

POLICY PAGE

Cover for treatment injury policy

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Tīmatanga kōrero | Introduction

Audience: All ACC Staff
Purpose: This policy outlines the guidelines and criteria to determine cover for injuries resulting from treatment from a registered health professional (RHP).

Operational Policy landing page

Policy statement

ACC covers treatment injury where a claim is lodged on or after 1 July 2005 after receiving treatment from a registered health professional (RHP). Prior to 1 July 2005, treatment injury is assessed under the cover criteria for Medical misadventure.

Relevant legislation

- AC Act 2001, s32, Treatment injury

Guidelines and rules

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Cover criteria for treatment injury

ACC covers treatment injury if:

- the client has suffered a personal injury (see Cover for personal injury caused by accident policy for definition of personal injury); and
- the injury has happened in the context of treatment; and
- there is a clear causal link between the treatment and the injury.

Where there is an existing or underlying condition

ACC does not cover treatment injury if:

- the injury is a necessary part or ordinary consequence of the treatment; or
- the injury is solely attributable to a resource allocation decision; or

- the treatment did not achieve the desired result.

For more information and examples see Scenarios for treatment injury.

Date of injury for treatment injury

The date on which a client suffers a treatment injury is the date on which they first seek or receive treatment for the symptoms of that personal injury. This date applies even if it was not known at the time the treatment was first sought or received for the symptoms that previous treatment was the cause of the symptoms.

ACC determines the date that a client first sought or received treatment by taking the advice of the treatment provider and any other medical experts who lodged the claim. This date must be supported by clinical records.

Relevant legislation

- AC Act 2001, s38, Date suffered treatment injury
- AC Act 2001, s53, Time for making a claim

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Meaning of treatment

Under the AC Act 2001, for the purposes of determining whether a treatment injury has occurred, treatment includes:

- the giving of treatment; or
- a diagnosis of a person's medical condition; or
- a decision on the treatment to be provided (including a decision not to provide treatment); or
- a failure to provide treatment, or to provide treatment in a timely manner; or

- obtaining, or failing to obtain, a person's consent to undergo treatment, including any information provided to the person (or other person legally entitled to consent on their behalf if the person does not have legal capacity) to enable the person to make an informed decision on whether to accept treatment; or
- the provision of preventive treatment or medicine to prevent disease (prophylaxis); or
- the failure of any equipment, device, or tool used as part of the treatment process, including the failure of any implant or prosthesis (except where the failure of the implant or prosthesis is caused by an intervening act or by fair wear and tear), whether at the time of giving treatment or subsequently; or
- the application of any support systems, including policies, processes, practices, and administrative systems, that:
  - are used by the organisation or person providing the treatment; and
  - directly support the treatment.

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Relevant legislation

- AC Act 2001, s33, Treatment

Context of treatment

An injury has occurred in the context of treatment when a client sought or received treatment from, or at the direction of, one or more registered health professionals (RHPs).

Seeking treatment

A client is considered to be seeking treatment when:

- there is a direct interaction between the client and an RHP, including telephone advice; and
- the RHP is acting in their professional capacity.

This does not include informal advice given in a social situation.

Receiving treatment

A client is considered to be receiving treatment if:

- they are undergoing treatment, or there is an exchange of clinical advice between the client and one or more RHP; or
- a non-RHP provides treatment at the direction of an RHP.

The relevant date to consider whether someone is an RHP is the date of the treatment that caused the injury. If a client claims after 01 October 2019 for an event occurring earlier, the amendment to the definitions of an RHP does not apply. The changes are not retrospective.

Treatment from a family member

Treatment of a family member is recognised as treatment by a registered health professional in terms of treatment injury legislation. For ACC's position on treatment from a family member, including claiming payment, see Providers treating self or family members policy.

At the direction of an RHP

Treatment is considered to have been given by a non-RHP under an RHP's supervision or guidance ('at the direction of') if:

- it forms part of a treatment plan set by an RHP and supports the ongoing treatment provided by the RHP; and
- the RHP retains responsibility for the specific intervention and the patient; and
- the specific intervention is within the RHP's scope of practice; and
- the RHP exercises clinical judgment that directs the specific intervention by the non-RHP, including the way it is administered.

Supervision or guidance does not include formal or informal referrals to non RHPs.

Example

A trainee physiotherapist causes an injury while manipulating a patient's limb. If a qualified physiotherapist is supervising the trainee, this is considered to be working at the direction of an RHP.

Relevant legislation

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- Accident Compensation (Definitions) Regulations 2019; Clause 7 Meaning of registered health professional
- Accident Compensation (Definitions) Regulations 2019; Clause 8 Meaning of treatment provider

Causal link

For treatment injury cover there must be a causal link between the treatment and the injury. A causal link cannot be established if:

- the personal injury is wholly or substantially caused by an underlying health condition; or
- the personal injury is the result of unreasonably withholding or delaying consent to undergo treatment.

Progression of an underlying condition or disease

Where a client has an underlying condition or disease, ACC can provide cover for the progression of that disease or condition where the progression was caused by treatment (including failure to provide treatment or to provide treatment in a timely manner).

Unreasonably withholding or delaying consent to undergo treatment

A person can only make a reasonable decision not to consent to the recommended treatment when they have enough information to make an informed decision.

The client's reasons for withholding or delaying their consent must be fully examined. In some situations, the decision may have been reasonable, given all the circumstances of the treatment.

Cover criteria for treatment injury due to failure to provide treatment, or to provide treatment in a timely manner

ACC covers treatment injury caused by failure to provide treatment, or failure to provide treatment in a timely manner if:

- there has been a failure to provide treatment or to provide treatment in a timely manner; and

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- there is a personal injury, over and above the natural consequences of the underlying condition for which the treatment was sought; and
- had the condition been diagnosed or treatment received earlier, the personal injury would have been prevented or lessened.

Factors to consider in assessing whether there has been a failure to provide treatment, or a delay to treat or diagnose in a timely manner:

- based on the client's presentation, including complexity of presentation and any co morbidities present, and clinical knowledge at the time of treatment, should a different diagnosis reasonably have been made, or a different treatment path reasonably have been undertaken, at an earlier point in time in the case of delay?
- if a different diagnosis or treatment path was indicated, and if it had been followed, would this, on the balance of probabilities, have led to a different outcome, i.e. would it have prevented or altered the progression of the injury?

Do not apply hindsight

When assessing cover there must be an investigation to identify what treatment is required based on the client's presentation at the time rather than on what was subsequently proved to be the case with the benefit of hindsight. If a client disease progresses into a more severe condition confirmed at a later date, this does not automatically mean that there was a delay or failure to treat the client for that diagnosis at the time of the original presentation.

Example

A client presents to her GP with a flu-like illness, including headache and vomiting. Her GP provided treatment according to her presentation. Her health deteriorated over several weeks and she was eventually diagnosed with herpes simplex encephalitis (HSE), which resulted in the client suffering from right visual field defect and right-sided hyperaesthesia. Treatment for HSE would not have been appropriate for the client's original presentation, as HSE was only diagnosed after a brain biopsy. In this case there was no failure to provide treatment, or to provide treatment in a timely manner.

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Necessary part or ordinary consequence of treatment

ACC does not cover treatment injury if the personal injury suffered was a necessary part or ordinary consequence of the treatment, taking into account all the circumstances of the treatment.

Determining this can be a complex undertaking, see Defining necessary part or ordinary consequence of treatment and, if you need assistance to determine this, see Seek Internal Guidance.

Solely attributable to a resource allocation decision

ACC does not cover injuries solely attributable to a resource allocation decision as it is not part of the treatment received from an individual provider; it sits outside the specific treatment. A resource allocation decision:

- relates to which services are made available to a population or group, not just an individual; or
- may be an implicit decision, e.g. not seeking additional funding for a type of treatment.

Example

The emergency department at a rural hospital has closed. A patient is unaware of this and turns up for treatment for chest pains. By the time the patient has found the afterhours General Practitioner (GP) clinic and been transferred to the proper facility, they have suffered a heart attack. The heart attack is not a treatment injury.

The treatment did not achieve the desired result

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The fact that the treatment did not achieve the desired result does not, of itself, constitute a treatment injury.

If the only reason for the treatment injury claim is that the client is dissatisfied with the outcome of the treatment, cover is declined.

Example

A client's arthritis meant that he required a hip replacement. The hip replacement and subsequent healing was, in the opinion of the surgeon, unremarkable. The client expected he would regain the ability to resume tramping and climbing over fences. He did not regain the level of mobility he expected and lodged a claim because the surgery did not achieve the desired result. The claim was declined. It was not a treatment injury as although achieving 100% range of movement was the client's desired result, not meeting a desired result does not in itself constitute a treatment injury.

Clinical trials

Cover criteria for treatment injury sustained during a clinical trial

If all other treatment injury criteria are met, ACC covers a treatment injury sustained during a clinical trial if:

- the client did not agree in writing to participate in the trial; or
- an ethics committee, approved by the Heath Research Council of New Zealand or the Director General of Health, approved the trial and was satisfied that it was not conducted for the benefit of the manufacturer or distributor of the medicine or item being trialled.

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Third party infections

Under section 32(7) of the AC Act 2001, if a client suffers an infection that is a treatment injury, cover for that personal injury can extend to a third party if the client has passed the infection on directly to them e.g. when a mother with treatment injury cover for an infection passes that infection to their child via breastfeeding.

You will need to seek advice to confirm cover for these cases by using the Seek Internal Guidance process.

Relevant legislation

- AC Act 2001, s18, Spouse (and spouse in relation to deceased claimant)
- AC Act 2001, s18A, Partner (and partner in relation to deceased claimant)

Overseas treatment

When a client receives treatment overseas and suffers a personal injury, irrespective of whether the injury occurs overseas or in New Zealand (for claims on or after 1 July 2005), the client:

- must be ordinarily resident in New Zealand at the date they received their treatment (see the Ordinarily resident in New Zealand policy); and
- must have received treatment that led to the treatment injury from a treatment provider that has the same or equivalent qualifications to that of a registered healthcare provider (RHP).

Consultation with an external clinical advisor may be required to peer review the overseas RHP credentials and the treatment that was provided. For claims made prior to 1 July 2005 please refer to the medical misadventure reference page.

For consequential injuries resulting from treatment received overseas (e.g. treatment for an already covered injury) the treatment provider does not need to meet the RHP equivalent qualifications.

Further information regarding overseas treatment can be found at the following:

- Comparable country for overseas claim – treatment injury
- Determining overseas equivalent of Registered Health Professional
- List of approved qualifications
- World directory of medical schools

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Risk of harm

By identifying harm that may be preventable and sharing relevant information with authorities responsible, and other organisations as appropriate, ACC aims to reduce harm in the health and disability system and fulfil its statutory obligations to report belief of risk of harm to the public.

ACC is required to report its belief of risk of harm to the public arising out of treatment injury and related claims. The requirement to report exists irrespective of whether the claim is accepted or declined, see Risk of harm policy for further information.

Relevant legislation

- AC Act 2001, s284, reporting risk of harm

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Previous legislation

The AC Act 2001 was amended replacing the provision for medical misadventure with treatment injury. The treatment injury provisions apply to all claims lodged for the first time on or after 1 July 2005. For claims lodged before this date see the reference page Medical misadventure claims lodged before 1 July 2005.

Definitions of 'registered health professional' and 'treatment provider' and associated definitions moved from the AC Act 2001 to stand alone regulations on 1 October 2019.

Relevant legislation

- Accident Compensation (Definitions) Amendment Regulations 2024

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