



An update on ACC: Changes to the Accident Compensation Legislation

Recent changes to the Accident Compensation legislation extend the scope of cover available for injuries arising out of medical treatment.

Changes to the Accident Compensation legislation came into effect on 1 July 2005. The changes abolish the concept of medical misadventure, which restricted cover under the Accident Compensation scheme to injuries resulting from medical error (negligence) and medical mishap (severe adverse consequences of treatment occurring in less than 1% of cases). The need to establish medical error was an anomaly in a "no fault" compensation system, which has now been corrected.

Patients now have cover for injuries suffered after 1 April 2002 which result from treatment given by, or at the direction of, a registered health professional and which are not a necessary part or ordinary consequence of that treatment (e.g. a surgical incision). If the treatment injury is an infection, cover will also extend to third parties who catch the infection from the patient or from the patient's spouse or partner.

Treatment includes:

- the giving of treatment;
- the diagnosis of a medical condition;
- a decision to treat (or not to treat);
- a failure to treat (or to treat in a timely manner);
- obtaining or failing to obtain informed consent to treatment and the provision of prophylaxis; and
- the application of any support systems (including policies, processes, practices, and administrative systems) which are used by the treatment provider and directly support the treatment.

The definition of treatment, for the purpose of determining whether a treatment injury has occurred, also extends to the failure of equipment, devices or tools used as part of the treatment process, whether at the time of treatment or subsequently. The failure of any implant or prosthesis is expressly included, except where that failure is caused by an intervening act or by fair wear and tear.

This amendment closes an apparent gap in the Accident Compensation scheme where patients were not covered for injuries resulting from prostheses (e.g. joint replacements) or implants (e.g. breast or tooth implants) of an inherently flawed design. The absence of cover left open the possibility of civil claims against, for example, the manufacturer of the defective products for negligent design.

However, a patient will not be covered for injuries:

- caused by their underlying health condition;
- which are solely attributable to a resource allocation decision (for example, if a type of treatment is unavailable); or

- if injury is the result of the patient's unreasonable refusal or delay in giving consent to undergo that treatment.

The new definition of cover only extends to treatment injuries suffered after 1 April 2002 . The date on which a treatment injury occurs is deemed to be the date on which a person first seeks treatment for the symptoms of that injury. For example, a patient might suffer an injury during the course of an operation in 2001. The patient begins to suffer complications as a result of the injury in 2003 and seeks treatment. Following investigations, the injury is diagnosed in 2004. The date of injury for the purpose of cover will be the date on which the patient first sought treatment in 2003.

If, prior to 1 July 2005 , a medical misadventure claim has been lodged with the Accident Compensation Corporation in relation to a treatment injury suffered after 1 April 2002 , that claim will be decided under the provisions of the former legislation. Cover for treatment injuries suffered before 1 April 2002 will be determined in accordance with the legislation in force at the time the injury occurred.

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