

How to submit this form

Submission form: Proposed amendments to the Accident Compensation (Review Costs and Appeals) Regulations 2002

The Ministry of Business, Innovation and Employment (MBIE) would like your feedback on proposals on updating the Accident Compensation (Review Costs and Appeals) Regulations 2002. Please provide your feedback by **5pm, on 28 March 2022**.

When completing this submission form, please provide comments, evidence, and any data that may aid your submission. Your feedback provides valuable information and informs decisions about the proposals.

We appreciate your time and effort taken to respond to this consultation.

Instructions

To make a submission you will need to:

1. Fill out your name, email address, phone number and organisation.
2. Fill out your responses to the discussion document questions. You can answer any or all of these questions in the [discussion document](#). Where possible, please provide us with evidence to support your views. Examples can include references to independent research or facts and figures.
3. If your submission has any confidential information:
 - i. Please state this in the email accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 (Official Information Act) that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
 - ii. Indicate this on the front of your submission (e.g. the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
 - iii. Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

How to submit this form

4. Submit your feedback:

i. As a Microsoft Word document by email to ACregs@mbie.govt.nz with subject line:
Consultation: Review Costs Regulations

ii. By mailing your submission to:

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

Wellington 6140
New Zealand

Submitter information

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MBIE would appreciate if you would provide some information about yourself. If you choose to provide information in the section below it will be used to help MBIE understand the impact of our proposals on different occupational groups. Any information you provide will be stored securely.

Your name, email address, phone number and organisation

Name: Benjamin Hinchcliff

Email address: Privacy of natural persons

Phone number:

Organisation: ACC and Employment Law

- The Privacy Act 1993 applies to submissions. Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE may publish.
- MBIE may upload submissions or a summary of submissions received to MBIE's website at www.mbie.govt.nz. If you do **not** want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below:

I do not want my submission placed on MBIE's website because... [insert reasoning here]

Please check if your submission contains confidential information

- I would like my submission (or identifiable parts of my submission) to be kept confidential, and **have stated** my reasons and ground under section 9 of the Official Information Act that I believe apply, for consideration by MBIE.

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Questions on the proposed objectives

1. Do you agree with the presented objectives?

Yes No Not Sure

2. Are there alternative objectives that should be considered to help shape the discussion? (please provide detail on any alternative objectives you consider relevant)

None

Questions on the proposed cost categories

3. What do you think about the proposed cost categories?

They simplify the matter.

4. Do you agree with the proposed categories?

Yes No Not Sure

Why/ why not?

The time at review does not need to be separate because 95% of the time they are under 1 hour. The application costs should be bundled with the representation costs.

5. Are there any other alternative options for grouping the cost categories that could be used? Please provide supporting information.

The application costs should be added to the Representation costs. When a client lodges a review application it usually creates more work than if I had lodged the review. Having to charge the client an extra \$150 because they lodged their own review application is problematic. Easier to bundle the two costs.

Questions on Category 1 – Application costs

6. Should Application Costs (Category 1) remain separate from Representation Costs (Category 2)?

Yes No Not sure

Why/ why not?

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See above. Client's often do not understand how difficult the process is until they get to the case conference, or receive ACC submissions. Clients should be able to engage a representative at any time without being penalised.

Due to the time limits, clients will lodge a review and then seek representation. They are not aware that they will be charged \$150 if they lodge their own review.

There is no good reason to keep the costs separate. Often, a file review is needed prior to lodging a review. Clients are not aware of the interplay with ACC decisions and it takes time to ensure the correct review is lodged.

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7. Do you agree with the proposed increase in maximum costs awardable for Application Costs? (please circle or highlight your response)

Strongly Disagree
Disagree
Neither
Agree
Strongly Agree

Questions on Category 2 – Representation costs

8. Based on the options provided in this document, what is your preferred option? (please circle or highlight your response)

2.1 One maximum limit for all representatives

OR

2.2 Sliding scale based on complexity and/or time and, qualification of the representative.

Please provide the reasons for your view

2.2 The reasons stated in the discussion paper are correct. Lawyers cannot invoice ACC for more than the legal costs to the client. Advocates will typically charge the maximum because there is no control on the way they invoice ACC.

9. Do you have any other suggested options or groupings to categorise Representation Costs (Category 2)?

No.

10. Is there any information to support or reject the distinction that is made between lawyers and advocates (Option 2.2)?

I know of a lawyer that became an advocate because they could charge more. There is no advantage to being a lawyer at a review. As a lawyer, we have various constraints and requirements on how we practice. The cost differential will encourage advocates to become lawyers and to understand the law.

11. Do the proposed new rates reflected in Option 2.2 reflect appropriate market rates for lawyers and advocates?

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Yes No Not sure

If not, is there any information that can be shared to inform this discussion.

[insert response here]

12. Do you agree with the proposed new maximum costs awardable for Representation costs (both options)? (please circle or highlight your response)

Strongly Disagree
Disagree
Neither
Agree
Strongly Agree

13. Do you think the proposed changes will increase access to justice (and therefore improve outcomes) for claimants?

Yes No Not sure

If not, why not?

[insert response here]

14. Is there any evidence/data or precedence that could be used to determine the complexity of a review (i.e. which cases should sit in which categories (ie A or B)?

Just anecdotal. The availability and complexity of obtaining medical reports to support a client's case is also a consideration. The files of VI cases are usually a lot bigger and take an average of 4 times as long to review. Treatment injury files are usually 2-3x as big as standard PICBA files. The legal arguments are more complex in category B and require an understanding of the law to help reviewers.

Questions on Category 3 – Medical and Other Report costs

15. Currently, the medical reports categories can be used for multiple reports. Is there any information to suggest the capped approach is inappropriate? Please provide supporting information.

No.

16. Do you think the proposed new rates will increase access to medical reports (and therefore access to justice) for claimants?

Yes No Not sure

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Please explain your view.

Psychiatric reports are around \$3-4,500. Only a few clients will be able to afford that cost and so almost all mental injury cases go to review without fresh evidence. This is the area where the increase will make a big difference. Another \$2,000 should be available for a follow-up report if ACC obtains an opinion after the initial report is filed.

17. Do you agree with the proposed new maximum costs awardable for Medical and Other Report Costs? (please circle or highlight your response)

Strongly Disagree
Disagree
Neither
Agree
Strongly Agree

18. Do you think removing the distinction between registered specialist reports and other reports will improve claimant's access to reports?

Yes No Not sure

Please explain your view.

GP's do not often write reports as they take too long and are not worth the time. Physiotherapy specialists are now available to write reports, but the current rate is not enough.

Questions on Category 4 – Other expenses

19. Do you think the new rates will increase access to in-person reviews for rural communities?

Yes No Not sure

Why/ why not?

The increase in other expenses will allow more travel costs to be funded. Also, to allow funding for time off work to travel and attend hearings.

20. How can 'Other Expenses' (Category 4) be improved to enhance support for rural communities?

Please provide supporting information.

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If there is detail as to what that covers, claimants will know that they can be compensated for travel and time off work.

21. Do you agree with the proposed new maximum costs awardable for Other Expenses? (please circle or highlight your response)

Strongly Disagree
Disagree
Neither
Agree
Strongly Agree

Questions on the overall proposed changes to the Regulations

22. Are there any other costs, benefits, or unintended consequences of the proposed changes that have not been considered in this document?

No

23. Do you think MBIE should conduct regular reviews of the maximum cost caps in the regulations?

Yes No Not sure

24. Do you have any comments on the alternative approaches considered?

Thank you for making a change to help people access justice.

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Questions on Alternative Dispute Resolution (ADR)

25. If the regulated timeframes are extended while clients are engaged in ADR, what effect do you think it will have on claimant's decisions to use ADR and the external review process? Please provide supporting information.

I would recommend that we do not use ADR. There is no good reason to extend the three-month limit. ADR usually occurs within 1 month of the review application being filed. If the 3-month limit is extended, it will extend the time of litigation. The current system is working because it encourages a quick resolution. If the time limits are extended, ACC may delay setting up ADR and hearings.

26. Have you incurred costs as a result of undertaking ADR? What are these and did it impact on decisions to proceed with an external review?

Yes, review costs are paid if there is an agreement to settle. This motivates a settlement agreement and ensures that ADR is only used if it can help.

27. If a level of reimbursement for costs was to be included for ADR in the Regulations, what should be taken into consideration?

The review costs are usually paid at ADR. There is no need for separate ADR costs as costs may be negotiated at ADR.

28. Would the inclusion of a level of reimbursement for ADR costs change your position on undertaking ADR in comparison to an external review?

No.