

4 December 2017

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Dear Ms Ashworth

Reference: 0050875

Official Information Act Request

Thank you for your requests of 25 October 2017, asking for the following information under the Official Information Act 1982 (the Act):

- 1. When ACC makes a decision to decline cover does it reference in the letter communicating the decision which section(s) of the ACC Act 2001 the decision to deny cover was based on? If not, why not?*
- 2. On what grounds can an in-house ACC medical advisor ignore or overrule medical evidence provided by a medical specialist? If this happens, what are the checks and balances around this process?*
- 3. For the last 10 years, can ACC provide the number of accepted Treatment Injuries as a result of the use of surgical instruments, including sub-totals for the use of drills and saws?*
- 4. For the last 10 years, can ACC provide the number of accepted / declined ACC claims for CRPS (Chronic Regional Pain Syndrome) following surgery.*

For those declined, what were the reasons provided and against which section(s) of the ACC Act was the decision made against? ACC may provide summary information to ensure client confidentiality where the reason(s) may potentially identify individuals.

In our acknowledgement email of 26 October 2017, we advised that we would be combining our responses to your requests into one letter. We also wrote to you on 22 November 2017 to advise you that we required an extension to 6 December 2017 in order to make a decision on your requests. Our response to each request is below.

Request One

The relevant sections of the Accident Compensation Act 2001 (AC Act) are not usually referred to explicitly in a decline letter, however, the reasons for a decline decision will always be outlined, and these are based on the provisions of the AC Act. For example, a decline letter may state that “we can only cover accidents that result in a physical injury” or “we’re unable to cover injuries that happened before the Accident Compensation Act came into effect on 1 April 1974”.

Using the treatment injury decline letter as an example, it refers to the requirement for a claim to meet the criteria for a treatment injury. In addition to this, the specific legislative requirements for a treatment injury claim are referred to in section two of the treatment injury report attached to the cover letter.

The legislative criteria for a treatment injury are:

- the client must have suffered a personal injury
- the injury must have happened in the context of treatment
- there must be a clear causal link between the treatment and the injury
- the injury must not be a necessary part or ordinary consequence of the treatment
- the claim must not fall under any of the treatment injury exclusions from cover.

Reference is also made to the Accident Compensation Act 2001 at the bottom of the report.

The Accident Compensation Act 2001 is publicly available. You can access it online at <http://www.legislation.govt.nz/act/public/2001/0049/latest/whole.html>.

Request Two

ACC medical advisors do not overrule a medical specialist’s opinion. ACC medical advisors provide advice to case owners on various aspects of a claim. The case owner will also consider the advice of technical specialists, who provide advice relating to legislative requirements, along with other sources of information specific to a claim, such as medical notes and reports from other health providers. If appropriate, they will also seek input from more experienced staff. All of this information is used by the case owner to determine whether an injury meets the requirements of the legislation and to make a decision on a claim.

There are various medical advisors within ACC who a case owner can approach for advice. For example, branch medical advisors help case owners understand clinical conditions to assist them to make decisions on claims. This may relate to cover, rehabilitation, treatment or other entitlements. ACC also has specialist medical advisors who provide advice on claims related to their areas of expertise, such toxicology, dentistry and psychology.

All case owners are monitored under a quality checking process to ensure that cover decisions are consistent and robust with regard to the legislation.

Using treatment injury as an example again, when a claim is lodged, ACC seeks relevant clinical evidence on the treatment giving rise to an injury. The opinion from the medical specialist and/or the clinical evidence provides information to ACC about the clinical facts specific to the client.

The investigating Treatment Injury Cover Specialists then apply the legislative criteria to the clinical evidence to determine whether the claim meets the criteria for cover.

The Treatment Injury Cover Specialists may call on other advisors, such as ACC medical advisors or external clinical advisors, to provide advice on a claim and inform their decision.

Cover decisions are also peer reviewed and undergo a quality checking process to ensure that they are robust.

When a decline decision is made that contrasts with the opinion provided by a medical specialist, it simply means that the legislative criteria for cover are not met based on all the clinical evidence considered.

Request Three

ACC is able to provide data for treatment injuries related to surgery. Whether surgical instruments (for example drills or saws) were involved is not recorded in a way that is readily retrievable in our system. To review all the claims that could relate to surgical instruments would require a manual review of all the relevant claim files, which would amount to substantial collation and research. We must therefore decline this part of your request under section 18(e) of the Act. We do not consider that fixing a charge or extending the time limit for responding would enable the request to be granted without unreasonably interfering with ACC's operations.

The number of treatment injury claims per year related to surgery is shown in the table below, which may be of interest to you.

The rate of treatment injury claims has been growing steadily since 2005. Factors that may be contributing to this growth include: increased volumes of treatment across the health system, greater risk factors in the patient population, and efforts to encourage greater reporting of treatment injury.

Please note that the number of treatment injury claims lodged with ACC should not be taken as an accurate indication of the occurrence of injury during treatment. This is because, among other reasons, not all occurrences of treatment injuries are lodged with ACC.

The treatment injury data in the table below was extracted on 3 November 2017 and covers the period from 1 January 2007 to 31 December 2016. The figures may differ if run at a different date.

Table One: Accepted treatment injury claims related to surgery from 2007-2016

Decision year	Accepted
2007	1,983
2008	2,532
2009	2,667
2010	2,478
2011	2,418
2012	2,897
2013	3,295
2014	3,708
2015	4,320
2016	4,864

Request Four

We note that you refer to CRPS as "chronic regional pain syndrome". However, the standard use of CRPS is Complex Regional Pain Syndrome. These are two different diagnoses.

Complex Regional Pain Syndrome (CRPS) is a pain related condition that may develop following a physical injury. CRPS has agreed criteria for diagnosis – the Budapest criteria – which include measureable physical changes (such as skin temperature and colour or loss of hair), symptoms (such as pain of a burning character) and signs (such as allodynia –

extreme pain on light touch of the skin). Persistent pain or a “pain syndrome” without the changes required in the Budapest criteria is not a physical injury for ACC purposes, and therefore cover would not be approved.

ACC is not able to provide data for accepted and declined CRPS claims following surgery, as this information is not recorded in a way that is readily retrievable in our system. To review all the claims where CRPS cover was requested following surgery would require a manual review of the medical notes and reports in the relevant claim files, which would amount to substantial collation and research. We must therefore decline this part of your request under section 18(e) of the Act. We do not consider that fixing a charge or extending the time limit for responding would enable the request to be granted without unreasonably interfering with ACC’s operations.

The claims data in tables two and three below show all claims with a diagnosis of CRPS and all claims with a diagnosis of CRPS where elective surgery has also taken place. The data was extracted on 10 November 2017 and covers the period from 1 July 2007 to 30 June 2017 in financial years. The figures may differ if run at a different date.

It is important to note that the cover decision of accepted or declined refers to overall cover for the claim and is not specific to the CRPS diagnosis, as a claim can have multiple diagnoses. Therefore, a claim could be accepted for cover for a diagnosis unrelated to the CRPS and still have the CRPS diagnosis declined. We are also unable to identify where the CRPS has been added to a claim as a result of elective surgery.

Surgery may or may not have taken place in the same financial year in which the claim was lodged.

Table Two: Claims with a diagnosis of CRPS from 2007-2017

Decision year	Accepted	Declined
2007/08	22	0
2008/09	24	0
2009/10	24	0
2010/11	23	0
2011/12	69	<4
2012/13	75	0
2013/14	102	<4
2014/15	101	0
2015/16	120	<4
2016/17	84	<4

Table Three: Claims with a diagnosis of CRPS that have also involved elective surgery from 2007-2017

Decision year	Total
2007/08	14
2008/09	15
2009/10	13
2010/11	9
2011/12	33
2012/13	31
2013/14	40
2014/15	35
2015/16	32
2016/17	4

The number of treatment injury claims with a pain diagnosis related to surgery is shown in the table below.

The treatment injury data in the table below was extracted on 3 November 2017 and covers the period from 1 January 2007 to 2 November 2017. The figures may differ if run at a different date.

Pain is rarely a covered treatment injury. The underlying cause of the pain may be the diagnosed injury receiving cover, for example swelling, deformity, impingement or damage/injury (to a specified area).

Five injury types related to pain were identified in the treatment injury data. These are:

- pain – acute
- pain – chronic
- regional pain syndrome
- reflex sympathetic dystrophy
- sympathetic dystrophy.

There were 1,177 (52%) treatment injuries claims made with these injury types where the client had surgery. 2% of these were accepted and 98% were declined. The table below shows the number of accepted and declined claims

Table Four: Treatment injury claims for pain related to surgery from 2007-2017

Primary injury	Accepted	Declined
Pain - Acute	<4	428
Pain - Chronic	10	625
Reflex Sympathetic Dystrophy	4	<4
Regional Pain Syndrome	13	92
Sympathetic Dystrophy	0	<4

As a matter of practice, ACC does not disclose data related to claims below a certain value. Accordingly, some entries in the tables above only indicate that the relevant number is less than four (denoted by "<4").

This practice exists to limit the potential for particular individuals or matters specific to certain individuals to be identified, and is necessary to protect the privacy of these individuals under section 9(2)(a) of the Act. In doing so, we have considered the public interest in making the information available and have determined that it does not outweigh the need to protect the privacy of these persons.

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 GES@acc.co.nz or in writing to *Government Engagement and Support, 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

Government Engagement and Support