



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	Updating the Review Costs Regulations: Approval to Consult	Date to be published	28 February 2022

List of documents that have been proactively released		
Date	Title	Author
8 April 2021	Options for updating the Review Costs Regulations	Ministry of Business, Innovation and Employment
21 April 2021	Review Costs Regulations – detailed options for consultation	Ministry of Business, Innovation and Employment
24 November 2021	Updating the Review Costs Regulations: Approval to Consult	Office of the Minister for ACC
29 November 2021	Cabinet Minute of Decision, Updating the Review Costs Regulations: Approval to Consult [SWC-21-MIN-0193 refers]	Cabinet Office

Information redacted

YES / NO

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.

Some information has been withheld to protect confidential advice to Government.

In Confidence

Office of the Minister for ACC

Chair, Cabinet Social Wellbeing Committee

Updating the Review Costs Regulations – Approval to undertake consultation

Proposal

1. I am seeking Cabinet agreement to release the attached consultation document on *Proposed amendments to the Accident Compensation (Review Costs and Appeals) Regulations 2002*.

Relation to government priorities

2. The proposals in this paper have no direct relationship with government priorities. However, they will support more ACC claimants to test ACC's decisions on cover and entitlements and in that way progress our manifesto commitment to return ACC to its original purpose of assisting all New Zealanders who have had an injury.

Executive Summary

3. The Accident Compensation Act 2001 (the AC Act) provides a dispute resolution process for claimants who disagree with decisions made by the Accident Compensation Corporation (ACC). Under this process, claimants can have the decision reviewed by an independent external reviewer.
4. Claimants can get some reimbursement of the costs of taking a review ("review costs"). The maximum costs that can be awarded are set out in *the Accident Compensation (Review Costs and Appeals) Regulations 2002* (the Regulations). These are paid by ACC.
5. The Regulations currently have 14 cost categories, up to a maximum amount, based on an award limit or the time required for a task. Policy reviews, undertaken since 2016, have indicated that current cost caps in the Regulations present barriers to claimants accessing the review process and the categories need simplification.
6. I recommend consulting on increasing the total amount that can be reimbursed, and lowering the number of cost categories from 14 to four (refer to Table 2 on page 4).
7. Consultation is scheduled to be undertaken in early 2022, with a final proposal brought back to Cabinet in mid-2022.

Background

8. As a part of a comprehensive dispute resolution framework for ACC claimants, the AC Act provides an independent, external review process for claimants who disagree with a decision that is made by ACC.
9. The availability of some reimbursement of review costs helps support the efficient, effective, and fair resolution of disputes, and helps reduce the need for more costly court proceedings.
10. In keeping with the Accident Compensation Scheme's mandate, the Regulations provide fair, as opposed to full, compensation to ensure that there is an incentive for individuals to minimise expenditure and avoid excessive litigation.

Policy reviews identified two main issues with the current regulations

11. Policy reviews¹ have raised two main issues:
 1. The current level of reimbursement for costs is insufficient in some cases, particularly for claimants whose cases involve complex or long-term injuries. The cost of accessing medical reports and representation are particular barriers to claimants accessing the review process.
 2. The current cost categories are too prescriptive. Reviewers are constrained by the 14 detailed categories, which allow reimbursement for specific or time-based tasks.

I recommend consulting on reducing the existing 14 cost categories in the Regulations to four

12. I recommend consulting on reducing the 14 existing categories, in which costs can be awarded, to four. The new categories would be:
 1. **Application costs:**

A limited cost category for the cost of preparing and submitting the application required to initiate a review.

 1. **Representation costs:**

Costs associated with a lawyer or advocate preparing for and attending a review.
 2. **Medical and other reports:**

Costs associated with expert reports that a claimant may require to support their case during the review process.
 3. **Other expenses:**

¹ The 2016 Independent Review of Acclaim Otago's (Inc) July 2015 Report in Accident Compensation Dispute Resolution Processes, and MBIE's follow up review in 2017-18.

Costs associated with expenses incurred in the review process such as travel and childcare.

13. Importantly, this will not reduce the range of costs that can be awarded.

I recommend consulting on increasing the maximum limits for the new proposed cost categories

Category 1: Application costs

14. To begin the review process, an application must be made under section 135 of the AC Act, and Category 1 provides reimbursement for the costs of this process. To reflect cost pressures, I recommend consulting on increasing the maximum limit from \$136.35 to \$150.

Category 2: Representation costs

15. Claimants are able to access representation from both lawyers (governed by the New Zealand Law Society) and advocates (not governed by a professional body ranging from very experienced to not experienced at all). Given this, I recommend two possible options are consulted on for Representation costs:

Option 2.1: One maximum limit for all representatives (inclusive of both lawyers and advocates) of \$1,320, compared with the current maximum of \$886.32.

Option 2.2: A sliding scale based on complexity and/or time involved, and qualifications of representatives, in recognition that lawyers are qualified and are held to the standards set by NZLS. Noting also, that a recent High Court ruling (ACC v Carey [2021] NZHC 748) determined that the full rate available through the district court rules would not generally be appropriate for non-lawyer advocates. (**Table 1 refers**).

Table 1: Option 2.2 matrix

	<i>Complexity and/or time</i> □	
	<i>A.</i>	<i>B.</i>
<i>1. Advocates</i>	<i>\$660</i>	<i>\$1,320</i>
<i>2. Lawyers</i>	<i>\$1,320</i>	<i>\$2,640</i>

Category 3: Medical and other reports

16. I recommend consulting on a maximum cap of \$4,150 for the cost of reports. The use of a single cap provides greater flexibility for reviewers. The Regulations currently set out prescriptive limits for various reports, including a separate rate for specified medical specialists, this would be removed through the single category approach.

Category 4: Other expenses

17. The other expenses category currently provides flexibility for the reviewer in the award of costs, and includes costs such as travel costs and time off work for the claimant. I recommend consulting on increasing the maximum cap from \$681.77 to \$1,500.

Comparison of proposals and analysis of risk

18. The outcomes sought through updating the Regulations are to:

- improve access to justice for claimants
- be transparent, consistent, and ensure ease-of-use for participants
- discourage frivolous and excessive litigation
- support an efficient and effective review process.

19. I consider that improving access to justice for claimants should be the primary objective of the Regulations. These objectives are included in the consultation document in order to provide a framework for the review and to help evaluate the proposed options.

20. The proposed changes to the Regulations are intended to provide both greater flexibility for reviewers and greater simplicity and predictability for claimants. **Table 2** below shows the proposed new categories against the status quo.

Table 2: Proposed changes to maximum costs able to be awarded

Category	Current regulations	Proposed new maximum (Option 2.1)	Proposed new maximum (Option 2.2)	
Application Costs	\$136.35	\$150.00	\$150.00	
Representation Costs (including advocates)	\$886.32 (across 7 categories)	\$1,320.00	<i>Complexity and/or time</i> <input type="checkbox"/>	
			A.	B.
			1. Advocates	\$660
2. Lawyers	\$1,320	\$2,640		
Medical and other reports	\$1,636.26 (across 5 categories)	\$4,150.00	\$4,150.00	
Other expenses	\$681.77	\$1,500.00	\$1,500.00	
Maximum award	\$3,340.70²	\$7,120.00	\$8,440.00 (assuming 2B of the matrix applies)	

21. There is a risk that representatives will try to prolong cases or purposely take them to review, when there is already pre-agreement to settle, in order to recoup higher costs

² The award of medical costs is uncertain as costs for multiple reports can be provided. This figure is based on one specialist report and one non-specialist report being provided.

under any option. However, it is expected that reviewers and ACC will challenge unmeritorious claims where representatives are attempting to recoup costs above the appropriate maximum.

22. Option (1) may encourage new non-lawyer representatives, into the ACC review space, who do not have the experience or expertise to adequately represent claimants. This could increase frivolous cases, lowering the effectiveness of the review process.
23. Risks associated with option (2) include, operational risks in implementation and potential discrepancies in awarding of costs among reviewers in the short term (this is expected to decrease after the initial implementation period).

Consultation

Public consultation

24. If Cabinet agrees I will release the *Proposed amendments to the Accident Compensation (Review Costs and Appeals) Regulations 2002* consultation document. Consultation will take place in early 2022, however I am seeking approval now to ensure my officials are prepared to consult as early as possible into the New Year. Public consultation will be held for a period of four weeks, and my officials will focus on consulting with claimant representatives and review providers.

25. Confidential advice to Government

Government consultation

26. ACC and the Ministry for Justice were consulted during the development of the potential approaches.
27. ACC, the Ministry of Justice, the Ministry of Health, the Treasury, the Ministry of Social Development, the Ministry for Women, Te Puni Kōkiri and Veterans' Affairs have been consulted on the proposals in this paper. Their comments have been incorporated. The Department of the Prime Minister and Cabinet has been informed.

Financial Implications

28. The total expected financial impact of these changes is up to approximately \$11.8 million p.a. Costs would be split between the Non-Earners' Account (Crown Appropriation) and levied accounts (i.e. Work, Earners', and Motor Vehicle Accounts). Confidential advice to Government

Legislative Implications

29. There are no legislative implications at this stage.

Impact Analysis

30. The Ministry of Business, Innovation and Employment's Quality Assurance panel has reviewed the Discussion Document and confirms that it substitutes as an interim Regulatory Impact Statement. The Discussion Document is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions.

Te Tiriti o Waitangi

31. I have considered the Crown's Te Tiriti o Waitangi obligations in regards to consultation. MBIE and ACC will work together to ensure that Māori are effectively represented throughout this process.

Population Implications

32. The options in this paper may provide enhanced access to justice to disabled people (where disability is caused by injury) given the greater potential reimbursement of costs.
33. Consideration was given to rural populations through the Rural Proofing Framework. Increases to *Category 4: Other Expenses* may help improve access for rural populations by providing a potential for a greater reimbursement of travel costs.

Climate Implications of policy proposals

34. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Human Rights

35. 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.

Publicity

36. The consultation document will be published on MBIE's website. ACC will also publicise the consultation document on their website and will notify relevant stakeholders of its release.

Proactive Release

37. I intend to proactively release this Cabinet paper on MBIE's website at the same time as the release of the Discussion document in early 2022. Any redactions will be made in accordance with the Official Information Act 1982.

Recommendations

The Minister for ACC recommends that the Committee:

1. **note** that updating the review costs regulations completes the last of the recommendations from the Independent Review of Acclaim Otago's report into

Accident Compensation Dispute Resolution Processes (the Dean Review) in 2016, which recommended the maximum rates under the Regulations be increased by more than just inflation

2. **note** that there has been a significant amount of time since the Dean Review was conducted and delays caused by COVID-19 over the last two years have meant this work was put on hold until now
3. **agree** to release the attached public consultation document providing proposals to substantively update the *Accident Compensation (Review Costs and Appeals) Regulations 2002*;
4. **note** that consultation is scheduled to be undertaken in early 2022
5. Confidential advice to Government

Authorised for lodgement

Hon Carmel Sepuloni

Minister for ACC