

ACC's approach to considering claims for cover for ingestion or inhalation of a virus, bacterium, protozoan or fungus

This document is a general guide to ACC's approach to considering claims for cover for ingestion or inhalation of a virus, bacterium, protozoan or fungus. Each application for cover will be considered on its own merits.

Cover under the Accident Compensation Act 2001

The Accident Compensation Act provides cover for personal injury caused in a number of circumstances, including personal injury caused by accident. :

The kinds of occurrences considered to be an "accident" are listed in section 25 of the Act.

Meaning of Accident

Section 25 provides that an accident does not include the inhalation or ingestion of a virus, bacterium, protozoan or fungus unless the ingestion or inhalation is the result of a criminal act of a person other than an injured person.

What is a criminal act?

The Act does not define what a "criminal act" is, and the meaning has not been considered by the Courts in an ACC context.

The Crimes Act 1961 (s.2) defines "criminally responsible" to mean that a person is "liable to punishment for an offence".

ACC interprets a criminal act to be an offence under any New Zealand legislation for which a person can be prosecuted and convicted.

How can ACC be satisfied that a criminal act has occurred?

To decide if cover is available under the Act for the ingestion or inhalation of a virus, bacterium, protozoan or fungus, ACC has to be satisfied that:

- a criminal act has occurred AND
- that act has resulted in the ingestion or inhalation of the micro-organism, causing personal injury.

A finding of "a criminal act" can have serious implications for the reputation of the person who committed the act. ACC has no power to investigate or compel the giving of evidence to establish whether offences have occurred under legislation administered by other agencies, or under the general law.

ACC cannot be satisfied that a criminal act has occurred unless:

- a person has been prosecuted and convicted of the offence; OR
- an act has occurred that is clearly criminal in nature (such as where a person has deliberately contaminated food or water for an injurious purpose) but a perpetrator has not been identified or has been identified but is not prosecuted or convicted only by reason of establishing a defence such as mental illness.

Havelock North Water contamination and impact of Inquiry findings

The Hawkes Bay Regional Council filed a criminal prosecution against the Hawkes Bay District Council in November 2016, but the prosecution was later withdrawn. The Government Inquiry into Havelock North Drinking Water (Stage 1) did not make any findings of a criminal nature and endorsed the withdrawing of the prosecution, finding that it “was bound to fail and ought never to have been brought”..

In the absence of a prosecution and conviction, and without clear evidence that a criminal act has occurred which resulted in the ingestion of the bacteria, ACC cannot be satisfied that the criteria in s25(1)(ba) have been met. Cover under the Act does not exist for claims resulting from the ingestion of bacteria in the Hawkes Bay water contamination event.

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