

28 January 2014

Mr Anthony Jordan  
[fyi-request-1333-44112ad8@requests.fyi.org.nz](mailto:fyi-request-1333-44112ad8@requests.fyi.org.nz)

Dear Mr Jordan

### Official Information Act request

On 25 November 2013 you asked for the following information under the Official Information Act 1982 (the Act):

1. Does the Corporation use 'Dual Role Assessors' i.e. assessors Employed/Contracted by the corporation, to provide medical advice based on forwarded medical records/reports/assessments relating to claimant's specific claim numbers for the purpose of eligibility of Lost Earnings entitlements
2. Does the Corporation use 'Dual Role Assessors' to provide assessment reports for eligibility of Vocational Independence entitlements
3. Does the Corporation use 'Dual Role Assessors' to provide assessment reports for eligibility of Rehabilitation entitlements
4. Does the Corporation use 'Dual Role Assessors' to provide assessment reports for on-going Lost Earnings entitlements
5. Does the Corporation use 'Dual Role assessors' to provide assessment reports for on-going Rehabilitation entitlements
6. Does the Corporation use 'Dual Role assessors' to provide assessment reports for on-going Vocational Independence requirements
7. When the Corporation or Branch Medical Advisor deem it necessary to have a claimant referred to 'an appropriately qualified' assessor, who's jurisdiction and expected qualification of referrer, does this belong to ensuring the claimant is being referred to the most qualified and 'appropriate' assessor
8. For years 2002 through to 2012 how many 'dual role assessors' have been employed/contracted (provided in 12 month bands)
9. Qualification of the ten most used assessors (Individual names not sought) i.e. (by percentage of reviews referred to assessor by Corporation), that play a dual role position to the Corporation for years 2005-2012 (in twelve month bands)
10. Please provide policy/legislation changes and/or considerations made in the past five years to address any concerns by the wider New Zealand public of rights to selecting an assessor of equal or more qualification as recommended by any Corporation contracted Party/Specialist

In a further email on 27 November 2013 you clarified that "Dual Role Assessor" meant:

*Dual Role being where ACC provide a medical professional with claimants information and medical professional subsequently provides medical opinion upon request by ACC for the purpose of medical treatments and/or various entitlements and/or various recommendations. (without Physical Examination)*

*and*

*also conduct Assessments and/or Medical examinations with subsequent reports for the purpose of further medical treatments and/or various entitlements and/or future/ongoing recommendations (in the interests of the claimants Vocational well-being and Independence etc) (with Physical Examination)*

*An example of this could be a contracted advisor, such as a BMA, also acting as a assessor for the Corporation providing Independence Allowance, Sensitive Claims, Vocational Rehab, Occupational Rehab etc assessments (Both non claimant contact and physical contact with claimant)*

### **General Commentary**

The following details are provided as contextual background and should be read in conjunction with ACC's specific answers under the Act.

You have asked for information about 'Dual Role Assessors', which is not a term used by ACC. However, based on the Act's principal of availability, ACC has taken the approach of defining your term of 'dual role assessor' as being clinically qualified staff who are both employed by ACC as a BMA and contracted by ACC as an assessor.

ACC employs a number of clinically qualified staff on a part time basis to assist with its claims/case management decision-making processes. These include Branch Medical Advisors (BMAs) and Branch Advisory Psychologists. ACC also uses independent expert assessors to provide opinions on a client's clinical status. It is important to note, however, that the role of a BMA and an expert assessor are quite different.

BMAs analyse medical information and translate that into lay language for case managers who do not have clinical backgrounds. BMAs may also assist a case manager with identifying an expert advisor, drafting appropriate clinical questions and reviewing expert advice. They do not conduct physical examinations of clients or provide expert opinions.

BMAs do not have decision-making delegations. It is case managers who make decisions on behalf of ACC based on the information available. This includes the medical evidence on file, ACC legislation and its policies.

External assessors are asked to provide an expert opinion on the clinical status of a client to assist ACC with its decision-making. The case manager takes this information into account, along with all other relevant details, to make decisions on the claim.

In an earlier information response to you, dated 15 November 2013, ACC provided you with a copy of its generic Master Contract, used to obtain services from medical specialists, and a copy of its Branch Medical Advisor job description. Those documents contain useful details that explain the difference in these two roles.

### *Managing conflicts*

There is a very small number of clinicians who are employed by ACC as BMAs and who occasionally also provide independent assessment services as part of their private practice. In 2012, there were only three clinicians working in both roles (discussed below in response to question 8). ACC has processes in place to ensure that a clinician who works both as a BMA and as an assessor cannot work in both capacities on the same claim file.

All staff employed by ACC are trained in and obliged to fulfil the requirements of its Staff Code of Conduct. The Code of Conduct requires all employees, including BMAs, to declare any overlapping interests that may affect their employment tasks. Accordingly, if a BMA is referred a client file, for which they have had contact with in their private clinical capacity, they are required to declare a conflict of interest. The client's file will subsequently be referred to another BMA.

If ACC refers a client for an external assessment with a medical professional who is also a BMA, ACC actively checks for conflicts of interest. Accordingly, a BMA who is also working in private practice, would not be referred a client from the branch they are based in, for any type of physical examination or assessment. This ensures that the clinician is not referred a claim as an assessor if he or she has already been involved in the file as a BMA.

These clinical practitioners also have their own personal processes in place to guard against any conflicts of interest. Clinical practitioners are bound by their own professional codes of conduct that establish acceptable ethical practices. It is a professional requirement that they declare any conflicts of interest or previous dealings when they are asked to assist with a claim file.

I will now turn to responding to the specific questions as you have asked them.

**1) Does ACC use 'Dual Role Assessors' to provide reports on a claimant's eligibility for lost earnings entitlements?**

ACC pays ongoing lost earnings entitlements, or weekly compensation, if the following criteria are met:

- a personal injury that has been accepted for cover under the Accident Compensation Act 2001
- ACC is responsible for managing the claim (as opposed to a work-related injury suffered by the employee of an accredited employer)
- the client has made a written or verbal application for weekly compensation
- the client is an earner at the date of injury; and
- the client is incapacitated for employment.

ACC initially relies on medical certificates from the client's doctor to establish incapacity. A BMA may assist the case manager with interpreting that medical certificate. Incapacity is then reviewed at regular intervals and that may include an external assessment by an expert. As noted above, that would never be the same person that has assisted ACC in the role of a BMA.

**2) Does the Corporation use 'Dual Role Assessors' to provide assessment reports for eligibility of Vocational Independence entitlements?**

ACC uses external occupational and medical assessments to assess if a client has achieved vocational independence following vocational rehabilitation.

The assessor's role is to provide an expert opinion on whether a person has capacity to work or to make recommendations for rehabilitation.

A BMA may assist the case manager with interpreting the assessments. However, a clinician would not work in both capacities on the same file due to ACC's Code of Conduct and the clinician's professional obligations (discussed above).

**3) Does the Corporation use 'Dual Role Assessors' to provide assessment reports for eligibility of Rehabilitation entitlements?**

ACC uses Individual Rehabilitation Plans to record the treatment, social rehabilitation and vocational rehabilitation a client needs to restore their health, independence and participation



in society to the highest possible level. It records the client's rehabilitation goals and the rehabilitation services that are appropriate. These are identified through external clinical assessments or recommended by professional support services.

A BMA may assist the case manager with interpreting this clinical information, but that BMA would not be asked to undertake any external assessments on the same claim file (as per ACC's Code of Conduct and the clinician's professional obligations outlined above).

**4) Does the Corporation use 'Dual Role Assessors' to provide assessment reports for on-going Lost Earnings entitlements?**

Please refer to the answer to question 1.

Incapacity is reviewed at regular intervals and that may include an external assessment by an expert. If a BMA has assisted the case manager with a claim file as part of his or her ACC employment, that person would not provide any assessments as an external expert (as per ACC's Code of Conduct and the clinician's professional obligations outlined above).

**5) Does the Corporation use 'Dual Role assessors' to provide assessment reports for on-going Rehabilitation entitlements**

Please refer to the answer to question 3.

The Individual Rehabilitation Plan is reviewed and updated at regular intervals. If an external assessment is required, this would be performed by a clinician who has not had any involvement with the claim file (as per ACC's Code of Conduct and the clinician's professional obligations outlined above).

**6) Does the Corporation use 'Dual Role assessors' to provide assessment reports for on-going Vocational Independence requirements**

Please refer to the answers to question 2 and 3.

External assessments may be used as part of reviewing and updating vocational rehabilitation needs. A BMA may assist the case manager in interpreting this clinical information, but would not be engaged as an external assessor on the same claim file (as per ACC's Code of Conduct and the clinician's professional obligations outlined above).

**7) Who decides when it is necessary to refer a claimant to an appropriately qualified assessor, what are the qualifications of the referrer, and how does ACC ensure it is referring a claimant to an appropriately qualified assessor?**

Case Managers determine whether an assessor has the appropriate qualifications to conduct a particular assessment on a client. When it is a clinical issue being assessed, the Case Manager may seek input on the appropriate type of assessment and type of assessor from a BMA. ACC has also developed best practice case management principles around the use of medical assessments. This includes associated training for staff.

**8) How many 'Dual Role Assessors' have been employed or contracted to ACC, in 12 month bands, between 2002 and 2012.**

ACC employed/contracted three dual role assessors in 2012.

The Corporation is unable to provide the number of 'Dual Role Assessors' it employed or contracted for the years 2002 to 2011 because those statistics cannot be identified without substantial collation or research. This decision complies with sections 18(e) and 18(f) of the Act.

To identify and provide the details you requested, ACC will have to manually cross-check the names of each BMA it has employed between 2002 to 2011, against the names of each assessor contracted to provide assessments and expert opinions during the same period. This is further complicated by the fact that assessors often work with ACC as part of a practice and use the practice name for invoicing purposes.

In addition to the above, it is not unusual for doctors to move and work for different practices, which makes searching for the details you require more problematic. And finally, it is also possible there are providers and vendors with similar names, which must be eliminated to identify the correct assessor.

Accordingly, ACC does not have a list of individual assessors and BMAs it is able to cross-reference to provide you with the requested information. The list of assessors by individual name does not currently exist and would need to be generated. The statistics would then also need to be calculated and generated. ACC may refuse a request if the information sought does not exist (section 18(e)).

ACC has also estimated that to locate and collate the information you have requested would take an analyst 100 hours to complete the cross-referencing alone for the years 2002 to 2011.

Under Section 15(1A) and (2) of the Act, an agency or organisation may have reasonable cause to charge a fee for the information requested. Given ACC estimates it would take approximately 100 hours for one employee to complete the cross-referencing exercise alone, it considers that levying a charge pursuant to section 18A of the Act is reasonable.

When calculating a charge, ACC uses the Ministry of Justice Charging Guidelines. These provide for an initial charge of \$38 for the first chargeable half hour or part thereof of staff time and then \$38 for each additional half hour or part thereof. ACC will also levy a charge of 20 cents per page after the first 20 pages for photocopying. For the estimated 100 hours of staff time involved in cross-referencing data that may be available, ACC would need to consider charging you a fee of \$7,600. This does not include the photocopying costs that may arise. This figure has been based on an hourly rate of \$76.00, charged in half hourly units.

ACC therefore considers that the amount of collation and research, and costs involved, meet the grounds for refusing this aspect of your request pursuant to section 18(f) of the Act.

**9) Qualification of the ten most used assessors (Individual names not sought) i.e. (by percentage of reviews referred to assessor by Corporation), that play a dual role position to the Corporation for years 2005-2012 (in twelve month bands)**

We note that this question asks about all assessors, as opposed to your other questions which are based on your definition of "Dual Role Assessors".

We are able to provide the information you have requested for the 2012 year as follows.

***Qualification of the ten most used assessors (Individual names not sought) i.e. (by percentage of reviews referred to assessor by Corporation), that play a dual role position to the Corporation for years 2005-2012 (in twelve month bands)***

ASSESSOR	CLAIMS PAID	REVIEWS AND SERVICES	QUALIFICATIONS
A	56%	56%	Bachelor of Medicine, Bachelor of Surgery, Diploma in Obstetrics, Diploma in Child Health, Member and Fellow of the Royal New Zealand College of General Practitioners
B	19%	15%	Bachelor of Medicine, Bachelor of Surgery, Diploma in Obstetrics, Member of Royal College of General Practitioners
C	6%	8%	Bachelor of Medicine, Bachelor of Surgery, Member of the Royal College of General Practitioners, Fellow of the Australasian Faculty of Occupational and Environmental Medicine of the Royal Australasian College of Physicians
D	7%	5%	Diploma of Medicine, Fellow of the Royal New Zealand College of General Practitioners
E	8%	12%	Bachelor of Medicine, Bachelor of Surgery, Fellow of the Royal New Zealand College of General Practitioners, Royal New Zealand College of General Practitioners
F	2%	3%	Bachelor of Medicine, Bachelor of Surgery, Fellow of the Royal New Zealand College of General Practitioners
G	<1%	<1%	Bachelor of Medicine, Bachelor of Surgery, Fellow of the Australasian Faculty of Rehabilitation Medicine, Royal Australasian College of Physicians
H	<1%	<1%	Bachelor of Medicine, Bachelor of Surgery, Diploma in Obstetrics, Member and Fellow of the Royal New Zealand College of General Practitioners
I	<1%	<1%	Bachelor of Medicine, Bachelor of Surgery, Fellow of the Royal New Zealand College of General Practitioners, Fellow of the Australasian Faculty of Occupational and Environmental Medicine of the Royal Australian College of Physicians
J	<1%	<1%	Bachelor of Medicine, Bachelor of Surgery, Fellow of the Royal Australasian College of Surgeons

**NB:**

- *The table includes services paid where the BMA was also listed as the vendor who was the commercial entity paid for the service. This is not necessarily the assessor who provided the service.*
- *The match between BMA name and vendor was made using the BMA's name. It is possible the BMA has done work under another business name, or for another vendor's business, which has not been captured in the information above.*
- *The assessors listed in the above table may possess additional qualifications to those provided.*

ACC is unable to provide the information requested for the period 2005 to 2011 because a list of assessor qualifications does not currently exist and cannot be generated without

substantial collation and research. This decision complies with sections 18(e) and 18(f) of the Act.

Assessor qualifications are examined as part of the original appointment process to the assessor contract. Assessors also have a professional responsibility to keep their annual practising certificates up to date by undertaking continuous professional development.

ACC does not hold this personal information about assessor qualifications in an existing database. To complete this aspect of your request, ACC would need to review the personnel files of every individual assessor for each of the six years and manually record their qualifications. ACC would then need to verify this information with the assessor to determine whether those qualifications remained the same as they were at the time of appointment or were added to during the relevant time period. As noted above, many assessors work with ACC under a practice name so ACC would also have to go through individual invoices to locate the name of the individual assessor.

ACC estimates that it would take an analyst in excess of 100 hours to complete this exercise. The time and costs are therefore prohibitive under section 18(e) of the Act. ACC is also entitled to refuse a request under section 18(f) of the Act if the information does not currently exist.

**10) Policy and or legislative changes and or considerations made in the past five years regarding ACC's client choice of assessor policy.**

Between 2003-2009, ACC's policy was to provide clients with a list of available assessors to choose from. However, ACC found this resulted in significant delays and barriers to clients receiving timely rehabilitation and treatment.

ACC revisited the policy in 2009 and amended it so that it would choose an assessor in the first instance. If the client had reasonable concerns about the ACC-chosen assessor, they could raise these with the Case Manager. Where practicably possible, ACC could consider using an alternative assessor with the necessary skills, qualifications and availability. This policy was seen as more accurately reflecting the assessor selection provisions in the Accident Compensation Act 2001, while also addressing the issue of delays.

In 2013 ACC reviewed the way it communicates its assessor choice policy to make clients more aware of their right to be involved in the choice of medical assessor. This review resulted in ACC's letters, factsheets and internal policies being updated to better highlight the issue of client choice in the assessor selection process.

You can reach me at [gabby.boag@acc.co.nz](mailto:gabby.boag@acc.co.nz) if you have any queries about this letter.

If you're unhappy with ACC's response, you may make a complaint to the Office of the Ombudsman. You can call them on 0800 802 602 between 9am and 5pm on weekdays, or write to:

The Office of the Ombudsman  
PO Box 10 152  
WELLINGTON 6143

Yours sincerely



Gabby Boag

**Senior Advisor, Government Services**