providers of Hyperbaric Oxygen Treatment (0.78 composite + 0.95 forecast inflation) **(ACC and MBIE recommended)**	Increases are based on changes in the LCI (Health) and CPI. Factors in an extra six months of forecast inflation for the period until the results of the 2020 review are implemented to alleviate potential cost pressures. This might be insufficient now that implementation has been delayed. However, it will still be more beneficial for affected parties to continue with this calculation, and receive increased payments as soon as practicable, than to restart the review process and wait longer (likely at least another 10 months) for a more accurate increase. Does not factor in potential impacts from the Allied Health and Nursing Multi-Employment Collective Agreements (MECAs) due to uncertainty about the impacts the MECAs will have on ACC's regulated providers. This will be addressed in the 2020 review when the impacts of the MECAs will be understood.
2	4.90% for Specified Treatment Providers 2.10% for Radiologists and providers of Hyperbaric Oxygen Treatment 1.07% - 5.59% GPs and Nurses (depending on employer, etc) 1.92% - 1.96% for Dentists, Specialists and Audiologists	Factors in potential impacts from the Allied Health and Nursing MECAs. However, there is uncertainty around the impacts that the MECAs will have on ACC's regulated providers. Factoring in the Allied Health and Nurse MECA could result in higher than necessary regulated rate increases for those largely private providers paid under the regulations.
3	1.10% general increase 0.78% for Radiologists and providers of Hyperbaric Oxygen Treatment	This factors in changes in the LCI (Health) and the CPI. Unlike option 1, it does not factor in an additional half year of typical inflation forecast. Not factoring in an additional half year of typical inflation forecast (0.95%) to account for the two-year review period increases the risk of increased co-payments for claimants. Does not factor in potential impacts from the Allied Health and Nurses MECAs, due to the uncertainty around the impacts that the MECAs will have on ACC's regulated providers. This can be addressed in the 2020 review, when the impacts of the MECAs will be understood.

19 ACC also recommended that the following changes be made to the regulations:

19.1 In response to fairness concerns, remove provisions in the regulations that require funding deductions for dental treatment, where a claimant has received previous treatment on the same tooth for a non-accident related purpose

19.2 To allow for market differences to be taken into account in future (some providers might get paid more and others less), separate 'Specified Treatment Providers' in the regulations to provide separate payment rates for Acupuncturists, Chiropractors, Occupational Therapists, Osteopaths, Physiotherapists, Podiatrists, and Speech Therapists.

I have consulted on ACC's recommended changes

20 Cabinet agreed [DEV-19-MIN-0303] that I consult on ACC's recommended rate increases and other changes to the regulations by releasing a public consultation document detailing those proposed changes. Cabinet agreed that after consultation, I would report back with a final recommendation, considering public submissions.

Proposed changes

Proposal 1: Increases to regulated rates

21 I propose that the rates in the Treatment Regulations be increased by:

21.1 2.05% for Counsellors, Dentists, Specialists, Specified Treatment Providers, Nurses, Nurse Practitioners, Medical Practitioners, Combined services (Nurse/Medical Practitioner) and Audiologists (service-based codes only)

21.2 1.72% for Radiologists and providers of Hyperbaric Oxygen Treatment.

22 The increases are intended to meet the policy objectives outlined below.

ACC claimants have access to treatment, meaning co-payments should be affordable:

23 ACC contributing to the cost of injury treatment is one of the most effective ways of encouraging claimants to seek treatment for their injuries in a timely manner. Delayed treatment can result in prolonged effects from an injury, which in some cases may be permanent.

24 Claimants need to be able to afford to pay the co-payment for treatment that most providers charge in addition to the ACC payment. I have no specific information available on how price increases affect ACC claimants' access to treatment. However, the last annual Health Survey (for health not ACC costs) showed that 13% of adults were unable to go to the GP because of cost, and that had not changed significantly in the prior 6 years. The figure was higher for Māori (about 22 per cent) and for children it was 2%. People with low incomes may find it more difficult to pay for ACC visits.

Costs to ACC are sustainable, affordable and predictable (gradual increases):

25 Part of the purpose of a regular review is to ensure that the need for an increase in treatment payments is considered on a timely basis. Small increments on regular basis have a negligible effect on total levies and a small increase in the Non-Earners' Account cash costs. ACC's recommended increase has the greatest increase in cash costs for:

25.1 the Earners Account, of up to $3.4 million each year, and

25.2 the Non-Earners' Account, of up to $2.8 million each year.

Payments do not cause alignment issues in the health sector.

26 Increases in ACC treatment payments should not materially affect payments being made in the health sector for similar services. This is less of a concern for this period than has sometimes been the case (when ACC increases were larger) with the health sector having now had some significant funding increases for some services. These arose from the settlement of the Nurses and Allied Health MECAs as discussed above.

Proposal 1 consultation feedback

27 Twenty submissions were received in response to the consultation document. While a number of submissions supported the proposed increases (including the New Zealand Medical Association (NZMA), New Zealand Chiropractors' Association, and New Zealand Acupuncture Standards Authority), most submissions considered the proposed increase in treatment payments to be inadequate, with previous increases not keeping pace with inflation. NZMA also noted that they considered the use of regulated treatment payments an interim measure while progress continues towards developing direct contracts between ACC and GP's.

28 In addition, NZMA continue to have concerns about ACC funding treatments that have no, or very limited, evidence of effectiveness, such as acupuncture.

29 The proposed increases have been based on economic data, including the LCI and the CPI. ACC and MBIE consider that the proposed increase in payment rates appropriately balances the objectives of ensuring ACC claimants have access to treatment against ensuring costs to ACC are sustainable and predictable. Importantly, the increases do not cause alignment issues between ACC and the broader health sector.

30 As part of the 2020 Regulated Rates Review, ACC will investigate the possibility of re-basing the current rates, and any resulting flow-through impacts from the MECAs.

Proposal 2: Remove provisions in the regulations that require funding deductions for dental treatment

31 I propose to remove provisions in the Cost of Treat Regulations that require funding deductions for dental treatment, where a claimant has received previous treatment on the same tooth for a non-accident related purpose.

32 Currently, ACC claimants who received an earlier tooth restoration or crown for a non-accident related purpose have deductions applied to the regulated amounts ACC will fund when they seek dental treatment on the same site.[2]

33 The affected claimants are commonly asked to meet the cost of this deduction through a higher co-payment to the dentist (with most dental services already requiring co-payments from claimants).

34 However, these provisions effectively create additional costs for clients who have taken care of their dental health through non-injury treatment, either privately or through

[2] Regulation 10 (4) & (5) of Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003

publicly-funded care as an under 18-year old person. In contrast, clients who have not sought treatment receive a full ACC contribution, with no deductions applied. This creates an unfair and inconsistent service, and is administratively burdensome for both ACC and dentists.

35 Removing the dental deduction provisions is estimated to cost ACC around $1 million a year, and is expected to be partly offset by ACC's reduced administration costs associated with these types of claims. ACC has advised that they do not expect there to be any impact on levies as a result of this change. It is proposed the dental deduction provisions be removed with effect from 1 February 2021.

Proposal 2 consultation feedback

36 All submissions either supported the removal of dental deductions or were silent on the issue.

Proposal 3: Separate 'Specified Treatment Providers' in the regulations

37 I propose to separate 'Specified Treatment Providers' in the Cost of Treatment Regulations to provide provision in the future for separate payment rates for Acupuncturists, Chiropractors, Occupational Therapists, Osteopaths, Physiotherapists, Podiatrists, and Speech Therapists.

38 Currently, Acupuncturists, Chiropractors, Occupational Therapists, Osteopaths, Physiotherapists, Podiatrists, and Speech Therapists are all defined within the same category in the regulations (as 'Specified Treatment Providers'), meaning that same treatment payment rate must be applied to all providers under this category.

39 This is despite there being significant differences between the providers, including the kind of treatment offered, the average treatment duration, and the market forces affecting each provider type.

40 Separating Specified Treatment Providers in the Regulations will enable future pricing recommendations for individual professions, if required.

41 I anticipate that revised rates for these professions will be developed prior to the next biennial pricing review (December 2020), and informed by commissioning approaches available outside the Treatment Regulations.

Proposal 3 consultation feedback

42 Most submissions supported splitting Specified Treatment Providers into different classes, with just a few concerns that this could be applied unfairly by introducing payment differentials.

Consultation

43 ACC, the Ministry of Health, the Treasury, the Ministry of Social Development, the Ministry for Women, and Te Puni Kōkiri have been consulted on the proposals in the public discussion document and on this paper. No substantive comments were received.

Public consultation

44 The Ministry of Business, Innovation and Employment (MBIE) released the document *Consultation on ACC regulated payments for treatment* to consult on the proposed changes to the regulations on my behalf. The consultation document was posted on the MBIE website, and the Ministry of Health assisted by ensuring it was distributed to treatment provider organisations, DHBs, Māori organisations, and claimant representatives. Public consultation ran for nearly four weeks, opening on 19 November 2019 and closing on 13 December 2019.

Financial implications

Increases to regulated rates

45 Regular price adjustments to regulated treatment payments are factored into ACC's levy and Non-Earners Account estimates. Estimated cash costs are set out in Table 4. ACC advises that there will be no impact on levies or ACC appropriation from this increase.

Table 4: Cash costs of recommended increases

Account	2020/21	2021/22	2022/23	2023/24	2024/25
Earners'	$1.5m	$3.1m	$3.2m	$3.3m	$3.4m
Work	$0.4m	$0.9m	$0.9m	$0.9m	$0.9m
Treatment Injury	$0.1m	$0.2m	$0.2m	$0.2m	$0.2m
Motor Vehicle	$0.2m	$0.3m	$0.3m	$0.4m	$0.4m
Non-Earners'	$1.3m	$2.7m	$2.7m	$2.8m	$2.8m
Total (excluding AEP)	**$3.48m**	**$7.26m**	**$7.40m**	**$7.54m**	**$7.68m**

Removal of dental deductions provisions

46 The estimated annual costs of removing the dental deductions provisions are provided in Table 5 below:

Table 5: Cash costs of removing dental deductions provisions

Account	2020/21	2021/22	2022/23	2023/24
Earners', Work & Motor Vehicle	$0.31m	$0.79m	$0.84m	$0.89m
Non-Earners' and Treatment Injury	$0.14m	$0.35m	$0.38m	$0.40m
Total	**$0.45m**	**$1.15m**	**$1.22m**	**$1.29m**

Human Rights

47 The proposals contained in this paper are consistent with the principles of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

48 The changes proposed in this paper will require amendment 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*.

49 The response to COVID-19 disrupted the planned timeline for amending the Treatment Regulations which means the recommended changes cannot now be implemented before the election. However, if approved, it is expected that the amendments to the Treatment Regulations can be drafted by Parliamentary Counsel Office to be ready for authorisation once a new government is formed after the election. It is anticipated that the amendments could then come into force on 1 February 2021.

Regulatory impact analysis

50 The Regulatory Impact Analysis (RIA) requirements apply to the proposals in this paper.

51 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Summary prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Summary **partially meets** the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

52 The Impact Summary notes there is a lack of information on the current level of co-payments made by patients, how this affects access to services and how ACC contributions affect the level of co-payments (i.e. whether service providers pass on this contribution to their patients). This makes it difficult to assess whether the proposed changes will have the intended impact of improving access to services. Whether the ACC contribution should increase by more than inflation has not been considered. This suggests that more weight has been attached to the 'cost' criterion than to the 'access to services' criterion.

Population Implications

53 Increasing ACC's contributions to the cost of treatment may reduce co-payments charged to claimants, or prevent the likely rise in co-payments if contributions are not increased when expected. This ensures cost does not become more of a barrier for claimants of all types to seek treatment for their injuries in a timely manner.

54 The level of co-payment tends to vary by the socio-economic status of the area in which the clinic providing the treatment is located. Some GP practices in low socio-economic areas do not charge a co-payment at all (but this means the GPs accept lower remuneration and this is only sustainable if payments increase regularly) while the highest co-payments tend to be charged by GPs in high socio-economic areas. This means that ACC contributions towards the cost of treatment tend to facilitate proportional assistance to low socio-economic areas, which also tend to have a higher proportion of Māori and Pasifika.

Communications

55 Once finalised, ACC will publicise changes to the regulations on its website and directly to providers or through practice management systems.

Proactive release

56 MBIE will proactively release this Cabinet paper and accompanying Cabinet minute. No redactions are proposed.

Recommendations

I recommend that the Cabinet Economic Development Committee:

1 **Agree** to increase rates in the Cost of Treatment Regulations by:

1.1 2.05% for Counsellors, Dentists, Specialists, Specified Treatment Providers, Nurses, Medical Practitioners, Combined services (Nurse/Medical Practitioner) and Audiologists (service-based codes only); and

1.2 1.72% for Radiologists and Hyperbaric Oxygen Treatment.

2 **Agree** to remove provisions in the Cost of Treatment Regulations that require funding deductions for dental treatment, where a claimant has received previous treatment on the same tooth for a non-accident related purpose.

3 **Agree** to separate 'Specified Treatment Providers' in the Cost of Treatment Regulations, to provide for separate payment rates for Acupuncturists, Chiropractors, Occupational Therapists, Osteopaths, Physiotherapists, Podiatrists, and Speech Therapists.

4 **Note** that these changes are expected to have an annual total cash cost of up to $9 million across the ACC levied accounts and the Non-Earners' Account, compared to the approximately $325 million current cost of regulated treatment payments.

5 **Note** that there is expected to be no impact on the total amount of levies or the ACC appropriation.

6 **Note** that the requirement in section 324 (2) of the Accident Compensation Act 2001 requires *the Minister to consult with the person or organisations the Minister considers appropriate, having regard to the subject matter of the proposed regulations*, has been fulfilled.

7 **Note** that the required amendments to the regulations are expected to be ready for authorisation before a new government is formed after the election. It is anticipated that the amendments could then come into force on 1 February 2021.

8 **Authorise** the Minister for ACC to issue drafting instructions to the Parliamentary Counsel Office for regulations to give effect to Recommendations 1 - 3 above.

Authorised for lodgement

Hon Carmel Sepuloni
Minister for ACC