

Treatment Injury

Claim Lodgement Guide



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Introduction

What is the purpose of this guide?

This guide is to help District Health Boards (DHBs) and Registered Health Professionals (RHPs) advise patients on whether to lodge a Treatment Injury Claim.

On average, a third of Treatment Injury Claims are declined each year. Giving DHBs and Registered Health Professionals clearer guidance on when to lodge a Treatment Injury Claim will lead to:

- more appropriate claim lodgement, leading to greater confidence that a claim will be accepted
- improved patient experience as expectations are managed more effectively
- more time and resources within DHBs that can be focused on patient care and successful claims.

What is a Treatment Injury Claim?

It is a claim to ACC to cover an injury caused to a patient by treatment from a Registered Health Professional. The claim must be lodged with the consent of the patient.

When an injury is covered, ACC may pay or contribute to the cost of treatment, rehabilitation and compensation.

There are three core requirements which need to be met in order for a claim to be accepted. These are explained in more detail later in this guidance:

- an injury has occurred that has resulted in physical harm or damage to the patient
- the injury has been caused by treatment
- the injury is not a necessary part or an ordinary consequence of treatment, having regard to the clinical knowledge at the time of treatment, and the underlying health condition of the patient.

All Treatment Injury Claims are considered by ACC on the basis of the specific circumstances of each patient. Differences in the underlying health conditions or the context of treatment can mean that a claim that is accepted for one patient may not be accepted for another patient.

About the Guide

Who is this guide for?

This guide is for those involved in the process of lodging a Treatment Injury Claim, and is tailored for health professionals who are eligible to lodge claims and those submitting the claims on behalf of patients.

Where the guide refers to DHBs, if relevant this should also be taken to include private surgical hospitals and other health care settings.

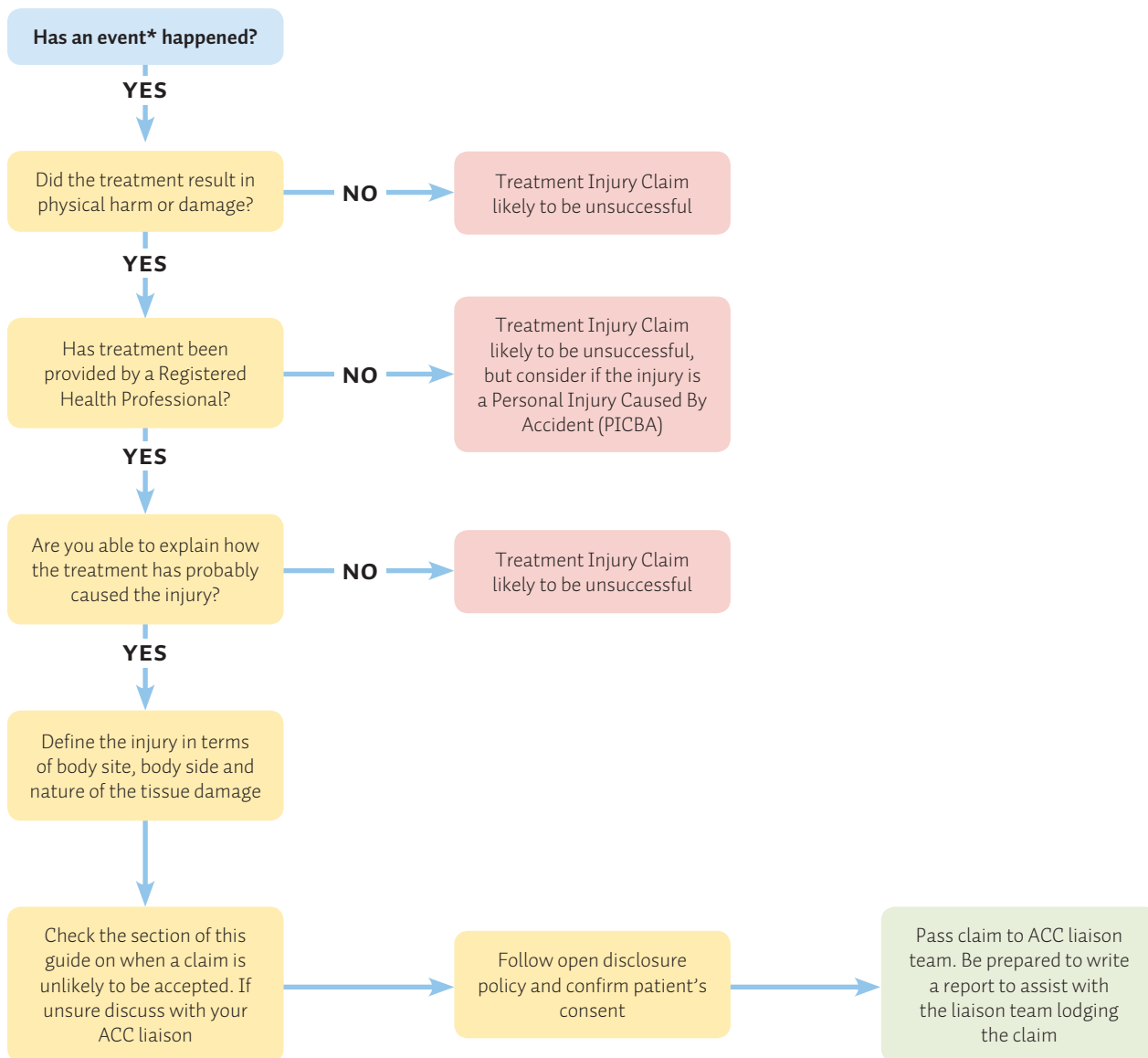
How should I use this guide?

This guide should be used as a reference, to inform the decisions you need to make to lodge a Treatment Injury Claim appropriately. Use this guide to:

- identify what you need to discuss with your patient before lodging a claim, including making sure they have given their consent
- help you decide whether to lodge a Treatment Injury Claim
- confirm the key information you need to send to ACC to help a timely decision.

The guide can be used to inform DHB policy on Treatment Injury Claims, and is intended to supplement other DHB policies, such as informed consent and open disclosure policies.

Should I lodge a Treatment Injury Claim with the patient's consent?



See sections on criteria and [definitions](#) for more detail

* An event can include when treatment has not been provided by mistake, or has been given unreasonably late.

Frequently Asked Questions

What is a personal injury?

A personal injury is a [physical injury](#) where bodily damage has been suffered. For example, an injury such as a fracture may be accompanied by the symptoms of pain or aching. However, lodging a claim based solely on symptoms (such as pain or aching) without an identifiable physical injury will not be accepted.

What is treatment?

Treatment has a very broad definition, though it must have been administered by, or at the direction of, a [Registered Health Professional](#) in respect of their patient.

Treatment includes diagnosis, a decision on the treatment to be provided or not provided, a failure to provide treatment at all or in a timely manner, obtaining or failing to obtain consent, and failure of equipment. The full definition is set out in [Section 33 of the AC Act 2001](#).

What counts as 'causation'?

To be covered, the personal injury must be caused by treatment. You will need to provide an explanation as to how the injury was caused by the treatment. Causation is considered on the balance of probability, not possibility.

Circumstances of the treatment

The circumstances of the treatment should be taken into account when deciding whether to lodge a Treatment Injury Claim. This includes the:

- underlying health condition of the patient at the time of treatment, and
- clinical knowledge at the time of treatment.

The underlying health condition of a patient may make an injury that is caused by treatment 'ordinary', where in a different patient it would not be. For example, a patient with widespread atherosclerosis and diabetes suffers a wound infection after having a small skin lesion removed from their toe, which may be considered as 'ordinary'. Given the underlying diseases, an infection may be an ordinary outcome even with careful surgery. ACC cover under a Treatment Injury Claim would be unlikely.

Who is eligible for ACC support through a Treatment Injury Claim?

ACC support is available to all New Zealand residents and temporary visitors to New Zealand, who received treatment in New Zealand.

New Zealanders who are ordinarily resident may also be covered if they are injured overseas. There are specific rules around the circumstances in which a resident would be covered if injured overseas. If you have a patient in this situation, contact your ACC Liaison in your DHB to discuss.

When is a claim unlikely to be accepted?

There are circumstances in which an injury resulting from treatment may not be covered by ACC. If the claim does not meet the legislative criteria, it will be declined. Some examples are described below.

See [Appendix 1](#) for definitions of key terminology, and [Appendix 2](#) for the underpinning legislation.

There is insufficient evidence of a physical injury

Lack of evidence of a physical injury caused by treatment is the most common reason for a claim to be declined, accounting for almost two thirds of declined claims. For example, a claim may be lodged for a patient who is experiencing dizziness – but has no sign of physical damage after receiving medication prescribed for a different patient. In this case, there is no physical injury and so a claim would be unlikely to be accepted.

The injury is a necessary part of the treatment

For example, a patient has surgery to remove a tumour. During the operation, the surgeon has to cut a nerve in order to access the tumour. The patient subsequently loses movement of some muscles and experiences numbness. Cutting the nerve was a necessary part of the treatment and so a Treatment Injury Claim would be unlikely to be accepted.

The injury is an ordinary consequence of the treatment

For example, two men of similar age are admitted to hospital for emergency surgery. Both patients need a midline incision, one for appendicitis and the other for a ruptured aneurysm of the abdominal aortic artery. Both patients heal well without infection in the wound, but both develop a hernia at the site of the incision.

The patient with appendicitis has never smoked and has no previous medical problems. His claim for incisional hernia is likely to be accepted.

The patient with the ruptured aneurysm of the abdominal aortic artery, is a smoker with long standing high blood pressure, so the incisional hernia is likely to be considered an ordinary consequence and a Treatment Injury Claim would be unlikely to be accepted.

The patient has withheld consent for the treatment

For example, a patient declines to complete a course of medication and their condition gets worse as a result. A Treatment Injury Claim would be unlikely to be accepted.

The injury has been caused solely by resource allocation decisions

For example, a patient is on a prioritised waiting list for a hip replacement and their hip arthritis gets worse while they are waiting for surgery. The patient's GP has updated the DHB on the patient's deteriorating symptoms and the patient is reprioritised to bring forward the surgery. A Treatment Injury Claim would be unlikely to be accepted in this situation.

The desired results of the treatment have not been achieved

For example, a Treatment Injury Claim for a patient who has had cosmetic surgery and is not satisfied with the results would be unlikely to be accepted. A Treatment Injury Claim for pregnancy after a properly inserted Intrauterine Contraceptive Device (IUCD) also would be unlikely to be accepted.

Clinical information needed for a claim

What clinical information is needed?

Where available and relevant you should gather:

- **Case notes** from the Registered Health Professional who undertook the treatment. Treatment Injury Claims can only be made where the treatment was provided by, or at the direction of a [Registered Health Professional](#).
- The following documents (where they apply):
 - **laboratory reports**
 - **referral letter**
 - **x-ray reports**
 - **MRI reports**
 - **operative notes**
 - **consent forms**
 - **discharge summaries.**
- A **Clinical Incident Review**, if completed for the injury and event
- A **letter** explaining the reason for the claim, or a **report** about the treatment event, especially if the situation is particularly complex.

Clinical information is needed to show that the injury happened, and that it was caused by the treatment. It is important to be able to explain and show **how** the treatment caused the injury. If the treatment that caused the injury was not given in your DHB, provide what you can in discussion with your patient.

ACC aims to make decisions on claims as quickly as possible. You should send in clinical information to support the claim as soon as it is available, so that ACC can start to investigate the claim.

For particularly complex claims, ACC may seek expert clinical advice.

Treatment Injury Claim timeframes

How long will it take to get a decision from ACC?

ACC wants the best for the patient and if cover is available, ACC seeks to ensure the patient has access to support as quickly as possible.

Treatment Injury Claims are considered complicated claims within the legislation, which allows up to nine months for a decision to be made. However, ACC aims to investigate Treatment Injury Claims and determine cover as quickly as possible after the claim is lodged so that the patient can receive timely assistance from ACC if cover is available for their injury.

What can I do to ensure the quickest possible decision?

You can make a **big** difference for your patients by helping to provide the required clinical information to ACC as quickly as possible, and especially when lodging the claim. Once you have completed the relevant forms, your DHB ACC Liaison will review the documentation to make sure you have everything you need.

Your Liaison will then send the forms to ACC.

Once a decision has been made, ACC will write to the patient to let them know the outcome.

Can the patient receive treatment before a decision is made on ACC cover?

The Registered Health Professionals should continue to treat the patient and plan for discharge as clinically required. It is for the treating clinician to determine what treatment the patient requires, not ACC.

ACC contributes to the cost of treatment and rehabilitation for covered injuries for accepted claims.

Can I lodge a claim if I think there might be a risk of physical injury presenting in the future?

There must be evidence of a physical injury when the claim is made. If there is no evidence of a physical injury the claim will not be accepted. If a patient is treated, and the injury occurs months – or even years – later, a claim can be made then.

Best practice in lodging Treatment Injury Claims

Messaging for patients

A patient **must provide their consent** for a claim to be lodged with ACC, as it involves providing their personal and private information to ACC.

As well as a prompt and accurate explanation of the circumstances of the injury, patients should be reassured that the health system will manage their treatment regardless of the ACC claim. ACC is not a treatment provider and will investigate a claim for cover while the medical care continues. Registered Health Professionals and DHBs should avoid setting expectations for patients as to the likelihood of a claim being accepted, especially where the basis of the claim is an omission in the treatment process.

Health professionals are obliged to inform the patient of their right to consider a complaint to the Health and Disability Commissioner where the patient is harmed by treatment.

Refreshing DHB policy

It is good practice to refresh your DHB Treatment Injury Claim policy annually, to make sure you have captured any updates from ACC. Many DHBs use this opportunity to remind their Registered Health Professionals of the policy and what they can do to ensure a smooth claims process.

Communication with ACC

The more information and context ACC has about a particular claim, the quicker a decision can be made. If the clinical information to support the claim is delayed, the treatment changes or you have additional information, then let ACC know. This helps to manage patients' expectations on when the decision will be made. It's important to remember that ACC can only make a decision on the information provided, so if there is something else you think should be taken into account, share that information with ACC.

Communication with ACC about a particular patient is permitted if the patient has provided written consent to ACC. The decision outcome will be communicated directly to the patient.

General enquiries on how to make a claim or the type of information required are welcomed. Please use the contact details below.

Sharing policy information between DHBs

It may be helpful to share information on your DHB Treatment Injury Claim policy with your colleagues in other DHBs. This helps to ensure consistency between DHBs, and to share best practice.

Where do I go for more information?

Useful documents and forms

The [ACC website](#) contains details of how to lodge a claim.

[ACC 589 Getting Help with an Injury Caused by Treatment](#)

This is a document that tells you how and when you can make a claim for a treatment injury, and the help ACC may be able to provide.

ACC 45 ACC Injury Claim Form

This claim form is submitted electronically.

ACC 46N

Paper version of electronic claims form – used when electronic system is unavailable.

[ACC 2152 Treatment Injury Form](#)

This form provides additional information to ACC about the claimed Treatment Injury. It must be completed alongside the ACC45 form when making a Treatment Injury Claim.

Key contacts

ACC Treatment Injury Helpline: 0800 735 566

www.acc.co.nz

Appendix 1: Definitions

An 'event'

An event is an incident that results in bodily harm to a patient, which is caused by treatment provided by a Registered Health Professional, rather than the underlying disease processes. The cause could be treatment or a failure to provide treatment.

Connected processes

Your DHB will have a range of policies and processes that will need to be followed. A Treatment Injury Claim does not replace any of these. For example, alongside a Treatment Injury Claim you may need to undertake:

- informed consent standards and policies (including Diminished Capacity and Competence to Consent, Children)
- death of a patient
- open disclosure
- other policies and procedures your DHB may have in place.

Date of injury

This is the date when the patient first sought treatment for the symptoms of the injury that was caused by the treatment. This is not necessarily the date of the original treatment, which caused the injury.

Mental injury

A mental injury is a clinically significant behavioural, cognitive or psychological dysfunction. A mental injury may be covered if it is caused by a physical injury caused by treatment. If you wish to make a claim for a mental injury, as a result of physical injuries caused by treatment, contact your ACC Liaison in your DHB to discuss.

Personal injury/ Injury to a person

Personal injury is defined in the AC Act as:

- death
- physical injury
- damage to dentures or prostheses that replace a part of the human body.

Damage to a physical aid that is not replacing part of the human body, for example a hearing aid, contact lenses or spectacles, is not covered under Treatment Injury legislation.

Physical harm or damage

There must be evidence of physical harm or damage to the patient. Symptoms alone are insufficient to amount to physical injury.

Common physical injuries include wounds, lacerations and contusions, burns, fractures, amputations and dislocations.

Registered Health Professional

Only injuries caused by treatment from a Registered Health Professional listed in Section 6 of the AC Act can form the basis of a Treatment Injury Claim. The ACC Act 2001 can be found at www.legislation.govt.nz.

Registered Health Professional (who can lodge Treatment Injury Claims)

The list of Registered Health Professionals who can lodge Treatment Injury Claims is available on www.acc.co.nz (search 'lodging claims').

Reporting of risk of harm from treatment injuries

Under Section 284 of the Accident Compensation Act 2001, if ACC believes from information gathered in the course of processing a claim that there is a risk of harm to the public, ACC must report the risk. Examples include medication adverse events and equipment failures that are reported to Medsafe.

While all claims are assessed for risk of harm, those claims involving a failure to provide treatment with significant worsening of a person's health represent obvious risk to the public and are more likely to be reported to a registration body or another relevant authority.

Appendix 2: Underpinning legislation

The following sections of the [Accident Compensation Act 2001 and amendments](#) are relevant for Treatment Injury Claims:

[Section 6: Interpretation](#)

[Section 16: New Zealand](#)

[Section 17: Ordinarily resident in New Zealand](#)

[Section 20: Cover for personal injury suffered in New Zealand](#)

[Section 22: Cover for personal injury suffered outside New Zealand](#)

[Section 23: Cover for personal injury suffered by persons not ordinarily resident in New Zealand: exclusions while travelling to, around, and from New Zealand](#)

[Section 25: Accident](#)

[Section 26: Personal injury](#)

[Section 32: Treatment injury](#)

[Section 33: Treatment](#)

[Section 38: Date on which person is to be regarded as suffering treatment injury](#)

[Section 284: Reporting of risk of harm to public](#)

[Schedule 1, Part 1: When Corporation is liable to pay cost of treatment](#)

Other relevant legislation includes:

[ACC Code of Claimants' Rights](#)

[Code of Health and Disability Services Consumers' Rights 1996](#)

[Health Information Privacy Code 1994](#)

[Health Practitioners Competence Assurance Act 2003](#)

[The Mental Health Compulsory Assessment and Treatment Act 1992](#)

[The Alcoholism and Drug Addiction Act 1996](#)

[The Tuberculosis Act 1948](#)

[The Health Act 1956](#)

[The Coroner's Act 2006](#)

Key contacts

ACC Treatment Injury Helpline: 0800 735 566

www.acc.co.nz





Te Kaporeihana Áwhina Hunga Whara

www.acc.co.nz

0800 222 070