

26 July 2017

Mr Trevor Smith  
[fyi-request-6116-f38ec951@requests.fyi.org.nz](mailto:fyi-request-6116-f38ec951@requests.fyi.org.nz)

Dear Mr Smith

### Official Information Act Request

Thank you for your request of 3 July 2017, asking for the following information under the Official Information Act 1982 (the Act):

*"This is a request for operational policies and the Accident Corporations instructions to the staff in interpretation of the Accident Compensation Act.*

*The Policies explaining Section 117 (1)*

*117 Corporation may suspend, cancel, or decline entitlements*

*(1) The Corporation may suspend or cancel an entitlement if it is not satisfied, on the basis of the information in its possession, that a claimant is entitled to continue to receive the entitlement.*

*The Corporations policy explaining to the Corporation staff the interpretation of section 117 when Accident Compensation Corporation obtain information that is in conflicting with the information already in the Corporation possession but showing no error in the original held information.*

*The Corporation policies explaining what is new information and what is conflicting information.*

*The policies and procedure the Accident Compensation Corporation legal section follow to make sure the information they are handing on to there (sic) appointed Solicitors or Lawyers is correct and accurate."*

#### Our response

ACC does not have policies explaining the specific information you are seeking. While there is no specific policy for the information you requested, you may be interested in the attached ACC policy '*Suspend entitlement when client no longer eligible*'.

With regard to ACC's Legal Services team's procedures in relation to referring information to appointed solicitors or lawyers, when a notice of appeal is received for a client, by Legal Services, a copy of the client's file is requested from the relevant ACC branch. This is then privacy checked before being forwarded to Legal Services who refers the file to the appointed solicitor or lawyer. There is no documented policy or procedure for this process. As Legal Services would not be familiar with the information on file, it relies on the branch to ensure the accuracy of that information.

Accordingly, ACC is unable to provide the information you seek as it does not exist. This decision complies with section 18(e) of the Act

More generally, if a client believes the information held on their ACC claim file is incorrect or inaccurate, they have the right to seek a correction of that information, or request a statement of correction to the disputed information. Please find attached a copy of the policy '*Correction policy*' which sets out ACC's obligations under the Privacy Act 1993.

### **Queries or concerns**

If you have any questions or concerns about the information provided, please address any concerns by emailing [GovernmentServices@acc.co.nz](mailto:GovernmentServices@acc.co.nz) or in writing to *Government Services, PO Box 242, Wellington 6140*.

You also 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

**OIA Services**  
**Government Engagement and Support**

Encl: *Policy documents:*

- *Suspend entitlement when client no longer eligible*
- *Correction policy*

# Suspend entitlement when client no longer eligible

Contact

Last review 10 Dec 2015

Next review 09 Dec 2016

## Introduction

We can suspend an entitlement if there is evidence that, although the client might continue to need assistance, they are no longer eligible to receive it from ACC.

This means that the client's symptoms or limitations relate wholly or substantially to something for which ACC is unable to grant cover, such as:

- gradual process injury, disease or infection, that does not have cover itself
- the ageing process
- the client no longer meets the relevant eligibility criteria for an entitlement that they are receiving.

Always remember ACC's obligations under the Code of ACC Claimants' Rights (the ACC Code).

See:

- Working with the Code of ACC Claimants' Rights
- AC Act 2001, Section 117(1).

## Rules

### The difference between suspending entitlements and declining to provide entitlements

If a client has unreasonably failed or refused to comply with requests, we decline to provide entitlements rather than suspend them.

See Decline entitlements when client is non-compliant.

### Claims accepted under the 1972 and 1982 Acts

We cannot suspend entitlements on the basis that the client's current symptoms or limitations are wholly or substantially due to factors unrelated to their injury.

For decisions about ongoing entitlements under Section 117(1) of the current Act for a claim that was accepted for cover under the 1972 and 1982 Acts, refer to the personal injury criteria in Section 2 of both Acts, **not** Section 26 of the AC Act 2001.

Section 2 only excludes personal injury caused **exclusively** by non-injury factors, such as:

- gradual process injury, disease or infection, that does not have cover itself
- the ageing process.

Continue to provide the entitlement if you have evidence that the injury is having **some** ongoing effect in causing the symptoms or limitations the client currently suffers.

See:

- AC Act 1972, Section 2: Interpretation (repealed)
- AC Act 1982, Section 2: Interpretation (repealed).

### Claims accepted under the Accident Insurance Act 1998

For claims accepted under the 1998 Act, we could only **suspend** the entitlement when the client was no longer eligible to receive weekly entitlements. An entitlement **cannot be cancelled** if you are making a decision under Section 116(1) of the Act.

See AI Act 1998, Section 116(1) (repealed).

### Medical information and evidence

You must use independent and expert evidence, ie from non-ACC staff suitably qualified to comment, when making a decision.

You must consider all medical evidence, including any evidence that conflicts with the Branch Medical Advisor's opinion.

The medical evidence must firmly establish that the client's current condition is no longer caused by the injury for which they have cover, **not** whether ACC was correct to cover the original injury.

You may not suspend an entitlement simply because of a reference to degeneration in a medical report. You must investigate the cause of degeneration and how much it contributes to the overall condition. If the degeneration is caused by the covered injury, and that is the primary cause of the

ongoing symptoms, do not suspend the entitlement.

#### Notice

We must give the client reasonable notice about a decision to suspend entitlements.

If the client has received weekly compensation for...	then give...
fewer than 52 weeks	two weeks' notice. We can give up to four weeks notice at the Case Manager's discretion
52 weeks or more	up to four weeks' notice and provide budgeting advice

#### Example: suspend entitlement

A client with diabetes has an eye injury. After it heals, the client still suffers a visual impairment, but medical information shows that impairment is caused by their diabetes not the eye injury. It may be appropriate to suspend an entitlement.

#### Example: do not suspend entitlement

A client suffered a skin wound that is now completely healed. Medical information shows they no longer need assistance of any type because of this injury. We would simply stop providing the entitlements not suspend them.

#### Reinstate suspended entitlement

We can reinstate a suspended entitlement, under the same claim, if both the following criteria apply:

- new medical information shows that the effects of the original covered injury are now causing a further incapacity
- the ageing process or a gradual process is not now wholly or substantially the cause of the client's current condition.

We must be satisfied that a new incapacity is caused by a previous injury, rather than a new injury:

- the same body site must have been affected on both occasions, and the diagnosis must be substantially the same on both occasions
- the new incapacity must not be due to an intervening incident, which would have caused incapacity in its own right.

These criteria have particular meaning for cases where we have previously suspended weekly compensation because the incapacity is no longer caused by a covered injury.

We can reinstate an entitlement that was suspended based on a reason **other** than that the cause of a client's current limitations is wholly or substantially due to ageing or a gradual process. New information must show that the client is now eligible for the suspended entitlements.

#### Example: reinstate suspended entitlement

We suspend a client's entitlement because they move overseas and cannot provide suitable medical certification. They return from overseas and begin providing suitable medical certification, including an acceptable, backdated certificate covering the period overseas. As long as the client is still eligible, we can consider reinstating their entitlement, taking all the relevant issues into account, such as compliance with their individual rehabilitation plan (IRP) while they were overseas. If the client did not comply with their IRP while overseas, we would issue a decline to provide decision and consider reinstatement under Decline entitlements when client is non-compliant

We do not generally accept backdated medical certificates, except in exceptional circumstances. Refer these to the Branch Medical Advisor, who can advise if the backdated certificate is acceptable, taking into account:

- the type of injury
- the stability of incapacity during the period overseas
- whether or not any medical attention was sought overseas.

For more information about backdated medical certificates, see Weekly compensation policy – Determine incapacity dates

**Special case: independence allowance**

We can only reduce or stop an independence allowance (IA) if the client is reassessed as no longer having an impairment from their personal injury. The client must have an impairment assessment so we can make this decision.

Under the 1992 Act, we could assess a client's entitlement to an IA over more than one injury claim.

If the client still has an impairment on any claim, adjust the IA accordingly, rather than suspend the entitlement.

See Independence allowance reassessment and Suspension and backpayments.

**Other relevant legislation**

AC Act 2001, Section 54: Responsibility of Corporation to make reasonable decisions in timely manner

# Correction policy

*IPP7/HIPR7 gives clients and customers the right to correct the information we hold about them. The policy below sets out our obligations under this principle/rule.*

Contact

Last review 29 Mar 2017

Next review 29 Mar 2018

## The Legislative Framework

ACC's correction policies are bound by three key pieces of legislation:

- the Privacy Act 1993
- the Health Information Privacy Code 1994 (which is a code issued under the Privacy Act)
- the Accident Compensation Act 2001, including the Code of ACC Claimants' Rights. Right 7 of the Code provides for a claimant's right to privacy, which includes obligations for ACC to comply with all relevant legislation relating to privacy.

ACC collects information about customers (eg, levy payers) and clients – personal and health information. There are differences between personal and health information and slightly different rules govern their collection, use, and disclosure. Customers and clients have the right to ask for correction of both their personal and health information.

The Privacy Act 1993 and the Health Information Privacy Code 1994 list 12 principles that must be followed for effective privacy management. Information Privacy Principle (IPP) 7 and Health Information Privacy Rule (HIPR) 7 relate to correcting personal and health information.

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## Customers' and Clients' rights

Under IPP/HIPR 7, customers and clients have two rights:

- The right to request correction of their information; and, if we cannot correct their information:
- The right to request that a statement of correction be attached to the disputed information.

The right to seek correction of personal and health information is closely related to the right to access information. Whenever a customer or client is given access to their information, the individual must be advised that correction of that information may be requested. The correction principle and access principle both promote autonomy and individual control in relation to a person's personal and health information.

Correction of personal and health information is an important right because it reduces the possibility that the customer or client will receive incorrect treatment, rehabilitation or decisions.

Correction may involve altering information by amending or correcting, deleting or adding information.

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## Responding to requests for correction of personal and health information

### Customers' and clients' rights and our responsibilities

- Under the Privacy Act, an individual has a right to request correction of their information. We can: **agree to that request; or suggest an alternative solution such as attaching a statement of the correction** sought by the individual. The process for managing customers' and clients' requests to change personal information is available [here](#).
- **We must help customers and clients, especially when their requests are not clear, and always communicate in a timely and helpful way.**
- **If we fail to respond to a correction request, with no proper basis for that failure, we will be found to have interfered with a person's privacy – so we must be on the alert for correction requests and respond in a timely way.**
- When exercising their right to correction, a person does not need to make their request using a particular format. A request might be part of a letter of complaint. All communications from customers and clients – including meetings, phone conversations/call recordings, letters and emails – must be carefully assessed for whether they are requesting correction of their information.
- **Identification:** We need to be sure about the identity of the person making the request and that any personal and health information that we discuss with the person relates only to that person or their authorised representative
- **Representatives:** Where a correction request is made by a parent or guardian of a child or young person under the age of 16, or by a representative of another individual (eg, a client who is incapable of making a correction request), ensure that they are properly authorised to correct

the information or have the written authority of the individual to correct the information. For further guidance, consult with the Privacy team.

- ACC cannot charge for correcting personal and health information.

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#### **Transfers**

- Requests can be transferred: If ACC does not hold the information, but knows it is held by another agency, we may transfer the request to that other agency within 10 working days.

#### **Timeframes**

- We must comply with the statutory response times for correction. ACC must decide whether a request should be granted as soon as reasonably practicable and no more than 20 working days from when the request was received. This response time does not include the time for correcting the information but is the timeframe for contacting the customer or client with our decision.
- Extension of response time: If a reply cannot be given within the 20 working days, we must notify the requestor of a need for an extension, setting out the reasons for the extension and of the person's right to complain to the Office of the Privacy Commissioner.
- Urgent requests: A customer or client can request urgency, but must give reasons. Where reasons favour urgency, we will try to accommodate their request with urgency. We will advise them of our decision about urgency, including any decision to not treat the request with urgency.

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#### **Making changes and statements of correction**

- The right to request correction of personal and health information is not a right to change an individual's history that we hold. Some customers or clients may insist on having ACC delete information that they dispute. For example, a client might request that ACC correct a doctor's opinion about the client's health. However, unless there is a clear and demonstrable factual error, we can only attach a statement of correction in relation to the disputed information.
- Individuals do not have the right to make changes themselves on documents containing personal and health information.
- Whenever a customer or client's information is corrected, we must record: why the change or addition is sought, who should be notified of the change or addition, and whether the individual wishes to have a copy of the amended or added record.
- Requests for correction can be declined, but where a request is declined, we should offer to have the individual's statement of correction attached to their file.
- If we decline to make a correction, we must inform the individual: the reasons for refusal, the supporting grounds for refusal, the right to request a statement of correction, and the right to complain to the Office of the Privacy Commissioner.

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