

11 May 2017

Mr David Lawson
fyi-request-5720-0cac5b46@requests.fyi.org.nz

Dear Mr Lawson

Official Information Act Request

Thank you for your request of 12 April 2017, asking for the following information under the Official Information Act 1982:

"I respectfully request that ACC Government Services provide to me under the provision of the Official Information Act a copy of all policy documents dating from 5 June 2009 through to 11 April 2017 inclusive that relate to ACC's management of long term claims.

I further welcome the provision of copies of all policy documents during the period 5 June 2009 through to 11 April 2017 inclusive that relate to ACC's management of long term claims, in which the implementation of the decisions noted in such papers have not yet been initiated, and I expressly request that ACC Government Services do not rely on Section 9 (g) (i) of the Official Information Act 1982, to withhold such information.

...I request the provision of copies of all policy documents during the period 5 June 2009 through to 11 April 2017 inclusive that relate to ACC's management of long term claims to include all policy documents that were put forward for consideration and were either;

- (1) not accepted and therefore did not proceed, and or*
- (2) partially accepted conditional upon amendments, and then progressed,*

in addition to the information requested under Request 1 and Request 2 of today's request. With the release of the information that I have additionally requested under Request 3, please specify what policy documentation was either (1) not accepted and therefore did not proceed, and or (2) partially accepted conditional upon amendments, and then progressed, supplying the supporting official information that validates why the proposed new policy was either not proceeded with, or proceeded with amendments".

Our response

Please find enclosed the ACC policy document *Vocational independence and elective surgery*, dated 16 February 2011, which is the only policy document written between 5 June 2009 and 11 April 2017 relating to ACC's management of long term clients. The document

outlines a proposal to update ACC's policy and processes for vocational independence clients who are expected to undergo elective surgery.

We have withheld the names and contact details of staff from the document in order to protect the privacy of individuals. In deciding to withhold that information, we have carefully considered whether the privacy interests we have identified are outweighed by the public interest in making it available. Our decision to withhold this information is made in accordance with section 9(2)(a) of the Act.

Queries or concerns

If you have any questions or concerns about the information provided, ACC will be happy to work with you to resolve these. Please address any concerns by emailing GovernmentServices@acc.co.nz or in writing to *Government Services, PO Box 242, Wellington 6140*.

You have the right to 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 10152, Wellington 6143*.

Yours sincerely
Government Services

Operational Policy Committee Cover Sheet

Agenda item	To be added by the Committee Secretary	Date	16 February 2011
Title	Vocational independence and elective surgery		
Outcome sought	Agree to update ACC's policy and process for vocational independence when elective surgery is involved.		
Action sought	Decision <input checked="" type="checkbox"/> Discussion <input checked="" type="checkbox"/> Information <input checked="" type="checkbox"/>		
Strategic implications	ACC's current approach to elective surgery post vocational independence is not aligned with the legislation. The risk can be managed by not beginning the vocational independence process for clients who are expecting surgery in the short-term, and by reassessing the VI status of clients who undergo surgery after they have achieved vocational independence.		
	Issue size	L <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> H	
	Financial impact (add \$\$ value)	L <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> H	
	Impact on rehabilitation rates/duration	L <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> H	
	Client impact	L <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> H	
	Provider impact	L <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> H	
	Impact on operational staff	L <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> H	
	Public perception impact (+ve)	L <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> H	
	Legal impact	L <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> H	
	ACC-wide support	L <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> H	
Key contact	[Redacted]		

Signature: _____
Manager

Signature: _____
Policy National Manager

16 February 2011

Operational Policy Committee

Vocational Independence and elective surgery

1 Purpose

- 1.1 This paper asks the Operational Policy Committee to agree to update ACC's policy for vocational independence (VI) for clients having elective surgery, so that the policy is in line with the Accident Compensation Act 2001 (the AC Act).

2 Recommendations

- 2.1 It is recommended that the Operational Policy Committee:
- a) **Agree** to update ACC's policy for managing clients in the vocational independence process, so that it is in line with the Accident Compensation Act 2001:
 - i. clients expecting to undergo surgery in the upcoming three months do not begin the vocational independence process
 - ii. clients who require surgery after they have begun the vocational independence process restart the process once they have recovered from surgery
 - iii. vocationally independent clients must, post surgery, again be assessed and deemed vocationally independent

3 Context

Legislation

- 3.1 The vocational independence process is ACC's legislative tool for managing duration for clients who can work, but are not employed. Sections 107 – 113 of the AC Act prescribe the steps ACC must follow to deem a client vocationally independent.
- ACC can require a client to undergo the VI process to determine that the necessary vocational rehabilitation has been completed and that the client has the capacity to work 30 hours or more per week.
 - ACC must determine the client's VI again, if it had previously found the client to be vocationally independent and now believes that the client's VI has deteriorated (due to the covered injuries).
 - If a client no longer has vocational independence, the client regains their entitlement to weekly compensation until they are again deemed vocationally independent.

ACC's current policy for clients eligible for vocational independence and elective surgery

- 3.2 ACC's policy for clients who are candidates for elective surgery and for the vocational independence process is that:
- clients who are expecting surgery in the short term, begin the VI process regardless of when surgery is scheduled

- clients who require surgery once the VI process has begun continue with the VI process. (However, in some Branches a decision is not issued until the client has recovered from surgery)
- clients who undergo surgery after the VI process is complete only receive weekly compensation if they are employed at the surgery date, and do not have their VI determined again after surgery, ie ACC does not establish VI deterioration.

4 Problem definition

4.1 As a matter of policy, ACC pays weekly compensation to clients who are vocationally independent, but cannot work when recovering from elective surgery. However, the AC Act does not allow for discrete periods of short-term incapacity post vocational independence, meaning ACC is making weekly compensation payments without a clear legislative ability to do so. The current VI policy:

- does not account for situations where surgery is expected in the short term or once the VI process has begun. Expecting clients who are likely to undergo surgery in the short term to begin the VI process does not comply with s107 of the AC Act because the need for surgery indicates a client's rehabilitation is not complete. Weekly compensation is paid until the expected recovery date specified by the surgeon in the client's Assessment Rehabilitation and Treatment Plan (ARTP).
- when vocational independence has been achieved ACC pays weekly compensation from the date of surgery until the recovery date specified in the ARTP, without first determining that a client's incapacity has deteriorated. This does not comply with s109(2)(b) of the AC Act because clients can only re-gain their entitlements for the same injury(s) if their VI or capacity to work is assessed as having deteriorated. Reviewers have found that this policy is discretionary and is not authorised by the AC Act.¹

4.2 There have been three recent decisions² where reviewers found that by paying post-surgery weekly compensation to clients who had previously been found vocationally independent, ACC implied that the clients' VI had deteriorated. The reviewers directed ACC to backdate/reinstate weekly compensation until the client was again assessed as vocationally independent.

4.3 The Recover Independence Service are concerned that the current policy allows vocationally independent clients to remain on weekly compensation indefinitely because their VI is not redetermined after surgery. In order to manage this risk, some teams no longer follow the policy.

4.4 Only a small number of clients are affected. In 2009/2010, 57 clients underwent elective surgery post VI. On average, these clients received 186 days weekly compensation days paid post surgery.

¹ Marcell, 2 November 2010 (T6952135604).

² Lovett, 23 September 2010 (C6441635002), Burkitt, 21 October 2010 (C10003593807) and Campbell, 13 January 2011 (C10005764982).

5 Proposal

- 5.1 It is proposed that ACC aligns its policy on vocational independence for clients having elective surgery more closely with the legislation. Table 1 outlines the current policy, the proposed change, and why the change is suggested.

Situation	Proposal	Justification
A. The need for surgery is known before VI commences. Currently clients begin the VI process. ACC pays weekly compensation until recovery date specified in their ARTP.	Do not commence VI until client has recovered from surgery.	Section 107 of the AC Act requires all rehabilitation to be completed; when ACC knows surgery will be required for the covered injury rehabilitation is not complete.
B. Surgery occurs in the 3 months after VI has commenced. Currently the client continues with the VI process. ACC pays weekly compensation until recovery date specified in ARTP.	Restart VI once the client has recovered from surgery.	
C. Surgery occurs after a client is vocationally independent. ACC pays weekly compensation from the surgery date until recovery date specified in ARTP.	Assume that surgery means the client's VI has deteriorated. Repeat the VI process.	By paying weekly compensation, ACC deems VI to have deteriorated. In these situations the AC Act requires ACC to repeat the VI process.

- 5.2 In situation C, it is proposed that ACC issues a reviewable decision that the client does not have vocational independence from the day of surgery. A further reviewable decision would then issued after the expected recovery date (specified in the ARTP) once a vocational independence occupational assessment (VIOA) and a vocational independence medical assessment (VIMA) have been carried out (as required by the legislation).

6 Assessment of the proposal and its implications

- 6.1 The proposal ensures ACCs policy on paying weekly compensation to clients within the VI process is in line with the AC Act. It also removes the risk that the Courts will direct ACC to reinstate entitlements until the client is again assessed as vocationally independent.
- 6.2 The financial³ and workload⁴ risks to ACC are very small. There is the risk that clients will use the possibility of surgery to delay commencing the VI process. This risk can be managed by the proposal only applying to clients where a surgery date has been specified in the ARTP. All other clients for whom surgery may be an option in the future will begin the VI process until they have a specified surgery date.
- 6.3 There are enough assessors to meet the slight increase in demand for assessments that is expected.
- 6.4 Seeking a legislative amendment to entitle vocationally independent clients to weekly compensation from the surgery date to the date specified in the ARTP was

³ In 2008/09, 57 clients would have required additional assessments, costing a maximum \$153,470. (These figures are based on complex assessment costs for IMA, VIMA, VIOA and VIM/A assessments. Standard assessment costs are lower). ACC would also be liable for a maximum of an additional three months weekly compensation for a small number of clients (46 clients in 2009/10). (Those claims where surgery occurs within 90 days of VI (ie weekly compensation is still paid) are counted as active claims).

⁴ 46 extra claims would have been active within the Branch network in 2009/10.

discounted because it would be impractical to implement, as this date changes according to individual rehabilitation progress.

7 Implementation

- 7.1 If the committee agrees, the relevant teams will update informe, post a noticeboard item and provide training for case managers. The relevant business owners will be determined when the arrangements for Treatment and Rehabilitation Services are finalised.

8 Consultation

Stakeholder/Team	Contact	Comment
Rehabilitation Services	[REDACTED] National Manager	Agrees with recommendations. Concerns about extended durations have been addressed in the paper.
Claims Management Network	[REDACTED] Business Manager	Agrees with recommendations.
	[REDACTED] Business Manager	Agrees with recommendations. Concerns about extended durations have been addressed.
	[REDACTED] Technical Claims Manager Waikato Branch	Agrees with recommendations. Advises that some Recover Independence Service teams are not following the current policy due to risks identified in the paper.
	[REDACTED] Area Training Manager, Auckland	Agrees with recommendations.
Claims Processing & Specialist Services	[REDACTED] Northern Service Centre, Quality Assurance and Review	Agrees with recommendations.
Business Improvement	[REDACTED] National Manager	Agrees with recommendations.
	[REDACTED] Improvement Manager	Supports legislative change. Thinks that timeframes for reassessment post-surgery are unworkable.
HPPR	[REDACTED] Director Clinical Services	Agrees with recommendations.
Levy & Scheme Management	[REDACTED] Senior Actuary	No significant impacts.
Governance, Policy and Research	[REDACTED] Manager Legal Services	Agrees with intent of paper. Concerns about workability of proposal addressed in the paper.
	[REDACTED] Corporate Solicitor	Concerns addressed in the paper

[REDACTED]
Senior Policy Analyst

Committee quality rating for this paper
 To be completed by Committee consensus:

	Not fit for purpose				Fit for purpose
Quality of Advice	1	2	3	4	5
Readability/Flow	1	2	3	4	5
Consultation	1	2	3	4	5
Overall rating	1	2	3	4	5
Reasons for this rating					