

26 February 2018

Trevor Smith  
[fyi-request-7171-1f1d0021@requests.fyi.org.nz](mailto:fyi-request-7171-1f1d0021@requests.fyi.org.nz)

Dear Mr Smith

Ref: 0051294

### Official Information Act request

Thank you for your email of 26 January 2018, asking for information under the Official Information Act 1982 (the OI Act).

We have interpreted your request to be centred around details from the page we provided you on 26 July 2017, titled: "*Suspend entitlement when client no longer eligible*", which includes, on its third line, the statement below that you quote:

*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*

As you rightly point out, gradual process injury, disease and infection can be covered under the Accident Compensation Act 2001 (the AC Act), but only under the particular circumstances that are clearly defined under the AC Act.

To assist clarification of this, we are providing a copy of pages from ACC's internal intranet, titled: "*Cover criteria for personal injury*", which outlines instances where personal injury cover is accepted with regard to gradual process injury, disease or infection. We have removed a staff name from this page under section 9(2)(a) of the OI Act, to protect the privacy of natural persons. We have considered the public interest in this information and in this instance we consider that maintaining this individual's privacy outweighs the public interest in making the information available.

The message that the quoted paragraph is conveying is that while ACC can cover some injuries caused by gradual process, disease or infection, ACC cannot cover all gradual process injuries.

Also, we refer you to the Office of the Ombudsman's guide *Making official information requests*. This is available on the Ombudsman's website at: [www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides](http://www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides).

Under the OI Act a distinction exists between a request for information already known and held by an agency (official information), versus a request for an agency to form an opinion or provide an explanation or comment and thus create new information to answer a request (not official information).

A number of your points in this current request ask ACC to provide information, give an opinion, make comment, provide an explanation, or 'justify' points based on your opinion, and therefore do not qualify as requests for official information. As such, we have not addressed these points.

In the parts of your email quoted below, the points highlighted in bold are the only requests for information as defined in the OI Act which we are responding to.

*So that the persons currently responsible for the correction of policies **supply the name and position of all that is responsible from the legal section of Accident Compensation Corporation to the CEO and board.***

*As the Accident Compensation Corporation will have **policy into how to correct there policies we request those policies and if there are none then explain why there is no policies into how and when it is approximate in changing policies to reduce litigation.***

*As the policies show the Accident Compensation Corporation is claiming that gradual process injury, disease or infection, personal injury can not be accepted, **what is the balance of probabilities that entitlements can be declined when ACC staff claim that the gradual process injury, disease or infection is not a covered injury or can be covered.***

***What is the balance of probabilities that a claim under the above sections is accepted and any gradual process injury, disease or infection is accepted as having cover that a claimant will be denied entitlement because of those injuries.***

#### **Our response**

ACC stands by the current policy you refer to, therefore it does not need correcting.

*So that the persons currently responsible for the correction of policies **supply the name and position of all that is responsible from the legal section of Accident Compensation Corporation to the CEO and board.***

The Chief Governance Officer of ACC is responsible for the legal services group of ACC. Details of ACC's Chief Executive, Executive team and all ACC Board members are publicly available, and can be found online through ACC's website: [www.acc.co.nz/about-us/who-we-are/](http://www.acc.co.nz/about-us/who-we-are/). As the information is publicly available, we are not providing any further details here. This decision is made under section 18(d) of the OI Act.

*As the Accident Compensation Corporation will have **policy into how to correct there policies we request those policies and if there are none then explain why there is no policies into how and when it is approximate in changing policies to reduce litigation.***

ACC aims to continually improve, update, and document our processes. As such, pages on ACC's internal intranet may be updated and edited many times. Internal intranet pages are also reviewed each year and changed as appropriate. Changes can range from simple changes, such as broken hyperlinks or spelling errors, to major changes, such as reflecting restructures or internal staff changes. The content of the pages are changed by subject matter experts.

Substantial updates or changes in ACC Policy are approved by the Policy Governance Committee. ACC policies reflect interpretation of the AC Act. Where disagreements arise about how this applies to a decision on an individual's claim, there is a formal review and appeal process individuals can follow. There are no policies regarding how and when it is appropriate to change policies to reduce litigation. Therefore, no information is provided in relation to this request under section 18(e) of the OI Act, as the document alleged to contain it does not exist.

***... what is the balance of probabilities that entitlements can be declined when ACC staff claim that the gradual process injury, disease or infection is not a covered injury or can be covered.***

***What is the balance of probabilities that a claim under the above sections is accepted and any gradual process injury, disease or infection is accepted as having cover that a claimant will be denied entitlement because of those injuries.***

Claims are assessed individually on their own merits. If ACC is satisfied from the evidence that the legislative requirement for cover for gradual process injury, disease and infection is met cover will be granted. If cover is accepted a client will be entitled to receive entitlements for that injury in accordance with the AC Act.

We have not provided any information in response these two parts of your request as the document alleged to contain it does not exist. This decision is made under section 18(e) of the OI Act.

**Questions or concerns**

If you have any further questions about the information provided, you can contact us at [GES@acc.co.nz](mailto:GES@acc.co.nz) or in writing to *Government Engagement and Support, PO Box 242, Wellington 6140.*

You have the right to complain to the Office of the Ombudsman about our response to your request. 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:** Copy of pages from ACC's intranet titled: "*Cover criteria for personal injury*"

# Cover criteria for personal injury

Contact [REDACTED]

Last review 07 Sep 2017

Next review 07 Sep 2018

## Introduction

Before we can consider a claim for cover under the [AC Act 2001](#), we must establish that the client has suffered an injury and that this injury falls within the definition of personal injury.

## Rules

### Categories of personal injury that we can accept for cover

We can provide cover for a claim for personal injury if the injury was:

- caused by an [accident](#) that results in a [physical injury](#) to the client
- caused by [treatment](#)
- caused by a [work-related gradual process, disease or infection](#)
- a [cardiovascular or cerebrovascular episode](#) that is [work-related](#) or [treatment-related](#)
- a [mental injury](#) suffered by a client because of covered [physical injuries](#)
- a [mental injury](#) caused by [witnessing a traumatic event in the course of employment](#)
- a [mental injury](#) caused by [certain criminal acts](#). See [Cover criteria for sensitive claims](#)
- a [hearing loss injury](#)
- damage, other than wear and tear, to [dentures or prostheses](#) that replace a part of the human body
- the [death of the client](#)
- a [pregnancy](#) as the result of rape or treatment injury (or medical misadventure for claims prior to 1 July 2005)

See the [AC Act 2001, Section 26, subsections \(2\) to \(4\)](#).

### Categories of personal injury excluded from cover

A personal injury is excluded from cover if it is:

- caused [wholly](#) or [substantially](#) by the ageing process
- an injury to teeth or dentures caused by the natural use of the teeth
- caused by gradual process, disease or infection, [unless](#) it is:
  - work related
  - caused by treatment
  - a consequence of a covered personal injury
  - a consequence of treatment given to the client for an covered injury.
- a [pregnancy](#) that:
  - results from failed contraception
  - results from failure of treatment to a third party, eg a failed vasectomy
  - is an unwanted pregnancy.

See the [AC Act 2001, Sections 20\(2\)\(e\) to \(h\), subsections \(2\) to \(4\)](#).

### Natural use of teeth

We do not cover injuries caused by the natural use of teeth. [AC Act 2001, Section 26, subsection \(4b\)](#) stated:

- personal injury does not include "...personal injury to teeth or dentures caused by the natural use of those teeth or dentures".

There have been several cases heard by the Court in relation to this issue including [Partner HC180/1993](#), [Moulder \[34/97\]](#), [Brumby 87/97](#), [McCardle \[74/06\]](#) and [\[206/06\]](#), [Scaife \[114/12\]](#) and [Mares \[292/14\]](#).

The case law is clear that where the applicant is eating food, the courts have routinely held that where there is something hard contained within that food, then damage to teeth from chewing on that hard food is excluded from cover. This is because chewing of food is 'normal use of the teeth' and is excluded from cover by section 26(4)(b).

This means the act of breaking/injuring a tooth whilst eating is declined – regardless of whether it's a piece of glass/metal/shot or gristle/olive pit/nutshell/bone.

See [Natural use of teeth - historical background](#) for more information regarding legislative changes.

