



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Standard Operating Procedure

Excerpts relating to ACC

Approved: April 2017

Disclosed under the
Official Information Act 1982
Or the Privacy Act 1993

PART 2: INITIAL CONTACT

2.1 INTRODUCTION: WAYS IN WHICH A PERSON CAN COMPLAIN

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2.1.2 Telephone

The Complaints Assessment Team has dedicated Helpline Complaints Assessors who are primarily responsible for answering HDC's 0800 number. A large number of initial contacts to HDC are made through this number.

Process

The Helpline Complaints Assessor will make an assessment of the call and, for enquirers, provide information on:

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- How to contact another appropriate agency (WINZ, ACC, providers).

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2.2 FACTORS TO CONSIDER WHEN ASSESSING A CONTACT

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2.2.3 Jurisdiction

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Process

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- Where an OJ complaint concerns the actions of another Government agency (for example, WINZ or ACC) it is not standard practice to advise the agency about the complaint unless there is some reason it should be brought to the attention of that agency.

PART 3: ASSESSMENT OF COMPLAINT

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3.2 GATHERING INFORMATION: COMPLAINTS ASSESSMENT TEAM

3.2.1 Section 14(1)(m) requests

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Discussion

Further information is often gathered in order to make a preliminary assessment of a complaint (referred to as s14(1)(m) request). Factors to consider when determining whether to obtain further information include:

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- ACC files

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Process

Relevant points to note when drafting a section 14(1)(m) letter are:

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- It is often useful to obtain information from ACC when a treatment injury claim has been lodged.¹ In this case, the section 14(1)(m) letter needs to be accompanied by an ACC form, which includes check boxes for the information required. In most cases, copies of ACC's decision letter and any clinical or external expert advice are requested. Information requests to ACC should be sent by email only and copied to the Team Leader.

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PART 4: PRELIMINARY ASSESSMENT DECISIONS

4.1 PRELIMINARY ASSESSMENT DECISIONS AVAILABLE

The decisions available to the Commissioner under section 33 of the Act are set out below. Some of these decisions have been delegated (see [Appendix 3: Delegations](#)):

- Referral to an agency or person in accordance with section 34 or section 36 (section 33(1)(a)(i)):

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— ACC — section 34(1)(b) (see [4.3 Referral to ACC](#))

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4.3 REFERRAL TO ACC

See [Appendix 11: Referrals and Notifications](#).

Under section 34(1)(b) of the Act, the Commissioner may make a referral to ACC where it appears from the complaint that the aggrieved person may be entitled to cover under the ACC Act.

¹ A treatment injury claim is applicable only if the injury has been caused by a registered health professional.

Discussion

In practice, this is used by the Complaints Assessment Team only rarely, as typically the complaint will contain other issues that the Commissioner can address. The preferred approach is to advise the complainant orally, in the acknowledgement letter or in a section 38(1) letter, that he or she may wish to lodge a claim with ACC.

Process

- Where the provider has not already been provided with a copy of the complaint, copies of the complaint should be sent to the provider. The provider should be made aware of the action taken.
- If formally referring to ACC under section 34(1)(b), a copy of the complaint and letter to the complainant should also be sent to ACC.
- Under section 35 of the Act, ACC must report back to the Commissioner on any steps taken as a result of the referral.

Section 34(1)(b) letters

Relevant templates:

- Referring to ACC under s34(1)(b) use:
 - Non-standard letter and write to consumer, provider and ACC.
- If closing but advising complainant to contact ACC use either :
 - s38 letter – early resolution, or
 - OJ letter and write to the consumer and provider.

See [Appendix 3: Delegations](#) and [Appendix 3a: Delegations Chart](#)

ECDS action:

- Set file stage to *Drafting early resolution letters*.
- Once the draft letter is appropriate for review, set the file stage as appropriate e.g. *With Team Leader/senior for review* or *File with DCCR/DCD/MHC for steer/review* or *File with DCCR/DCD/MHC for signing* or *Early resolution letters with Team Leader for signing*.
- Once the letters have been sent, give the file to Senior/Team Leader for closing.

PART 5: SECTION 38(1) AFTER FURTHER INFORMATION OBTAINED

5.1 DECISION TO TAKE NO FURTHER ACTION

Discussion

In addition to the factors listed in the Act, factors relevant in deciding whether to take no further action include:

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- The complaint would be more appropriately dealt with by another agency under section 59(4) (see [PART 11: OTHER REFERRALS](#)). For example:

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- Complaints about reports written for the purpose of an ACC claim or WINZ benefit.

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PART 6: NOTIFICATION OF INVESTIGATION

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6.3 CONTACT WITH OTHER AGENCIES

6.3.1 Coroner

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If the complaint involves an injury that is the result of treatment, the Investigator should consider whether to make a request to ACC to check its involvement.

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PART 7: INVESTIGATION

7.2 SOURCES OF EVIDENCE

The investigator should consider obtaining evidence from a range of sources, including the following:

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- Other agencies, for example, ACC, Coroner, Police, Worksafe, Ministry of Health

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7.3 EVIDENCE TO OBTAIN

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The Investigator should request any other relevant information at this stage. For example:

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- Any information held by other agencies relevant to the complaint (eg, Coroner, Police, WorkSafe, ACC).

PART 9: COMMISSIONER'S REPORT

9.3 REFERRAL TO DIRECTOR OF PROCEEDINGS

9.3.1 Role of Director of Proceedings

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Damages (other than exemplary damages) are not available where there is ACC cover.

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PART 15: RELATIONSHIPS WITH OTHER AGENCIES

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15.4 COMPLAINTS INVOLVING ACC/WINZ

The Commissioner receives many complaints involving ACC. Principally these take one of two forms:

- Complaints about ACC's decisions, processes or the actions of a case manager or other ACC employee. As ACC is not considered to be a provider of health or disability services, these complaints are outside jurisdiction (see 0 ...

15.5 FACTORS TO CONSIDER WHEN ASSESSING A CONTACT

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- **2.2.3 Jurisdiction).**
- Complaints about an assessment conducted by a health or disability service provider for the purposes of an ACC decision. These may be in jurisdiction, but may be more appropriately dealt with by another body. See discussion below.

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Discussion

Complaints about assessments that have been conducted by a health provider for ACC or WINZ are dealt with on a case-by-case basis. Relevant considerations are:

- Whether the complaint is more appropriately dealt with by ACC or WINZ through its own review process (section 38(2)(e)).
- Whether the subject matter of the complaint is really within the Commissioner's jurisdiction (e.g., is it about the content of the report, rather than the diagnosis?).
- The seriousness of the complaint.
- The expectations of the complainant.

- Whether there are other similar complaints about the same provider.

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