

Guidelines for ACC Reviews

Introduction

The purpose of these guidelines is to provide certainty, clarity and consistency to those involved in the Accident Compensation Corporation (ACC) review process by providing clear, comprehensive and coherent guidance on how reviews are to be managed and conducted.

These guidelines are a living document, underpinned by the principles of natural justice¹, which implies that the review must follow a fair procedure. As a living document the guidelines will be updated as circumstances require.

The eight areas on which these guidelines focus are:

1. Case management principles;
2. Case management track system;
3. Case conferencing;
4. Expert evidence;
5. Adjournments;
6. Documents for review;
7. Submissions;
8. Technology assisted hearings.

¹See *Trustees of Rotoaira Forest v Attorney-General* [1999] 2 NZLR 452 in which Fischer J described the principles of natural justice, which has been adapted to fit with the ACC review process, to mean:

- i. full opportunity to present your case;
- ii. opportunity to understand, test and dispute the other party's case;
- iii. reasonable notice is provided;
- iv. opportunity to be present at case conferences/hearings;
- v. reasonable opportunity is provided to present evidence and argue in support of your case;
- vi. a reviewer may not take note of evidence and/or arguments outside the scope of a case conference or hearing, without giving the parties further notice and opportunity to respond.

1. Case management principles

The review process will be managed in accordance with the following case management principles:

- 1.1 The reviewer will adopt an investigative approach² and facilitate the prompt and just resolution of the review in accordance with Part 5 of the Accident Compensation Act 2001 (the Act). A just resolution requires the reviewer to deal with reviews in accordance with the:
 - i) principles of natural justice;
 - ii) reasons and complexity³ of the review;
 - iii) urgency of the matter.

- 1.2 The reviewer will ensure that the review progresses expeditiously and fairly with the intent to guide the review towards completion within realistic time limits.

2. Case management system

- 2.1 Each review will be managed based on a track case management system. The track system takes into account the case management principles, set out in Clause 1, measured against the expected timeframe a reviewer believes the review could be completed.

A. Track 1:

- i) no procedural issue has been identified; and
- ii) no Alternative Dispute Resolution⁴ (ADR) process is proposed or agreed to; and
- iii) parties confirm and the reviewer accepts that all the required evidence has been collated; and

²The investigative approach requires the orientation of a review hearing towards an inquiry into the facts.

³Complexity will be determined with reference to the issues of fact, evidence and applicable law.

⁴ Alternative Dispute Resolution (ADR) refers to informal procedures for settling disputes, by agreement, in various ways outside the review process. Where settlement is not reached the matter can continue to review.

- iv) the parties are ready to proceed to the review hearing within four months from the date the reviewer has received the review.

B. Track 2 - Cases where either:

- i) procedural issues have been identified; and/or
- ii) an ADR process has been proposed or agreed to; and/or
- iii) the review concerns a decision by an accredited employer who declined or revoked injury cover⁵; and/or
- iv) legal aid funding is yet to be confirmed; and/or
- v) parties confirm and the reviewer accepts that some evidence is still outstanding; and/or
- vi) the reviewer finds that some evidence is still outstanding; and
- vii) the parties are only ready to proceed with the review hearing within four to six months from the date the reviewer has received the review.

C. Track 3 - Cases where either:

- i) procedural issues have been identified; and/or
- ii) an ADR process has been proposed or agreed to; and/or
- iii) the review concerns a decision by an accredited employer who declined or revoked injury cover; and/or
- iv) legal aid funding is yet to be confirmed; and/or
- v) parties confirm and the reviewer accepts that some evidence is still outstanding; and/or
- vi) the reviewer finds that some evidence is still outstanding; and
- vii) the parties are only ready to proceed with the review hearing more than six months from the date the reviewer has received the review.

2.2 Based on the changing circumstances of a review a reviewer may, at any time, change the track of a review.

⁵ This category is included to address those cases where there is clear evidence that a claimant had suffered a personal injury, but the accredited employer disputes that it is work-related. By allocating this type of case to Track 2 or Track 3 this will ensure a case conference will be held to investigate ACC's potential involvement. Following the outcome of the case conference ACC could be advised of the dispute and be provided the opportunity to consider whether to cover the injury as a non-work-related personal injury. This approach will ensure that a claimant is not potentially left without cover for a personal injury.

3. Case conferencing

- 3.1 A reviewer may at any time, request the parties attend a case conference.
- 3.2 The purpose of the case conference is to enable the reviewer, to:
- i) identify, define, and/or redefine the issues requiring determination at the review hearing;
 - ii) determine what steps need to be taken in order to prepare the review for hearing;
 - iii) decide how best to facilitate the review hearing.
- 3.3 Unless otherwise agreed by the reviewer and the parties, a reviewer will have a case conference for those reviews allocated to Track 2 and Track 3.
- 3.4 Discussions at the case conference, except those relating to settlement proposals, are admissible at the review hearing.
- 3.5 At the case conference the reviewer may, for example:
- i) enquire into any alternative means for resolving the dispute;
 - ii) assist the parties to identify the relevant issues in dispute;
 - iii) seek to identify the specialist evidence in support of the respective positions and issues at review;
 - iv) enquire whether further specialist evidence or relevant report/s are required;
 - v) seek to identify suitable hearing dates;
 - vi) upon the request of any one of the parties, provide a provisional indication that cost will be awarded, in accordance with the regulations⁶, to the applicant;
 - vii) address any special needs of the parties;
 - viii) issue directions as necessary, including:
 - a. the disclosure and the exchange of documents;
 - b. timetabling; and
 - c. the provision of any expert evidence as per Clause 4, below.
- 3.6 After the conclusion of the case conference the reviewer will, as soon as practicable, provide the parties with minutes of the case conference.
- 3.7 To ensure an accurate minute the reviewer may make a voice recording of the case conference. A copy of the recording will be available to the parties, upon request.

⁶ See: Injury Prevention, Rehabilitation, and Compensation (Review Costs and Appeals) Amendment Regulations 2010

4. Expert evidence

A reviewer may, at any time, including at a case conference, request any party to obtain additional medical evidence, or other evidence relevant to the issue/s at review, and stipulate who will be responsible for the related cost.

5. Adjournments

- 5.1 Any party may, with good reason, apply to adjourn a review hearing. The request should be made in writing in a timely manner and where possible at least five business days prior to the hearing.
- 5.2 The request must explain the reasons for the adjournment and the length of the adjournment sought.
- 5.3 After considering the adjournment request the reviewer may:
 - i) without convening a hearing, adjourn the matter;
 - ii) convene a teleconference or hearing to determine whether to adjourn the matter; or
 - iii) decline the request.
- 5.4 In granting an adjournment a reviewer may issue reasonable timetabling directions. The failure to comply with these directions may in itself amount to sufficient grounds not to grant any further adjournments.

6. Documents for review

- 6.1 Upon the allocation of a reviewer ACC will provide the reviewer, and all other interested parties, clearly collated, and preferably indexed and paginated copies of the information in its possession relating to the claimant's claim file.
- 6.2 Prior to the review hearing a reviewer may request any party to disclose information subsequently obtained, with an updated index.
- 6.3 Succinct bundles of relevant documents (indexed and paginated) are encouraged from either the claimant or ACC at the review hearing.

7. Submissions

- 7.1 Once a review is set down for hearing a reviewer may request the parties to file written submissions on the main points that they intend to argue.
- 7.2 The purpose of the submissions is to ensure that the reviewer and other parties are fully informed of each party's case. In line with this purpose, if written submissions are to be filed, each party is expected to provide and exchange their submission at least five days prior to the hearing.

8. Technology assisted hearings

- 8.1 A reviewer may determine whether any party's appearance at a meeting, case conference or hearing will be made in person, by telephone, videoconference or other attendance assisted by any technology.
- 8.2 In deciding the manner of attendance, the reviewer must take into account:
- i) the location of the parties;
 - ii) the availability of relevant equipment;
 - iii) special needs of the parties.

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