

07 March 2022

ASE

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Tēnā koe

**Your Official Information Act request, reference: GOV-016281**

Thank you for your request of 14 January 2022, asking for information regarding the COVID-19 vaccine and liability waivers under the Official Information Act 1982 (the Act).

**Questions under the Act**

Upon review of your request, ACC has identified the following 13 questions that meet the criteria for a request for official information under the Act:

1. *Was ACC involved in negotiations for these, or similar, liability waivers? If so, what position did ACC take, and how was that position advocated?*
2. *If ACC was not involved in these negotiations, is it legal and ethical for ACC to be named as a liable party to this agreement?*
3. *Do these agreements prevent or impede ACC from recovering costs, eg via subrogation or similar processes, from treatment developers, manufacturers, suppliers and/or other parties?*
4. *To date (as near as practicable to the release of this requested information), what have been the costs that ACC has paid out in claims resulting from injuries related to these COVID-19 treatments?*
5. *What projections has ACC made, relating to future costs resulting from injuries related to these COVID-19 treatments (including any best-case/worse-case scenarios)?*
6. *To date (as near as practicable to the release of this requested information), how many claims have been submitted to ACC related to these COVID-19 treatments?*
7. *How many of those claims have been approved?*
8. *How many of those claims have been rejected?*
9. *How many of those claims are pending?*
10. *So far as it is practicable, I would appreciate this information be sorted by month, type of injury, and age-range.*
11. *What guidelines has ACC (and any 3rd party contractors) developed and/or implemented, formally and informally, regarding assessment of claims relating to these COVID-19 treatments?*
12. *What legislation and policies guide these decisions?*
13. *Regarding these types of claims, has ACC received any influence, pressure, or unsolicited advice from any government or international organisation regarding the assessment, handling, or other management of claims relating to these COVID-19 treatments? If so, what has been the nature of that advice?*

**The remaining questions**

You note in your request that *some of the following questions may be interpreted as requests for opinions or attempts to engage in debate. Respectfully, they are neither requests for opinions nor attempts to engage in debate, but rather they presume that such matters have been considered, and that relevant information exists on that basis. In the event that such matters have not been considered, please explain why they have not been considered.*

Under the Act, a distinction exists between a request for information already known and held by an agency (official information), versus a request for an agency to form an opinion or provide an explanation or comment, and thus create new information to answer a request (not official information).

As the remaining questions ask ACC to provide an opinion, explanation or comment they are not considered to be requesting official information under the Act. Accordingly, we are not responding to these questions.

Further information about official information requests can be found in the Ombudsman's guide, *Making official information requests*. This guide is available on their website, here:

<https://www.ombudsman.parliament.nz/sites/default/files/2021-11/Making%20official%20information%20requests%20-%20A%20guide%20for%20requesters.pdf>.

**1. Was ACC involved in negotiations for these, or similar, liability waivers? If so, what position did ACC take, and how was that position advocated?**

ACC was not involved in negotiations related to the purchase of COVID-19 vaccinations, including any negotiations with respect to liability. ACC did provide information and input to other government agencies about the scope of ACC cover for treatment injury, and our findings on treatment injury claims in relation to vaccinations, when these agencies undertook work on providing COVID-19 vaccinations for New Zealand.

**2. If ACC was not involved in these negotiations, is it legal and ethical for ACC to be named as a liable party to this agreement?**

ACC is not a liable party to the agreement. Rather, the agreement acknowledges the scope of ACC treatment injury cover, and that this is available for injuries arising from treatment, where they meet the ACC cover criteria, irrespective of any agreement.

**3. Do these agreements prevent or impede ACC from recovering costs, eg via subrogation or similar processes, from treatment developers, manufacturers, suppliers and/or other parties?**

The agreements do not prevent ACC from exercising its power to require or assist a person to bring civil proceedings against a drug manufacturer or supplier, as allowed under section 321 of the Accident Compensation Act 2001. However, the existence of the agreements means it is unlikely that ACC would consider exercising this power.

**4. To date (as near as practicable to the release of this requested information), what have been the costs that ACC has paid out in claims resulting from injuries related to these COVID-19 treatments?**

**6. To date (as near as practicable to the release of this requested information), how many claims have been submitted to ACC related to these COVID-19 treatments?**

**7. How many of those claims have been approved?**

**8. How many of those claims have been rejected?**

**9. How many of those claims are pending?**

**10. So far as it is practicable, I would appreciate this information be sorted by month, type of injury, and age-range.**

ACC has recently published datasets in relation to COVID-19 vaccine injuries on the ACC's website here: <https://www.acc.co.nz/assets/oia-responses/covid-19-vaccination-claims-refresh-february-2022-IPA5768.pdf>

This data was last extracted on 12 January 2022, and is updated on a monthly bases. The data includes a breakdown of claims by: cost; claim cover decision; injury type and, age range.

Also on our website are other related OIAs that have been published. These can be found here: <https://www.acc.co.nz/resources/#/category/12>.

As the data requested is publicly available, we are not reproducing the data in this response. This decision has been made under section 18(d) of the Act.

We are not providing the COVID-19 vaccine related injury data by month, as requested, as doing so would impair efficient administration. This decision is made under section 16(2)(a) of the Act.

**5. What projections has ACC made, relating to future costs resulting from injuries related to these COVID-19 treatments (including any best-case/worse-case scenarios)?**

ACC has not done any specific *actuarial modelling* around future costs for claims from COVID-19 vaccination. Examination of historical claims from other vaccines, and COVID-19 vaccine claims to date, indicate that costs would likely be relatively low. The majority of claims are expected to require little to no provider treatment and be very low cost. The total costs to date are relatively small and ACC is not expecting that to change. Estimates of future costs for these claims will be included in the normal modelling for treatment injury claims and will not be modelled separately.

We identified a number of documents which included forecasts of the *number* of COVID-19 vaccine claims ACC may receive. As these documents did not refer to forecasted *costs* of COVID-19 claims they have been excluded.

Attached to this response are excerpts from the two documents we found which reference estimated *costs* of COVID-19 claims. Attached to this response are excerpts from these two papers:

- Memorandum regarding COVID vaccine considerations (February 2021) and
- Policy Government Committee paper (May 2021)

**11. What guidelines has ACC (and any 3rd party contractors) developed and/or implemented, formally and informally, regarding assessment of claims relating to these COVID-19 treatments?**

**12. What legislation and policies guide these decisions?**

A personal injury resulting from the COVID-19 vaccine may be covered by ACC if the criteria for treatment injury are met. The following outlines how we assess applications for cover for treatment injuries:

1. Determine whether the client has suffered a personal injury.
2. Assess whether the personal injury occurred within the context of treatment by or at the direction of a registered health professional.
3. Determine if there is a direct causal link between the treatment (ie, in these circumstances, the vaccination) and the personal injury.
4. Determine whether the injury was a necessary part or ordinary consequence of treatment.

The *Assess Claim for cover (Treatment Injury)* guidance is used to assess information on a claim and decide whether it meets the criteria for cover for a treatment injury. A copy of this guidance is attached.

For further information about ACC cover for treatment injuries, please refer to section 32 of the Accident Compensation Act 2001 (the AC Act), here:

<https://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100934.html>.

In addition to the above, please find attached an internal flow chart which provides guidance to staff managing COVID-19 infection/COVID-19 vaccine injury claims, including who they can go to for advice.

*ACC takes privacy seriously*

We have redacted the names of staff in the *Assess Claim for cover (Treatment Injury)* and the internal flow chart, to protect their privacy. This decision has been made under section 9(2)(a) of the Act. In doing so, we considered the public interest in making their names available and determined that it did not outweigh the need to protect their privacy.

**13. Regarding these types of claims, has ACC received any influence, pressure, or unsolicited advice from any government or international organisation regarding the assessment, handling, or other management of claims relating to these COVID-19 treatments? If so, what has been the nature of that advice?**

ACC has not received any influence, pressure, or unsolicited advice from any government or international organisation regarding the assessment, handling, or other management of claims relating to COVID-19 treatments.

**How to contact us**

If you have any questions, you can email me at [GovernmentServices@acc.co.nz](mailto:GovernmentServices@acc.co.nz).

As this information may be of interest to other members of the public, ACC has decided to proactively release a copy of this response on ACC's website. All requester data, including your name and contact details, will be removed prior to release. The released response will be made available [here](#).

If you are not happy with this response, you have the right to make a complaint to the Ombudsman. Information about how to do this is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or by phoning 0800 802 602.

Nāku iti noa, nā



Sasha Wood  
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Government Engagement & Support