

## Summary

### Objective

Payments outside the scope of statutory entitlements are payments made by ACC to manage potential liabilities under Crown Entities Act 2004, Section 17. These payments were previously referred to as 'wrongful action' or 'ex-gratia' payments.

This page provides information on:

- criteria required for a client to be paid outside 'the scope of statutory entitlement'
- what defines a serious service failure
- what defines a financial loss
- how we compensate the client

Please note that privacy breaches are not addressed through this process. All enquiries around privacy breaches and potential compensation must be addressed through the Privacy Team.

For information on payments for backdated weekly compensation, go to 'Backdated Weekly Compensation' process group folder under: Claims Management > Manage Client Payments > Operational Policies > Weekly Compensation > in Promapp.

If we consider issuing a decision to decline weekly compensation after a review/appeal or a settlement has indicated that weekly compensation should be paid, then this case must be referred to the Weekly Compensation Panel to:

- check that the decision made to decline was robust
- recommend whether a payment outside the scope of statutory entitlement should be considered (if appropriate).

**Owner** Cheryl Gall

**Expert** Cheryl Gall

## Policy

### 1.0 Criteria for payments outside the scope of statutory entitlements

- a** For a payment to be made outside the scope of statutory entitlements, the following criteria must be met:

- ACC committed a serious service failure, and
- the client experienced a measurable financial loss because of ACC's actions.

If you receive a payment request that can't be resolved through statutory entitlement, and ACC runs risk of court action due to the service failure, you should refer the matter to your a Technical Specialist. The delegation to approve a payment in excess of \$2,000 or to reject a request is made on the recommendation of a Technical Specialist.

### 2.0 Serious service failure

- a** Service failures can occur when:

- a client's entitled to a payment, but for some reason this wasn't identified early enough
- the client isn't entitled to a payment but we've incorrectly advised them they are.

Both of these scenarios result in a loss for the client. If they request payment from what they see as a service failure, we need to see if this can be resolved through statutory entitlements.

See AC Act 2001, Section 69

A serious service failure requires more than a simple omission or delay. It requires ACC to have fallen well below reasonable service standards. The following criteria normally should be met when considering if a serious service failure has occurred:

- there's serious failure by ACC to do so something that was a legislative requirement or an error in the way something was done
- the failure falls outside the scope of a normal rectifiable human error (serious error is negligent and risks putting ACC under threat of law liability).

### 3.0 Measurable financial loss

- a** As well as a serious service failure occurring, a client must be able to demonstrate that due to ACC's service failure they experienced a measurable financial loss. This could include:

- income that could have been earned from a rightful entitlement that's been delayed due to ACC's inaction, payment of interest on late payment of weekly compensation does not apply
- additional costs incurred by the client whilst trying to get their entitlement
- incorrect advice provided by ACC that resulted in a financial commitment for the client
- ACC committing to pay for something with no entitlement.

## 4.0 Reimbursement of bank fees

- a** This is a common issue considered as a payment outside the scope of legislation. The following provides information how to manage these cases:
- If a client receives bank fees due to a delay in ACC paying an entitlement (eg weekly compensation) this is a failure in service. These cases wouldn't be considered a 'serious error' and therefore not meet criteria for payment outside scope of statutory entitlement.
  - Where a client incurs costs resulting from poor service, the Branch manager can decide if a reimbursement is needed.
  - Reimbursements should be made from the branch's operating budget, not against a claim file. To do this, the branch manager needs to send a memo to Accounts Payable. They'll need the amount, payee, and other relevant details like the bank statement.
  - Delegation for payments from the branch operating budget is covered in Delegations.
  - Branch Managers should confirm if there's additional sign off needed (unlikely based on the usual amount but should be checked).

## 5.0 Specific claim examples

### **NOTE Example: Unlawful suspension of independence allowance**

In Stewart (337/2004), the District Court found that ACC couldn't suspend entitlement to the independence allowance on medical grounds without going through the statutory independence allowance reassessment process.

QBE stopped paying the client's independence allowance entitlement in 2005 without going through the proper process. This alone constituted a serious error. However there was also the issue about whether or not this decision should have been made in the first place. There was a wealth of medical information supporting the client's on-going incapacity being related to the original covered injury. However his entitlements were suspended on the basis of a file review.

The case met the criteria in relation to serious error despite the decision having originally been made by a private insurer. Once QBE files were handed back to ACC, the Corporation was obliged to notify the insurer of any liabilities within 20 days of becoming aware of them. As that timeframe had passed ACC was now liable for any payment outside the scope of statutory entitlements due.

In regards to the quantifiable loss this was calculated on the basis of the interest from the date of suspension of the independence allowance to the date it was reinstated.

### **NOTE Example: Rest home costs incurred**

The client fractured her hip 2004. This year she returned to hospital for removal of rods. Prior to her discharge a needs assessment was completed. The assessor recommended 7 hours home help and 10 hours attendant care assistance per week.

Instead of returning home, the client was discharged to a rest home. A short time later, ACC was advised that the client had died. ACC advised the client's daughter, that ACC would pay the rest home costs.

It had since been determined that there was no injury-related need for rest home care. However, ACC had given a clear undertaking to the family that ACC would meet this cost.

### **NOTE Example: Reimbursement for duplicate prescription receipt if ACC loses original**

A client has sent their application for reimbursement of prescription fees to their case manager. In turn, the case manager has sent the application to the processing centre.

However, after three weeks of not hearing back from ACC the client contacts the case manager, who discovers the application cannot be found.

The client now has to submit a new application. When they go to the pharmacy to get a duplicate of their original receipt the pharmacy charges them a fee for the duplicate.

This fee is not a prescription cost, but a cost incurred by the client due to ACC having lost the original application. ACC will then reimburse for the prescription fee as well as the costs of obtaining the duplicated receipt.

## 6.0 How to pay the client - the submission

- a** If you identify a case where there has been a serious service failure resulting in a quantifiable loss to the client, a submission for 'payment outside the scope of statutory entitlements' should be prepared.

The submission needs to include:

- amount the client is seeking
- details surrounding the claim
- alleged errors ACC made
- quantified losses incurred by the client.

For amounts under \$2,000 the submission is referred to the Unit Manager to approve.

For amounts over \$2,000 the submission is referred to the Technical Services team for consideration and submission to the delegation holder.

## 7.0 Making the payment

a Once written approval's been given, the Case Manager needs to:

1) send a letter to the client advising them of the decision, noting that as it is a decision outside the scope of statutory entitlements, review rights do not apply

2) create a purchase approval in EOS, using the following details:

- Client or representative (in [Vendor] field)
- Entitlement code WA02
- One month from now (in [To Date] field)
- Amount to be entered as directed by Manager/Technical Services (In Unit Price field)

3) email the Unit Manager/Delegation Holder contact (depending on amount) to request authorisation of the purchase order

4) complete an ACC161 Proforma invoice form, once the authorisation's been given

5) forward ACC161 to the local payments centre for processing. Refer to Who processes client reimbursements.

6) check a week later to make sure the payment's received by the client and if not, follow up with payments team.

 ACC161 Proforma invoice form

 Who Processes Client Reimbursements Policy

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