



05 August 2022

Kia ora [REDACTED]

Your Official Information Act request, reference: GOV-019617

Thank you for your request of 21 July 2022 to our Cover Assessment team, asking for the following information:

1. *Request full ACC copies of legislation and relevant case law around dental injuries and cover either granted or declined - specifically for foreign body objects in food*
2. *Case Law such as listed/referenced in Promapp: Partner HC180/1993, Moulder [34/97], Brumby 87/97, McCardie [74/06] and [206/06], Scaife [114/12] and Mares [292/14]*

Due to the nature of your request, it was referred to the Government Engagement team to respond to under the Official Information Act 1982 (the Act).

ACC assesses dental injuries under section 26(4)(b) of the Accident Compensation Act 2001

The legislation can be viewed at www.legislation.govt.nz/act/public/2001/0049/latest/DLM100910.html. We are refusing to provide a copy of the legislation in this response as it is publicly available. This decision has been made under section 18(d) of the Act.

Cover criteria for personal injury is attached as Appendix 1

As ACC staff names were not requested, they have been deemed out of scope of your request and removed.

The relevant case laws referenced in Appendix 1 are publicly available at the following links:

- Partner HC180/1993 - <http://www.nzlii.org/nz/cases/NZHC/1995/805.pdf>
- Moulder [34/97] - <http://www.nzlii.org/nz/cases/NZACC/1997/34.html>
- Brumby 87/97 - <http://www.nzlii.org/nz/cases/NZACC/1997/87.html>
- McCardle [74/06] - <http://www.nzlii.org/nz/cases/NZACC/2006/74.html>
- McCardle [206/06] - <http://www.nzlii.org/nz/cases/NZACC/2006/206.html>
- Scaife [114/12] - <http://www.nzlii.org/nz/cases/NZACC/2012/114.html>
- Mares [292/14] - <http://www.nzlii.org/nz/cases/NZACC/2014/292.html>

We are not providing a copy of the case laws with this response as they are publicly available. This decision has been made under section 18(d) of the Act.

If you have questions about this response, please get in touch

You can email me at GovernmentServices@acc.co.nz.

If you are not happy with this response, you can also contact the Ombudsman via info@ombudsman.parliament.nz or by phoning 0800 802 602. Information about how to make a complaint is available at www.ombudsman.parliament.nz

Ngā mihi



Sara Freitag
Acting Manager Official Information Act Services
Government Engagement

Summary

Objective

Use this policy when considering a claim for cover under the Accident Compensation Act 2001 (the AC Act). This policy helps you establish that the client has suffered an injury and that this injury falls within the definition of 'personal injury' provided by the Act.

1. Categories of personal injury that we can accept for cover
2. Categories of personal injury excluded from cover
3. Natural use of teeth

Owner out of scope

Expert out of scope

Policy

1.0 Categories of personal injury that we can accept for cover

- a** We can provide cover for a claim for personal injury if the injury was:
 - b** - caused by an accident that results in a physical injury to the client
 -  Definition of Accident Policy
 -  Cover criteria for physical injury
<https://go.promapp.com/accnz/Process/7ad9c6ce-8dc>
 - c** - caused by treatment
 -  Cover criteria for treatment injury
<https://go.promapp.com/accnz/Process/0672ce4b-34i>
 - d** - caused by a work-related gradual process, disease or infection
 -  Work-related gradual process, disease or infection Policy
<https://go.promapp.com/accnz/Process/10f12b7d-cffc>
 - e** - a cardiovascular or cerebrovascular episode that is work-related or treatment-related
 -  Cover criteria for work-related cardiovascular or cerebrovascular episode
<https://go.promapp.com/accnz/Process/51af43fb-e78>
 - f** - a mental injury suffered by a client because of covered physical injuries
 -  Mental injury due to physical injury
<https://go.promapp.com/accnz/Process/3f4b2b30-77f>
 - g** - a mental injury caused by witnessing a traumatic event in the course of employment
 -  Work-related mental injury
<https://go.promapp.com/accnz/Process/2221c063-28i>
 - h** - a mental injury caused by certain criminal acts.
 -  Cover criteria for sensitive claims
<https://go.promapp.com/accnz/Process/0249a44a-59>
 - i** - a hearing loss injury
 -  Criteria for Hearing loss claims prior to 01 July 2010 Policy
 -  Criteria for Hearing Loss Claims Policy
 - j** - damage, other than wear and tear, to dentures or prostheses that replace a part of the human body

-  Cover criteria for dentures and prostheses
<https://go.promapp.com/accnz/Process/f02eb0ef-575>

k - the death of the client

-  Cover criteria for accidental death claim
<https://go.promapp.com/accnz/Process/fb268b6b-08c>

l - a pregnancy as the result of rape or treatment injury (or medical misadventure for claims prior to 1 July 2005)

-  Pregnancy as a personal injury
<https://go.promapp.com/accnz/Process/5ce6add6-6d>

m See the AC Act 2001, Section 26, subsections (2) to (4).

-  AC Act 2001, Section 26, subsections (2) to (4)
<https://www.westlaw.co.nz/maf/wlnz/app/authenticatic>

2.0 Categories of personal injury excluded from cover

a 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).

-  AC Act 2001, Sections 20(2)(e) to (h), subsections (2) to (4).
<https://www.westlaw.co.nz/maf/wlnz/app/document?&>

-  Pregnancy as a personal injury
<https://go.promapp.com/accnz/Process/5ce6add6-6d>

3.0 Natural use of teeth

a 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.

 [Natural use of teeth - historical background.docx](#)

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