

**Proposed Changes to the Scale of Payments
made under the
ACC Review Costs and Appeals Regulations**

Discussion document

prepared by the Department of Labour

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Introduction

The Injury Prevention, Rehabilitation, and Compensation Act 2001 (the IPRC Act) provides review processes for people who wish to apply for a review of an ACC decision.

Where an applicant is wholly or partially successful in their review application, or where the Review Officer considers that the application was reasonably brought, the applicant can apply to have some of the costs they incur reimbursed. The Injury Prevention, Rehabilitation, and Compensation (Review Costs and Appeals) Regulations 2002 (the regulations) set out the payments that can be made towards these review costs.

The Department of Labour is reviewing the level of costs paid under the regulations. This document sets out proposals for some changes to the existing scale of costs payable. The Department is seeking feedback on these proposals.

Giving us feedback

How to make a submission

Please send your submission in writing to:

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Additional copies of this discussion document can be obtained by contacting Lisa.

The **closing date** for submissions is **18 April 2008**.

Official Information Act

The Department of Labour is subject to the Official Information Act 1982. This means that your submission may be available to those seeking information under that Act.

If you would like any part of your submission to be kept confidential, please note this clearly in your submission.

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Background

The Injury Prevention, Rehabilitation, and Compensation (Review Costs and Appeals) Regulations (the regulations)

When a person seeks a review of an ACC decision, the regulations specify:

- a the scale of costs and expenses to be awarded
 - i to claimants who are wholly or partially successful in their review application, or
 - ii where the Review Officer considers that the application was reasonably brought
- b rules for the conduct of appeals, and
- c rules for lodging notices of appeal in the District Court.

Reviews are primarily conducted by reviewers engaged by Dispute Resolution Services Limited (DRSL). Reviewers provide independent reviews of decisions (mainly on cover and entitlements) made under the ACC scheme. Costs are awarded by reviewers [see section 148 of the Injury Prevention, Rehabilitation, and Compensation Act 20001] and are paid by ACC.

A full review of all the costs payable was undertaken in 2003 and there is no evidence that another detailed examination of the categories of costs paid is indicated.

This discussion document is therefore concerned only with the scale of costs payable. The payments aim to ensure that persons dissatisfied with ACC decisions can reasonably prepare and present a case at review, without encouraging unnecessary preparation and representation.

Under the IPRC Act reviews are required to be conducted in a manner that reduces the need for claimants, or others challenging ACC decisions, to seek assistance (for example from an advocate or solicitor) to bring their review.

Intent of the scale of costs

Costs and expenses can only be awarded to claimants or “any other person” who are applicants or who appear at a review. Other persons are employers contesting whether an injury is work-related, or a levy payer contesting their levy classification. There is also a limited right for registered health practitioners or organisations to contest ACC cover decisions made under the medical misadventure provisions which applied prior to July 2005.

Costs and expenses must be awarded if the applicant is wholly or partially successful, and may be awarded if “the applicant acted reasonably in applying for the review.” Other people can be awarded costs if they have a decision made in their favour [see section 148 (2) of the IPRC Act].

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The purpose of these provisions is to allow reasonable claims to come forward without causing undue hardship to applicants or others affected by ACC decisions. The provisions also ensure access to justice and independence of the review process. The process is intended to be non-adversarial and informal, and legal representation is not necessarily required.

Reviews

Some facts about reviews to give the context for your submission are set out below.

- Over the 2006/07 year, ACC received a total of 3,482,272 claims
- Of these, 3,366,523 claims were accepted and 115,749 claims were declined
- Most reviews arise out of declined claims. Only three to four percent of all claims are declined [3.6% declined 2005/06; 3.3% declined 2006/07]
- There were 6,002 reviews lodged for the 2006/07 year. These reviews related to decisions on:
 - treatment: 1,324
 - cover: 1,091
 - jurisdiction: 807
 - independence allowances: 746
 - weekly compensation: 479
 - suspension: 379
 - social rehabilitation: 348
 - other: 313
 - vocational independence: 205
 - work injury: 165
 - vocational rehabilitation: 116
 - Code of Claimants' Rights: 26
 - 3 were unidentified subjects.
- Not all reviews go to a hearing. ACC may revise its decision, or the applicant may withdraw.
- ACC records for the first six months of the 07/08 financial year show around 25 percent of applicants chose to have representation (representation can be by any person the applicant wishes and may not be legal counsel). Of the 4693 cases recorded, 1187 were represented and 3506 self-represented.
- Currently costs awards total around \$1.66million annually.
- Most reviews are heard in less than an hour and it is unusual for hearings to run for more than two hours.

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Current scale of costs

The regulations were last reviewed in 2003. The current scale of costs in Schedule 1 of the regulations is set out below.

Table 1:

Item	Maximum Award (\$)	Rate (\$)
Applicant's or another person's representation ¹ —		
preparation and lodging of application for review under section 135	100	
participation in a case conference on behalf of applicant or another person before review hearing	50	
other preparation of case for review	300	
appearance at hearing on behalf of applicant or another person—	300	
1st hour of hearing (or part thereof)		150
2nd hour of hearing		25 per 15 mins
later hours of hearing		12.50 per 15 mins
All relevant and reasonably necessary reports for applicant or another person by any registered specialists ²	800	
All relevant and reasonably necessary reports prepared for applicant or another person by a person with a recognised qualification to express a competent view on a matter in issue (for example, a person undertaking an occupational assessment, an architect, or a general medical practitioner)—		
if only 1 report is provided	400	
if 2 or more reports are provided	600	
at the following rates:		
1st hour (or part thereof) of preparation		150
2nd hour of preparation		37.50 per 15 mins
3rd hour of preparation		25 per 15 mins
Other expenses reasonably incurred by applicant or another person, or on behalf of an applicant or other person, associated with a hearing (for example, transport to a hearing or time off work for an applicant, another person, representative, or a witness or support person such as whanau support; disbursements such as photocopying, childcare, or telephone charges)—		
	500	
for transport within this category	150	0.28 per kilometre for private transport
¹ Awards for items under this heading may be made in respect of 1 representative only		
² As defined by regulation 3		

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Proposal

This consultation is not a full review of all aspects of the regulations. Its focus is only on the scale of costs, and whether these should be increased.

Your feedback is sought on the proposal set out below.

Increase the scale of costs able to be claimed

The regulations were last reviewed in 2003 and new rates of payment for the scale of costs were set. Those rates were a significant increase on the previous regulations. The prices were based on information provided in public submissions and from analysis of market rates.

Although there is no indication that the regulations need another full examination to the extent of the recent review, it is timely to consider further whether an adjustment to rates is required.

Currently all indexed ACC entitlements are adjusted in line with the Consumer Price Index (CPI)¹. The only exceptions to this are weekly compensation and related amounts, which are adjusted in line with the Labour Cost Index (LCI).

It is proposed that the existing scale of costs be increased by the rate of inflation, as measured by the CPI using the "all groups (services component)" index.

This index is part of an analytical split of the CPI into an index covering goods and an index covering services, and is a standard component of the published CPI figures for each quarter. This index is considered the most appropriate to use because the scale of costs is primarily composed of service-related entitlements.

This proposal would lead to a 14.4 percent increase in the scale of costs.

New scale of costs

If the scale of costs were to be increased by the rate of inflation, as measured by the CPI using the "all groups (services component)" index, the amended scale of costs would be as shown in Table 2.

¹ As per Section 116 (Indexation of lump sum compensation, funeral grant, survivor's grant, and child care payments) of the [IPRC Act](#)

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Table 2:

Item	Maximum Award (\$)	Rate (\$)
Applicant's or another person's representation ¹ —		
preparation and lodging of application for review under section 135	114.40	
participation in a case conference on behalf of applicant or another person before review hearing	57.20	
other preparation of case for review	343.20	
appearance at hearing on behalf of applicant or another person—	343.20	
1st hour of hearing (or part thereof)		171.60
2nd hour of hearing		28.60 per 15 mins
later hours of hearing		14.30 per 15 mins
All relevant and reasonably necessary reports for applicant or another person by any registered specialists ²	915.20	
All relevant and reasonably necessary reports prepared for applicant or another person by a person with a recognised qualification to express a competent view on a matter in issue (for example, a person undertaking an occupational assessment, an architect, or a general medical practitioner)—		
if only 1 report is provided	457.60	
if 2 or more reports are provided	686.40	
at the following rates:		
1st hour (or part thereof) of preparation		171.60
2nd hour of preparation		42.90 per 15 mins
3rd hour of preparation		28.60 per 15 mins
Other expenses reasonably incurred by applicant or another person, or on behalf of an applicant or other person, associated with a hearing (for example, transport to a hearing or time off work for an applicant, another person, representative, or a witness or support person such as whanau support; disbursements such as photocopying, childcare, or telephone charges)—	572	
for transport within this category	150	0.28 per kilometre for private transport
¹ Awards for items under this heading may be made in respect of 1 representative only		
² As defined by regulation 3		

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Mileage rate

The only exception to the proposed increase to the rates paid in the scale of costs is the current mileage rate of 28 cents per kilometre for private transport to and from a review hearing.

Maintaining the existing rate of payment ensures consistency with the rate prescribed for travel to obtain rehabilitation services under the Injury Prevention, Rehabilitation, and Compensation (Ancillary Services) Regulations 2002. It also provides parity with the rates allowed by the Ministry of Education and the Ministry of Health. There is no proposal to change the rate per kilometre for travel costs.

The maximum amount claimable for mileage is \$150. This allows for a total distance travelled of just over 535 kilometres per hearing. This is seen as adequate and no change is proposed to the existing mileage rates.

Other options considered

Three other options were considered during the development of this proposal. A summary of these options is given below.

Status quo

This option would mean payment rates in the scale of costs would remain as they are currently and no change would be made to the regulations.

This option is not recommended as it does not take into account the rise in inflation over the last four years, and the consequential increases in market rates for the services provided to claimants seeking a review.

Consumers Price Index (CPI) – all groups

This option would increase the scale of costs by the rate of inflation using the CPI "all groups index". This measure is the overall measure of the rise in goods and services purchased by private New Zealand households. This option would lead to a 12.2 percent increase in the scale of costs.

Using the CPI is consistent with the indexation of other ACC entitlements that are goods and services (as opposed to wage-related entitlements such as weekly compensation).

However, this option is not recommended because this figure measures the cost of all goods and services and will include groups that are not directly relevant to those under consideration here.

Labour Cost Index (LCI)

This option would increase the scale of costs by the rate of inflation as measured by the LCI. The provisions in the regulations are primarily service related, and therefore closely linked to movement in wage and salary levels. This option would lead to a 12.7 percent increase in the scale of costs.

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This option is not recommended because the LCI has limited relevance to the provisions under consideration. The LCI measures changes in labour costs rather than changes in the prices of services provided by businesses. Some legal and health services providers may also be self-employed and changes in their earnings would not be captured by the LCI.

Overall cost comparison of options considered

Table three outlines the predicted cost of each option considered, based on the assumption that the number of applications for review and costs awarded will remain at similar levels as the 2007 year.

Table 3

	Status quo	CPI "all groups"	LCI	CPI "all groups (services component)"
Percentage increase	0	12.2	12.7	14.4
Total cost	\$1,663,506.75	\$1,866,454.57	\$1,874,772.11	\$1,903,051.72

Do you agree with the proposed increases to the scale of costs? If not, why not?