



POLICY PAGE

Cover for mental injury policy

Tīmatanga kōrero | Introduction

Audience: All ACC Staff

Purpose: This policy outlines the guidelines and criteria to determine cover for the different types of mental injury.

[Operational Policy landing page](#)

Policy statement

ACC covers mental injury where the injury is clinically significant and caused by either a physical injury, treatment injury, certain criminal acts, or experience of a work-related event. The injury must be diagnosed by a qualified assessor as a clinically significant behavioural, cognitive, or psychological dysfunction, as well as meet specific criteria depending on the cause of the mental injury.

Guidelines and rules

Cover for mental injury	Mental injury caused by physical injury	Mental injury caused by treatment
Work-related mental injury	Mental injury caused by certain criminal acts	Previous legislation

Cover for mental injury

ACC covers mental injury where the injury is diagnosed by a qualified assessor as a clinically significant behavioural, cognitive, or psychological dysfunction, and where it meets specific criteria depending on the cause of the injury:

- Mental injury caused by physical injury
- Mental injury caused by treatment injury
- Work-related mental injury

- Mental injury caused by certain criminal acts.

Use the [Cover decision timeframes policy](#) to ensure decisions on mental injury claims are made within the legislated timeframe.

Where needed Technical Services will refer cases to the Complex Mental Injury Panel.

Relevant legislation

- [AC Act 2001, s26, Personal injury](#).
- [AC Act 2001, s27, Mental injury](#).
- [AC Act 2001, Schedule 1, part 3, clause 58, Appointment of assessors](#)

^ Assessing a mental injury

Assessed as clinically significant

A mental injury is assessed as clinically significant when it is diagnosed by a qualified mental injury assessor as a clinically significant behavioural, cognitive, or psychological dysfunction. The diagnosis will generally be made using a standardised system.

Mental injury assessor

A mental injury assessment must be carried out by a qualified assessor. Where it is unclear if the lodgement provider is a qualified assessor, or more information is needed, refer the client to an ACC contracted qualified assessor. Clinical Services will advise which profession is best placed to carry out the assessment.

All ACC contracted mental injury assessors must meet criteria determined by Clinical Services, see either the [Service schedule for psychological services](#) or [Service schedule for psychiatric services](#) for more detail.

Standardised diagnostic system

Generally, a mental injury will be diagnosed under one of the following systems:

- Diagnostic and statistical manual of mental disorders – fourth edition text revision ([DSM-IV-TR](#)) or fifth edition ([DSM-5](#)); or
- International classification of diseases; or
- Psychodynamic diagnostic manual (PDM); or
- Diagnostic classification of mental health and developmental disorders of infancy and early childhood.

Exceptions to a standardised diagnosis

ACC accepts mental injury diagnoses not diagnosed under one of the above standardised diagnostic systems if the assessor can evidence that the mental injury is clinically significant.

Mental injury caused by physical injury

Cover criteria for mental injury caused by physical injury

ACC covers mental injury caused by physical injury if:

- the client is assessed as having a clinically significant mental injury; and
- the physical injury is a material cause of the mental injury.

Relevant legislation

- [AC Act 2001, s36, Date on which person is to be regarded as suffering mental injury.](#)

Request for cover

If the cover request does not include a medical certificate or a preliminary diagnosis of a mental injury from the client's treating practitioner, consider asking the client to return to their treatment provider to attain this. Where it would be unreasonable to ask the client to do so (e.g. it would be overly burdensome for the client), ACC can take steps to arrange the mental injury assessment.

Date of injury for mental injury caused by physical injury

The date of injury for mental injury caused by physical injury is the date the physical injury was suffered.

^ Assessing a mental injury caused by physical injury, including the two-part test

Physical injury has caused the mental injury

The mental injury must be materially caused by the physical injury. The mental injury assessment should clarify this. Materially caused means the physical injury is a significant cause of the mental injury. The physical injury does not need to be the only cause of the mental injury.

Two-part test to determine causal link

For claims where it is difficult to determine the causal link between the physical injury and mental injury, Clinical Services will contact Technical Services who apply the two-part test. Circumstances where it may be difficult to determine the causal link between the physical injury and mental injury may include:

- the mental injury assessor suggests the causal link between the physical and mental injury is indirect; or
- the client cannot recall the physical injury/event, and the cause of the client's mental health condition includes their knowledge of the fact that they suffered a physical injury; or
- a significant period has elapsed between the physical injury and the diagnosis of a mental health condition; or
- there is an intervening event (an event that breaks the direct connection between the injury event and the onset of the mental injury, where it is unclear if the injury or intervening event independently caused the mental injury).

For these claims, the [two-part test](#) will be applied. To meet the two-part test, the mental injury must be assessed as clinically significant and:

- 'but for' the physical injury the mental injury would not have occurred; and
- the physical injury has materially contributed to the mental injury.

Do not apply the 'but for' test where a traumatic event occurred at the same time as the physical injury and the effects of each cannot be distinguished. In these cases, only the second part of the test, whether the physical injury materially contributed to the mental injury, needs to be applied.

^ Overseas injury, traumatic injury, or post-traumatic stress disorder

When the physical injury occurred overseas

Where the physical injury is not covered because it occurred overseas and the client was not ordinarily resident in New Zealand at that time, any claims for a mental injury due to that physical injury will also not be covered.

Traumatic injury circumstances

Where a physical injury involves particularly traumatic circumstances (e.g. serious motor vehicle accidents or violent assaults), it may not be clear whether the mental injury is attributable to the physical injury, the accident, or the surrounding circumstances.

The mental injury may have arisen from a combination of these factors. In these cases, ACC is able to cover a mental injury if the mental injury assessor advises the physical injury is a material cause of the mental injury.

Post-traumatic stress disorder

To consider the physical injury to be a material cause of post-traumatic stress disorder (PTSD), it is reasonable to expect the physical injury to have been either:

- serious; or
- accompanied by a threat of serious injury.

If the mental injury assessment indicates the physical injury is a material cause of PTSD and other related disorders, it should reflect that the physical injury was serious or accompanied by threat of serious injury. If not, the assessment must have a detailed explanation of why the physical injury is considered a material cause.

The injury does not have to meet ACC's serious injury profile to be considered serious for this purpose. The advice from the mental injury assessor is relevant to deciding whether the physical injury is serious for the purposes of the standardised system being used to determine if the mental injury is clinically significant.

ACC accepts a threat of serious injury has been made if:

- the injury is sustained directly from the threat (e.g. the client was hit by the person who verbally threatened them), rather than incidentally (e.g. twisting ankle while running from the perceived threat); and
- the threat is direct rather than witnessed or inferred, and there was a real risk of it happening.

The threat is considered direct and real if:

- an explicit verbal threat of serious injury is made by someone known or reasonably believed to be capable of carrying it out; or
- weapons are involved in an assault, even if not used to inflict the actual injuries; or
- a clear threat is inherent in the nature of the event.

Mental injury caused by treatment

Cover criteria for mental injury caused by treatment

ACC covers mental injury caused by treatment if:

- the mental injury is caused by a non-covered physical injury; and
- that physical injury is caused by treatment.

The mental injury must:

- be assessed as clinically significant; and
- be caused by a non-covered physical injury suffered in the context of treatment; and
- meet the following treatment injury criteria:
 - be caused by treatment; and
 - not a necessary part or ordinary consequence of the treatment.

Where the mental injury is caused by a covered physical injury (including a covered treatment injury), use the mental injury caused by physical injury policy.

When ACC does not cover mental injury caused by treatment

ACC does not cover mental injury caused by treatment if the mental injury is:

- solely attributable to a resource allocation decision; or
- wholly or substantially caused by an underlying health condition; or
- a result of unreasonably withholding or delaying consent to undergo treatment; or
- a necessary or ordinary consequence of the treatment; or

- a result of the treatment not achieving the desired outcome.

Deciding cover and date of injury for mental injury caused by treatment

Complex mental injury timeframes apply to mental injury caused by treatment claims. Cover decisions are made by the specialist Cover Assessor, within the Treatment Injury Cover Team, with advice and recommendations on causal link and date of injury from the Complex Mental Injury Panel.

We only cover mental injuries caused by treatment if the claim is lodged on or after 1 July 2005. Consider any claims lodged before this as [Medical misadventure claims lodged before 1 July 2005](#) under the legislation in effect at that time.

Relevant legislation

- [AC Act 2001, s20, Cover for personal injury suffered in New Zealand \(except mental injury caused by certain criminal acts or work-related mental injury\).](#)
- [AC Act 2001, s32, Treatment injury.](#)
- [AC Act 2001, s57, Steps Corporation takes to action complicated claims for cover](#)

^ Assessing a mental injury caused by treatment

Non-covered physical injury caused by treatment

The physical injury does not need to meet the treatment injury cover criteria so long as the mental injury itself meets the treatment injury cover criteria (including the mental injury not being a necessary or ordinary part of treatment).

Work-related mental injury

Cover criteria for work-related mental injury

ACC covers work-related mental injury (WRMI) if:

- the client is assessed as having a clinically significant mental injury; and
- the mental injury is caused by experiencing a single, sudden work-related event; and
- the client first sought treatment for the mental injury on or after 1 October 2008.

Unlike other mental injury claims, a work-related mental injury does not need to be linked to a physical injury.

When assessing whether a work-related mental injury claim for cover is work-related, also refer to the following policies:

- [Work Account Fund Code Policy.](#)
- [Criteria for Work-related Personal Injury 'Place of Work'](#)
- [Criteria for Overriding Injury Classification Policy.](#)

Date of injury for work-related mental injury

The date of injury for a work-related mental injury is the date the client first receives treatment for the mental injury. Treatment means the types of treatments clients are entitled to when covered by ACC.

Relevant Legislation

- [AC Act 2001, s21B, Cover for work-related mental injury.](#)

- [AC Act 2001, s28, Work-related personal injury](#).

^ Assessing a work-related mental injury, including employment and event

Work-related

To be covered as a work-related mental injury, the client must have been present at the event for the purpose of their employment, including being at a place of employment during a break. The mental injury assessor's report should identify whether the event was a material or significant cause of the mental injury.

Example

A bus driver in Manukau swerves to avoid hitting a pedestrian who deliberately steps in front of the bus. The pedestrian is killed instantly when they are clipped by the front end of the bus. As the bus driver is suffering from severe clinical depression because of this event his general practitioner lodges a claim for a work-related mental injury.

A single, sudden event

The event must be sudden in onset, that is it occurs quickly or with little or no warning. The event itself may last a short or longer time. An event lasting a short time might include a drive-by shooting, while an event lasting longer could be a hostage situation lasting many hours. Irrespective of their duration, both are sudden events.

Multiple events that arise from the same cause or circumstance can still be considered a single event. In these cases, take care to ensure all parts of an event are clearly identifiable and occur at a precise point in time. This is different to a gradual process which refers to a series of recurring events over a longer period that have a cumulative effect and are not coverable.

Example

A police officer is exposed to several similar life-threatening situations over a short period of time (weeks or a few months, not years), if this is the case they can be considered as a single event and WRMI can be considered. Where it is not clear if it is multiple events that arise from the same or similar circumstance [Seek Internal Guidance](#).

Experienced the event

The client must directly experience the event that caused the mental injury. They must see or hear the event as it happens in order to experience it.

In most cases a person will see an event directly. Where a person experiences the event through hearing it, for example, from a room adjacent to that where the event took place, extra care will be required and you may need to [Seek Internal Guidance](#).

When someone experiences an event through technology

ACC covers work related mental injury where clients experience the event through technology – including but not limited to closed circuit TV, video call/conference, telephone call or two-way radio, if the client:

- has direct involvement or active participation (not a passive observer) in the event; and
- experiences the event live (ie in real-time).

We would not consider someone who sees or hears the event through technology at a later time to have experienced the event, for example seeing or hearing about the event on the news through television or radio.

[Seek Internal Guidance](#) if a claim is lodged for a person who witnessed an event because they were required to review video security surveillance as part of their employment.

Example

A security officer operating CCTV witnessed a traumatic crime in real-time and was responsible for tracking and communicating the crime to first responders as it unfolded. The officer had to stay watching the event unfolding to do this and was unable to physically intervene. The officer develops PTSD as a result of this event. The officer had direct involvement in the event as it happened and experienced the event live. However a colleague reviewing footage of the same event a week later as part of the workplace's review into the event would not be considered to have directly experienced the event because they were not involved and it was not live.

Direct outcome of a sudden event

Where a person is involved in, or witnesses, the direct outcome of the event they may still be eligible for cover even if they did not directly experience the event as it occurred. To be directly involved in, or witness, the outcome of a sudden event the person must be physically present at the scene of the event.

Being involved or witnessing the direct outcome may involve being at the scene of the event and:

- providing medical assistance; or
- providing emergency response assistance; or
- being part of a rescue or clean-up operation.

Caused by the event

For the mental injury to be considered to have been caused by experiencing the event, the event must be a material or significant cause and be an event that is reasonably expected to cause mental injury to people generally. Temporary distress that constitutes a normal reaction to trauma is not covered.

Events that could reasonably be expected to cause mental injury would:

- provoke extreme distress, horror, or alarm in almost everyone; and
- be outside the normal range of human experience (normal human experience would include bereavement, business loss and divorce).

The mental injury assessment should identify whether the event was a material or significant cause of the mental injury.

For claims where the event is significant, there will usually be lots of information that can be gathered from workplace incident reports, and police or emergency service reports, as well as a Ministry of Business, Innovation and Employment (MBIE) investigation. The more information that can be obtained, the more robust the cover decision will be.

Consider cover under mental injury caused by physical injury

Where the client has a physical injury as well as a mental injury, consider whether the mental injury is caused by the event the client experienced or the physical injury.

Work-related mental injury and mental injury caused by physical injury have different cover criteria and dates of injury. Which type of claim the client's mental injury is will depend on the mental injury assessment.

[Seek Internal Guidance](#) if needed.

Mental injury caused by certain criminal acts

Cover criteria for mental injury caused by certain criminal acts

ACC covers mental injury caused by certain criminal acts of sexual abuse or assault if:

- the client is the victim of a Schedule 3 offence; and
- the abuse or assault is a material or significant cause of the client's mental injury; and
- the offence took place in New Zealand; or
- the offence took place outside of New Zealand, but the client was ordinarily resident at the time of the offence.

No one needs to be charged with or convicted of the offence for the client to receive cover. It is sufficient to show on the balance of probabilities that the act is 'within the description of an offence listed in Schedule 3', (i.e. that it is more likely than not that the elements of the offence are present). It is not necessary to satisfy a criminal standard of proof (i.e. where it is beyond reasonable doubt).

Relevant legislation

- [AC Act 2001, s21, Cover for mental injury caused by certain criminal acts](#)
- [AC Act 2001, s36, Date on which person is to be regarded as suffering mental injury.](#)
- [AC Act 2001, Schedule 3, Cover for mental injury caused by certain acts dealt with in Crimes Act 1961](#)
- [Crimes Act 1961, s128A, Allowing sexual activity does not amount to consent in some circumstances](#)

Schedule 3 offences

A Schedule 3 offence means one of the certain criminal acts under the Crimes Act 1961 that are listed in Schedule 3 of the AC Act 2001. These offences involve attempted, threatened, or actual non-consensual sexual behaviour. Most, but not all, of these offences involve physical sexual contact. For more information see [Considerations for mental injury caused by Schedule 3 events](#).

Date of injury for mental injury cover caused by certain criminal acts

The date of injury for establishing cover for a mental injury caused by a Schedule 3 offence is the date the client first receives treatment for that mental injury (known as the 'deemed date of injury'). ACC accepts the date that any treatment including counselling is, or was, provided for a mental injury due to the underlying sexual abuse, even if a Schedule 3 offence was not disclosed at that time. This includes disclosure to, or treatment from, a counsellor or nurse at the school where the client attends/attended.

For entitlement purposes there is a separate injury date to consider, see [LOPE interim guidelines](#).

Date of injury under previous acts

For mental injury claims lodged under the [1972](#) and [1982](#) Acts the date of injury is the date of the abuse event.

Earlier deemed date of injury

If the sexual abuse was not disclosed, ACC will continue to accept an earlier deemed date of injury if the clinical evidence demonstrates:

- the client had consulted with a treatment provider for the same condition that ACC has covered; or
- the treatment provider kept clinical notes recording the mental injury and what treatment was recommended; or
- the overall evidence suggests the client was consulting the treatment provider in relation to the sexual abuse even though the sexual abuse wasn't explicitly mentioned to the treatment provider at that time.

[Seek Internal Guidance](#) to determine whether the symptoms identified are symptoms of the covered mental injury.

ACC can only accept an earlier deemed date of injury where the client saw a treatment provider who meets the legislative definition of treatment provider. It is not sufficient grounds to change the date of mental injury where the client discussed the sexual abuse or symptoms with a social worker or priest.

^ Assessing a mental injury caused by certain criminal acts, including consent

Caused by the offence

ACC considers the mental injury to be caused by the events in question if the event is a material or significant cause of the claimed mental injury. This means that when multiple causes are identified, the event in question, while not needing to be the predominant cause of the mental injury, must be a significant factor rather than have minimal significance.

Whether the mental injury is caused by the event could also be determined by deciding whether the injury would not have occurred 'but for' the offence.

No one needs to be charged with or convicted of the offence for it to be considered the cause of a client's mental injury.

Consent

Certain crimes under the Crimes Act 1961 state consent was not given if the victim was mistaken or deceived as to the nature and quality of the activity they engaged in. The absence of consent is part of the offence and must be established before deciding cover for the mental injury.

For help where it is unclear if the circumstances are within the Schedule 3 offences, [Seek Internal Guidance](#). Technical services may refer the query to the Complex Mental Injury Panel if required.

Examples where consent was not given

Non-disclosure of HIV status

In cases where a person does not disclose their HIV status to the person with whom they are having sexual relations before engaging in sexual activity, this deception changes the nature and quality of the act, and therefore it could not be said that the victim freely gave their informed consent.

Sexual relations agreed to on the basis of condom use

In cases where intercourse is consented to only on the basis of condom use, the removal of the condom means there is no consent. This is true both in instances of 'stealth' where the condom is removed without the other party's knowledge, and where the other party is aware but is unable to stop the sexual relations from proceeding.

False information about a vasectomy

In cases where a person's partner falsely tells them they had a vasectomy, the person falls pregnant and the pregnancy is unwanted, the person has been deceived about the nature and quality of sexual relations with their partner and there is no consent.

Schizophrenia caused by sexual abuse

Deciding if a Schedule 3 offence is a material or significant cause of schizophrenia is complex. Refer all these claims to the Complex Mental Injury Panel.

Previous legislation

Mental consequences


Section 2 of the Accident Compensation Act 1972 and 1982 provided cover for the physical and mental consequences of an injury or accident.

Determine whether clients with a subsequent claim following cover for physical injuries under the 1972 or 1982 Acts are entitled to cover for mental injury under the AC Act 2001 or mental consequences under the 1972 or 1982 AC Acts.

Relevant legislation

- [Accident Compensation Act 1972 \(1972 No 43\)](#)
- [Accident Compensation Act 1982 \(1982 No 181\)](#)

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