



Released under the Official Information Act 1982



Summary

Objective

This process will guide a Review Specialist on when and how to engage in Legal Representation as part of the review process.

Background

Owner

Outside of Scope

Expert

Procedure



PROCESS

Complete Background Review

Review Specialist

1.0 Consider Legal Services Representation

Review Specialist

- a Check if the review should be referred to Legal Services.

NOTE Consideration factors are used to determine whether a review may be more appropriately managed by External Counsel. The consideration factors are not exhaustive, and the Review Specialist must have regard to the surrounding factors of a review, especially the available resources to them in Resolution Services to support them in managing difficult reviews, and the perception of referring a claim for External Counsel management.

NOTE What are the consideration factors?

The consideration factors are:

- 1) Is there a strategic reason for a referral to External Counsel?
 - Is the topic one that ACC is currently litigating through the Courts?
 - Does our argument need to be run in line with arguments that ACC is currently addressing in appeals (such as mesothelioma claims)?
- 2) Is the legal issue complex or novel?
 - Does the decision relate to a point of law that has not been considered by ACC/the Courts before?
 - Is the review relating to an issue that may require specialist knowledge?
- 3) Is the review evidence complex or novel?
 - Does our approach to certain evidence need to be in line with arguments that ACC is currently running in appeals (such as mesothelioma claims)?
 - Has the customer or their representative presented evidence that requires special legal consideration or careful cross examination that is better managed by an experienced lawyer?
- 4) Is there a live appeal or review that is managed by External Counsel that may impact the current review or vice versa?
 - The presence of an existing appeal or review with External Counsel does not necessarily mean that a new review must be managed by External Counsel. Are the issues at appeal/review related and likely to impact on each other?
 - It is often beneficial to discuss this with the External Counsel managing the review or appeal before deciding whether the new review needs to be managed externally.
- 5) Is the review high risk?
 - Does the review have media involvement or interest?
 - Has there been CE involvement or interest?
 - Has there been recommendation for a review to be managed by External Counsel in previous correspondence on the file (such as from TS, TAS or the weekly compensation panel)?
- 6) Is the review relating to a high-cost decision?
 - Is the potential outcome of a review high cost to ACC (such as life-long serious injury cover and entitlements or retrospective entitlements for a significant period of time?)
- 7.) Does the customer have legal or advocate representation?
 - There may be situations where certain advocates or representatives may be more appropriately managed by External Counsel for strategic reasons.
 - ACC must think carefully before referring non-represented reviews to External Counsel because of the potential perception of this.
- 8) What would be the public perception or impact on the customer of ACC referring the case for External Counsel representation?
 - The ACC review process is meant to be a less-formal dispute resolution process outside of the Courts so there needs to be consideration on the potential perception of using External Counsel in the case.

- b** Seek agreement by speaking to a Senior Review Specialist, if you believe the review meets the consideration points.
- c** In Outlook, email the External Counsel Review Specialist outlining the reasons external legal counsel is necessary.
- d** Transfer the 'PRC REV – Complete Admin Review' to the External Counsel Review Specialist for further management, if there is agreement that external counsel is appropriate.

NOTE What if there is disagreement about whether the review should be managed by external counsel?

1. Ritwika provides a brief written rationale for the decline and offers a phone conversation if the referring Review Specialist doesn't agree
2. Phone conversation takes place for Ritwika and the Review Specialist to talk more in attempt to reach agreement
3. If no agreement then escalated to the two Senior Review Specialists
4. If still no agreement, the request can be escalated to Greer

NOTE What if it is not agreed that External Counsel will manage the review?

Retain the review and continue onto making the initial client phone call.

2.0 Refer to Legal Services

Review Specialist

- a** Create a bulk print selecting those documents in which Legal Services require to provide informed advice or appoint external counsel.
- b** Complete the referral template, attach the above selected documents and send to legal.services@acc.co.nz

 Legal Services Referral Template - November 2020.docx

NOTE What is the timeframe to refer to Legal Services?

A referral should be sent within 7 days of receiving the review application. If it is not clear within 7 days that Legal Services should be engaged (eg the case does not fall into one of the above categories), then a referral should be made within 14 days.

Legal Service will advise within 7 days who will be assigned to the case.

- c Go to 'Create Bulk Print and Sent CIR task' process to arrange the preparation of the file for Legal Services.

3.0 Book Case Conference

Review Specialist

- a Coordinate with the assigned External Counsel (once appointed) and the client to schedule a case conference time.

NOTE What timeframe should a Case Conference be booked within?

The Review Specialist should allow a generous amount of time between the scheduling of the case conference and the holding off the case conference. (eg If scheduled on day 20 - book the case conference towards Day 70). This will allow external counsel a sufficient period of time to familiarise themselves with the review matter.

NOTE Who should attend the Case Conference?

The Review Specialist should attend the Case Conference alongside the appointed Legal Counsel. The Review Specialist will attend as the ACC representative who will maintain the overall management of the review process (eg updating the Eos cog etc). It could also present valuable development for the Review Specialist.

- b Add the appointed External Legal Counsel as a 'non contracted vendor' to Eos as a participant.
- c Complete the ACC6239 (Appoint Reviewer) and leave on Eos as 'incomplete',
- d Arrange the dispatch of the file to the nominated provider, the client (if they haven't already received a copy) and the selected EC.

 **PROCESS Create Bulk Print and Send CIR Task**
Review Specialist

 **PROCESS Prepare and Attend Case Conference (CC)**
Review Specialist

4.0 Manage ongoing correspondence

Review Specialist

- a Remain involved to fulfil requests from Legal Counsel (eg seeking further internal information), and arranging the payment of Legal Counsel costs.

NOTE Who will write the submissions for hearing?

The appointed Legal Counsel will supply written submissions and represent ACC at the review hearing.