

9 June 2017

Mr Anthony Jordan
fyi-request-5859-ab896df9@requests.fyi.org.nz

Dear Mr Jordan

Official Information Act Request

Thank you for your request of 11 May 2017, asking for the following information under the Official Information Act 1982:

"1/ whereby the Corporation breaches it's own act or any New Zealand law, what are the consequences to the Corporation. This potentially could do with a broad number of breaches but in the interest of making things easier, I have listed a few examples

A) Don't return letter responses in given time (21 days as I understand)

B) Unable to find or trace personal information that has been couriered/ posted

C) Where proven to have intently manipulated information

2/ what financial fines have ACC subsequently paid for various breaches to their act in the last 15 years".

Our response

Question One

You have provided several examples of situations that you consider could be breaches under the Accident Compensation Act, 2001 (AC Act) and our response addresses these.

We have enclosed the following policy documents, *Timeframes to determine cover* and *Deemed cover decisions when timeframes not met*. These outline ACC's obligations when cover decisions are not made within the statutory timeframes.

Also enclosed is our policy, *Preparing and sending a courier package*, which outlines the steps taken to protect our clients' personal information when it is being sent by courier. Please note that clients are made aware of the risks of sending personal information by courier, as part of this process.

The manipulation of client information by staff would be considered a breach of our staff Code of Conduct. Any alleged breach would be investigated by our Human Resources department and could lead to disciplinary action.

In situations where ACC commits a serious service failure in terms of meeting its legislative requirements, resulting in a measurable financial loss to a client, ACC can approve a payment outside the scope of statutory entitlements. Further information is provided in the enclosed policy document titled *Payments outside the scope of statutory entitlements*.

Question Two

We can confirm that ACC has paid no “fines” for breaches relating to the AC Act in the last 15 years. This is because there is no basis in law for ACC, as a crown entity, to be “fined” in a situation where there is an actual or alleged breach of its statutory duty.

Comments or queries

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*.

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 10152, Wellington 6143*.

Yours sincerely

OIA Services

Government Engagement and Support

Timeframes to determine cover

Introduction

ACC operates under strict legislative timeframes for making cover decisions. If we don't meet these timeframes, a client's cover decision is [deemed in their favour](#) under the [AC Act 2001, Section 58](#).

Rules

Non-complicated claims

We must determine cover within 21 days of lodgement for claims that are considered non-complicated.

If there is not enough information to make a cover decision, we must inform the client that a decision cannot be made and the timeframe is being extended up to four months from the date of lodgement. Use the [CVR30 Time Extension - advise - claimant](#) (42K) letter.

We must make a final decision within four months of the claim being lodged.

See of the [AC Act 2001, Section 56](#).

Complicated claims

The following claims are considered complicated:

- personal injury caused by a [work-related gradual process, disease or infection](#)
- [treatment injury](#)
- claims for cover lodged 12 months after the date of accident ([late claims](#))
- mental injury caused by certain criminal acts ([sensitive claims](#))
- work-related mental injury.

We must make a cover decision within two months of a complicated claim being lodged. If we can't make a decision we must inform the client that we're extending the timeframe up to four months from the date of lodgement. Use the [CVR30 Time Extension - advise - claimant](#) (42K) letter.

See [AC Act 2001, Section 57](#).

Additional extension

It's possible to extend the timeframe for a complicated claim cover decision by up to nine months from the date the claim was lodged. The client must agree to this further extension by signing the form attached to the [CVR31 Time Extension - request - claimant](#) (88.5K) letter.

We must make a final decision within nine months of the claim being lodged.

Deemed cover decisions when timeframes not met

Introduction

If ACC fails to meet the agreed [timeframes](#) on a cover decision, a client is deemed to have cover for their injury under the [AC Act 2001, Section 58](#). Once there is a deemed cover decision, the client will also be eligible for entitlements.

Rules

We treat claims that have deemed cover decisions differently to those whose cover decisions were made within the statutory timeframes.

We:

- must continue to investigate the substantive claim for cover on an urgent basis
- are able to revoke deemed cover decisions where it is established that the client should not have cover on the substantive merits of the case. See [AC Act 2001, Section 65\(2\)](#).
Note: Revoking cover decisions that haven't been deemed due to exceeding statutory timeframes need to follow different rules. See [Reasons to revoke cover](#).
- will pay for entitlements on deemed decision claims so long as the entitlement meets eligibility criteria
- will pay some entitlements from the date cover is deemed until the deemed decision is revoked
- will not make any payments of lump sums for impairment or [converted weekly compensation](#) on deemed cover decisions
- must notify the branch group manager or centre manager of the deemed cover decision.

Informing the client

We must inform the client in writing of any deemed decisions and entitlements.

If at the time of writing the letter there is...

then advise the client...

not enough information to make a decision on the substantive merits of the claim

- that because the timeframes were exceeded, cover is granted while we continue to investigate their claim
- of any entitlements on the basis of the deemed decision, and that these entitlements are only payable from the date the timeframes were exceeded

If at the time of writing the letter there is...

then advise the client...

enough information to make a decision on the substantive merits of the claim for cover, and the client **does not** meet the criteria for cover

- that the timeframes were exceeded and they have a deemed cover decision in their favour
- that the claim is not supported by evidence, therefore the deemed decision is revoked and the claim for cover is declined on its substantive merits
- that only entitlements for the period from the date of deemed cover until the date cover was revoked will be provided

enough information to make a decision on the substantive merits of the claim for cover, and the client meets the criteria for cover

- that cover is granted and we'll consider entitlements in the usual manner

Confirm or revoke a cover decision after further investigation

Continue to investigate the claim until you can confirm or revoke the deemed decision.

If the decision is...

then...

to accept cover

- confirm cover on the substantial merits of the claim investigation
- pay any entitlement arrears due for periods before the date that cover was deemed

the claim does not meet the criteria for cover

- **revoke** the deemed cover decision and decline the claim for cover on the substantive merits of the claim investigation
- make any final entitlement payments for the period from the date of deemed cover until the cover was revoked

Preparing and sending a courier package

ACC staff use this process to send a package by courier and to ensure they use the most appropriate courier method for their customer. If the information is sensitive or confidential, refer to [Sending confidential information by courier using pre-alert](#).

All courier packages should be sent using ACC's preferred supplier [NZ Couriers](#). Exceptions apply for urgent deliveries where we can use [Sub60](#), and the following ACC sites that have been set up with Courier Post's PO Box delivery service:

- *Treatment injury centre*
- *Sensitive claims*
- *Dunedin*
- *Greymouth*
- *Nelson*
- *Christchurch.*

Note: *You can only use a courier to provide information to a client, client advocate or client lawyer if you have the client's consent to do so.*

Prepare a courier package

Responsibility

ACC staff

When to use

Use this instruction to prepare a package for delivery by courier.

Before you begin

Ensure the recipient is aware of the risks involved with sending their information by courier. See the [ACC6181 Receiving personal information by courier](#) information sheet.

Instruction

Step 1

If the package is...

then...

If the package is...	then...
a response to an information request	go to step 2
not a response to an information request	go to step 3

Step 2

Complete the appropriate cover letter and place it with the information to be couriered. Use either:

- [INP05 Personal info request – provide info](#)
- [INP05a Personal info request – provide info \(CIT\)](#).

Step 3

If you're...	then...
in the corporate office in Wellington	go to Send courier package from corporate office
not in the corporate office in Wellington	go to step 4

Step 4

Seal the information in a large courier pack or other suitable wrapping. If you require a signature on delivery, ensure you take the appropriate pack.

Note: These can be obtained from your team administrator or in your office supplies area.

Step 5

Check the delivery address details in Eos (or other system) and then print an address label.

If it's...	then use a...
a domestic delivery	CLI05 address label
an international delivery	Consignment note
	Note: These are available from local NZC branches or can be ordered online from http://www.nzcouriers.co.nz/international_paperwork.html

Notes:

- For packages sent to another ACC branch, attention the address label with the branch or unit name and the full physical address. You can find these in the [Locations](#) section on The Sauce.
- If the requestor is picking the package up from the branch, generate and complete 'Part A' of an [ACC6179 Acknowledge receipt of information](#) form and include it in the package.

Step 6

Stick a labelope to the front of the package and place the printed address label inside the labelope. Make sure only the name and address are visible.

Mark the package with 'Private and confidential'.

Step 7

If it's...	then...
a domestic delivery	<ul style="list-style-type: none"> • place the package inside an appropriate courier bag, bubble wrap envelope or archive box • go to step 8
a delivery to a PO Box or Private Bag	<ul style="list-style-type: none"> • go to Send courier to a provider's PO Box • place the package into an international courier bag • complete a 'consignment note' (these are found in your mail area), remove the top copy and place the rest into the clear plastic pouch on the bag labelled "insert consignment note here"
an international delivery	<ul style="list-style-type: none"> • write the consignment number in the space provided on the courier bag (this can be located underneath the barcode on the consignment note) • complete a Commercial invoice (aka 'Customs declaration form') and place it into the clear plastic pouch with the consignment note • go to step 9

Step 8

Print an additional address label and place this in a new labelope on the front of the courier bag.

Note: If sending to a branch, attention the address label with 'Admin area'.

Step 9

Clearly mark the courier bag with a pink 'Please obtain signature' sticker and ensure the 'signature required' box is ticked on the courier sticker.

Note: All ACC packages should have signature required. Standard rural deliveries are the exception where this service is not available unless using 'Pre-alert'.

Step 10

If you're... then...

in the CIT go to [Send courier package](#)

not in the CIT

- complete an [ACC6174 Information required for courier forwarding](#) form and upload it to Eos. This will act as a record that the package has been sent and contain the track and trace number

- go to [Send courier package](#)

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Send courier to a provider's PO Box

Responsibility

ACC staff

When to use

Use this instruction to send a courier to a provider's PO Box when you need to deliver them physical documents and they can't pick them up from an ACC office.

Instruction

Step 1

Load up the Courier Post website - <https://www.courierpost.co.nz/>

Note: This is a different courier company to normal.

Step 2

Type the site code of your branch or office into the 'Your Site ID' field.

If there are any special instructions the courier driver needs to be aware of, type these in the 'Pickup instructions' field.

Step 3

Click the 'Book Now' button.

Result: A pop-up window displays saying 'Your booking was successful'.

Step 4

Note down the job number provided in the pop-up window.

Step 5

Provide the tracking number to the recipient (this is located on the customer barcode of the courier pack) and let them know that they can track the package on the NZ Post website (<https://www.nzpost.co.nz/tools/tracking>). If they wish, they can also use the NZ Post website to request to receive an alert when it has been delivered to the PO Box.

Step 6

Leave the courier pack at reception to be collected by Courier Post.

What happens next

If the package is received, this process ends.

If there are any problems with delivery, call Courier Post on 0800 268 743 and press option 2 to talk to someone and resolve the issue. You'll need the track and trace number and job number, if possible.

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Send courier package from corporate office

Responsibility

Wellington corporate ACC staff

When to use

Use this instruction to select the courier method that best suits the customer's needs and send your package.

Instruction

Step 1

Refer to the [Courier options available at ACC](#) page to see the options available to you and a brief description of each. Then choose the best method for your customer.

Step 2

Get a courier pack from the ACC corporate mailroom extn: 46706.

Step 3

Complete an [ACC6174 Information required for courier forwarding](#) form and attach it to the outside of the package you want to send.

Step 4

Put your package in your outgoing mail area.

What happens next

The mailroom will collect it, and will return a copy of the ACC6174 form with the package tracking details.

This process ends, unless the package is not received, in which case go to [Follow up an undelivered package](#).

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Send courier package

Responsibility

ACC staff

When to use

Use this instruction to select the courier method that best suits the customer's needs and send your package.

Instruction

Step 1

Refer to the [Courier options available at ACC](#) page to see the options available to you and a brief description of each. Then choose the best method for your customer.

Step 2

Give the package to your on-site administrator or place it inside a courier bag.

Note: Use the courier contract red bag if you're sending your package to one of the scanning centres. These red bags are picked up each day from branches but can't weigh more than 20kg.

Step 3

Update and initial the [ACC6173 Information disclosure checklist](#) section 6, sign section 8 then load the completed form to Eos.

Step 4

If you're...	then...
in a CIT	<ul style="list-style-type: none">• edit the 'Complete Request for Copy of Client's Information' task with the date the information was sent• add a contact to include either the tracking number or the consignment number• close the task• go to step 5
not in a CIT	<ul style="list-style-type: none">• upload the ACC6174 Information required for courier forwarding to Eos once it is received back with the tracking details• go to step 5

Step 5

If you're couriating the information to...	then...
an ACC branch or office	<p>ensure that you have either:</p> <ul style="list-style-type: none">• included the ACC6179 Acknowledge receipt of information form with the package, or• sent a 'general' task to the relevant department to advise the information has been sent for collection, who will be collecting it and to contact the requestor to advise when it is available
another location	wait for confirmation that the package has been received

What happens next

This process ends, unless the package is not received, in which case go to Follow up an undelivered package

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Follow up an undelivered package

Responsibility

ACC staff

When to use

Use this instruction when you have been advised that your package has not arrived at its intended destination.

Instruction

Step 1

Confirm with the intended recipient that:

- the package has not been received within the estimated timeframe
- they haven't received a 'You missed a delivery' card from the courier.

Step 2

If the intended recipient confirms the package has not been received within the estimated timeframe and... then...

they did not receive a 'You missed a delivery card'

- contact your local NZC Representative using the [NZ Couriers Escalation List](#) to discuss the situation
- go to step 3
- advise the recipient to follow the directions listed on the card
- this process ends

they received a 'You missed a delivery card' from the courier

Note: Anyone located at the delivery destination can re-direct the package using the 'You missed a delivery' card and anyone at the new destination can sign for the package. The exception to this is when using the 'Pre-alert method'.

Step 3

If you're... then...

satisfied with the outcome

- advise the intended recipient of the outcome and next steps
- this process ends

not satisfied with the outcome

- escalate your concerns by using the [NZ Couriers Escalation List](#)
- advise the intended recipient of the outcome

If you're...

then...

- this process ends

Receiving personal information by courier

When you've requested a copy of your personal information and you wish to receive it by courier, we need to make you aware of the potential risks involved and the other options available.

What are the risks?

Your information may contain personal and financial details, such as bank account information, your Inland Revenue number or medical and other personal information.

The risk of us sending unprotected information by courier is the unauthorised access by another person due to theft, an accident or delivery to the wrong address.

If you've requested an unprotected copy of your personal information, we ask that you collect it from one of our offices so we can protect your privacy.

What are my choices?

Now that you're aware of the risk of sending your personal information by courier, you can choose to receive it by post on a password protected CD instead, or to collect an unprotected copy from your nearest ACC office.

If you still wish to receive an unprotected copy by courier, please confirm the address it should be delivered to. We'll take all reasonable care to ensure the safe delivery of your information with the courier service. However, you'll need to contact us using the number below if your information is not delivered, so we can follow it up.

Please tell me which option you prefer. **We need to know your decision before we can provide your information.**

We're here to help

For help with our services, language or cultural support you can call the person who has been helping you at ACC, phone 0800 101 996 or visit www.acc.co.nz.

You may also find the information sheet INPIS01 Collection and disclosure of information helpful. Copies are available at any ACC Branch, on our website acc.co.nz or by calling 0800 101 996.

Payments outside the scope of statutory entitlements

Introduction

Payments outside the scope of statutory entitlements are payments made by ACC to manage potential liabilities under [Crown Entities Act 2004, Section 17](#). These payments were previously referred to as 'wrongful action' or 'ex-gratia' payments.

This page provides information on:

- criteria required for a client to be paid outside 'the scope of statutory entitlement'
- what defines a serious service failure
- what defines a financial loss
- how we compensate the client

Please note that privacy breaches are not addressed through this process. All enquiries around privacy breaches and potential compensation must be addressed through the Privacy Team. See [Privacy and privacy breaches](#).

For information on payments for backdated weekly compensation, see [Backdated weekly compensation](#).

If we consider issuing a decision to decline weekly compensation after a review/appeal or a settlement has indicated that weekly compensation should be paid.

Then this case must be referred to the Weekly Compensation Panel to:

- check that the decision made to decline was robust
- recommend whether a payment outside the scope of statutory entitlement should be considered (if appropriate).

Criteria for payments outside the scope of statutory entitlements

For a payment to be made outside the scope of statutory entitlements, the following criteria must be met:

- ACC committed a serious service failure, and
- the client experienced a measurable financial loss because of ACC's actions.

Note: If you receive a payment request that can't be resolved through statutory entitlement, and ACC runs risk of court action due to the service failure, you should refer the matter to

your Technical Claims or Quality Assurance Manager.

Serious service failure

Service failures can occur when:

- a client's entitled to a payment, but for some reason this wasn't identified early enough
- the client isn't entitled to a payment but we've incorrectly advised them they are

Both of these scenarios result in a loss for the client. If they request payment from what they see as a service failure, we need to see if this can be resolved through statutory entitlements.

See [AC Act 2001, Section 69](#)

A **serious service** failure requires more than a simple omission or delay. It requires ACC to have fallen well below reasonable service standards. The following criteria normally should be met when considering if a serious service failure has occurred:

- there's serious failure by ACC to do so something that was a legislative requirement or an error in the way something was done
- the failure falls outside the scope of a normal rectifiable human error (serious error is negligent and risks putting ACC under threat of law liability)

Measurable financial loss

As well as a serious service failure occurring, a client must be able to demonstrate that due to ACC's service failure they experienced a measurable financial loss. This could include:

- income that could have been earned from a rightful entitlement that's been delayed due to ACC's inaction, payment of interest on late payment of weekly compensation does not apply
- additional costs incurred by the client whilst trying to get their entitlement
- incorrect advice provided by ACC that resulted in a financial commitment for the client
- ACC committing to pay for something with no entitlement

Reimbursement of bank fees

This is a common issue considered as a payment outside the scope of legislation. The following provides information how to manage these cases:

- If a client receives bank fees due to a delay in ACC paying an entitlement (eg weekly compensation) this is a failure in service. These cases wouldn't be considered a 'serious error' and therefore not meet criteria for payment outside scope of statutory entitlement.
- Where a client incurs costs resulting from poor service, the Branch manager can decide if a reimbursement is needed.

- Reimbursements should be made from the branch's operating budget, not against a claim file. To do this, the branch manager needs to send a memo to Accounts Payable. They'll need the amount, payee, and other relevant details like the bank statement.
- Delegation for payments from the branch operating budget is covered in Delegations
- Branch Managers should confirm if there's additional sign off needed (unlikely based on the usual amount but should be checked)

Specific Claim Examples

Example:

Unlawful suspension of independence allowance

In Stewart (337/2004), the District Court found that ACC couldn't suspend entitlement to the independence allowance on medical grounds without going through the statutory independence allowance reassessment process.

QBE stopped paying the client's independence allowance entitlement in 2005 without going through the proper process. This alone constituted a serious error. However there was also the issue about whether or not this decision should have been made in the first place. There was a wealth of medical information supporting the client's on-going incapacity being related to the original covered injury. However his entitlements were suspended on the basis of a file review.

The case met the criteria in relation to serious error despite the decision having originally been made by a private insurer. Once QBE files were handed back to ACC, the Corporation was obliged to notify the insurer of any liabilities within 20 days of becoming aware of them. As that timeframe had passed ACC was now liable for any payment outside the scope of statutory entitlements due.

In regards to the quantifiable loss this was calculated on the basis of the interest from the date of suspension of the independence allowance to the date it was reinstated.

Example:

Rest home costs incurred

The client fractured her hip 2004. This year she returned to hospital for removal of rods. Prior to her discharge a needs assessment was completed. The assessor recommended 7 hours home help and 10 hours attendant care assistance per week.

Instead of returning home, the client was discharged to a rest home. A short time later, ACC was advised that the client had died. ACC advised the client's daughter, that ACC would pay the rest home costs.

It had since been determined that there was no injury-related need for rest home care. However, ACC had given a clear undertaking to the family that ACC would meet this cost.

Example:

Reimbursement for duplicate prescription receipt if ACC loses original

A client has sent their application for reimbursement of prescription fees to their case manager. In turn, the case manager has sent the application to the processing centre.

However, after three weeks of not hearing back from ACC the client contacts the case manager, who discovers the application cannot be found.

The client now has to submit a new application. When they go to the pharmacy to get a duplicate of their original receipt the pharmacy charges them a fee for the duplicate.

This fee is not a prescription cost, but a cost incurred by the client due to ACC having lost the original application. ACC will then reimburse for the prescription fee as well as the costs of obtaining the duplicated receipt.

How to pay the client

The submission

If you identify a case where there has been a serious service failure resulting in a quantifiable loss to the client, a submission for 'payment outside the scope of statutory entitlements' should be prepared.

The submission needs to include:

- amount the client is seeking
- details surrounding the claim
- alleged errors ACC made
- quantified losses incurred by the client

For amounts under \$2,000 the submission is referred to the Unit Manager to approve.

For amounts over \$2,000 the submission is referred to the Customer Service Technical Support (CSTS) team for consideration and submission to the Manager Policy Advice & Implementation.

Making the payment

Once written approval's been given the Case Manager needs to:

- send a letter to the client advising them of the decision

- create a purchase approval in EOS using the following details:
 - Client or representative (in Vendor field)
 - Entitlement code WA02
 - One month from now (In To Date field)
 - Amount to be entered as Directed by Manager/CSTS (In Unit Price field)
- Email the Unit Manager/CSTS contact (depending on amount) to request authorisation of the purchase order
- Once the authorisation's been given, complete an [ACC161 Proforma invoice form](#) (91K)
- Forward ACC161 to your local payments centre for processing. See [Who processes client reimbursements](#).
- Check a week later to make sure the payment's received by the client and if not, follow up with payments team.