

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:

Peter Sara

Email address:

Privacy of natural persons

Phone number:

Organisation:

Peter Sara Barrister& Solicitor

- 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)

Successful claimants should not be put out of pocket in order to seek their rightful lawful entitlements.
There should be full reimbursement of out of pocket expenses not just a contribution

Questions on the proposed cost categories

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

agree

4. Do you agree with the proposed categories?

Yes No Not Sure

Why/ why not?

[insert response here]

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

[insert response here]

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?

Because representation costs are significantly greater in all cases than application costs

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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

The rationale applied by the High Court regarding advocate/lawyer costs applies here

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

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

Lawyers are tightly regulated and subject to costs supervision. Advocates are not at all. Lawyers are constrained by competency requirements. Advocates are not

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

Yes No Not sure

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

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The market rate for a junior lawyer is \$200-250 per hour, senior lawyer \$250-400 per hour and principal \$400-600 per hour (LegalVision December 2020) .It is noted that the cost increase proposed for medical reports is based on a rate of approx. \$550 per hour. The differential is difficult to justify.

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?

They don't go far enough. There is an enormous difference between the resources of ACC and the claimant

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)?

Gradual process work injuries and treatment injuries are notoriously more complex than other cases such as standard PICBA causation

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.

The medical report costs in some cases such as birth injuries can vastly exceed the cap. That can also arise in highly contentious cases where counsel for ACC are retained

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.

It may help a bit.

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.

Currently Musculo skeletal physicians are not included as specialists under the existing regs.They should be

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?

This should be the subject of some proper research

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

Please provide supporting information.

[insert response here]

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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?

[insert response here]

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?

[insert response here]

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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.

If claimants can see value in ADR (which is my experience) then regulated timeframes are of less importance

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 .I assume by costs is meant legal costs. ADR processes are similar to what is involved in preparation for reviews

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

The same as for reviews-range and complexity of issues & skill and experience required

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