ACC FACT SHEET

The ACC related services the firm provides include:

- Assistance with cover decisions
- Assistance with decisions concerning entitlements
- Assistance with obtaining appropriate rehabilitation support and returning to work
- Representation and advice:
  - At meetings with ACC and/or Partnership Programme employers and their agents
  - During the claims process
  - During vocational independence processes
  - During rehabilitation
  - At review and/or appeal
  - Follow up actions after review or appeal
  - At mediation
  - During fraud investigations

Challenging an ACC decision

1. ACC Reviews

If you are unhappy with a decision ACC has made, you may be able to lodge an application for a review of their decision. An application must be lodged within 3 months of ACC making their decision. If it is not, a late application will not be permitted unless you can prove certain ‘extenuating circumstances’ exist. We recommend that you involve us early in the process of lodging an application for review.

A ‘review hearing’ is then scheduled by FairWay Resolution. FairWay operates independently of ACC. It offers a specialist review service for people who are unhappy about decisions made by ACC. A review hearing must be scheduled for a date within 3 months of the date the review application was lodged unless agreed otherwise. A review hearing is a formal process where both sides meet with an independent and unbiased reviewer.

On your behalf, we will draft written legal submissions to support your case, and create a bundle of all relevant evidence for the hearing. In some cases, we will require further evidence from an independent assessor, such as a doctor, surgeon, or occupational therapist. We will draft referral letters to such assessors, asking them to answer specific questions to support your case. We will work with you to prepare a brief of evidence for you to present to the hearing. It is our firm’s view, that the review stage is an important part of the process. Review decisions are not publicly available, and this is your first formal opportunity to raise the issues that are relevant to your case.

Occasionally ACC will settle a case before it is heard by the reviewer. In this case, we can negotiate for ACC to pay some of the cost of our legal fees as part of the settlement.

At the review, both parties are given the chance to present their argument supporting their case. You may be asked questions by the reviewer, ACC, or we may ask you to speak to give evidence supporting your claim. It is important to provide evidence at the review stage, as you can only submit fresh evidence to the District Court with the leave of the Court. Once everyone has had the opportunity to speak, the reviewer will conclude the hearing. A reviewer has 28 days from the day they conclude to make their decision. They will send their decision in writing, by post.

Any decision made by the reviewer is binding. They can make a range of decisions; including upholding the original ACC decision or overturning it, and include decisions about money and payments and costs.
We estimate that our fees for an ACC review may cost approximately $5,000 to $9,000 excluding GST. Please note that this does not include the cost of any medical reports or other disbursements. These costs can increase or decrease depending on the complexity of your case and/or the amount of time spent on it. An assessor may also charge for their evidence. We can request that ACC pays some of the costs of our legal fees and some of the costs of getting an assessor to give evidence. The Injury Prevention, Rehabilitation, and Compensation (Review Costs and Appeals) Regulations specify the exact amounts you can claim from ACC following a review hearing. Whether costs are awarded is a discretionary decision made by a Reviewer, however, you can claim these costs whether you are successful or not, so long as you brought the case reasonably.

Many clients who come to us qualify for Legal Aid funding. You may have to pay some or all of the funding back depending on your financial status. During the review process, you should keep your medical certificates up to date. If you are successful at review, to pay you backdated weekly compensation, ACC will require medical certificates dated back to when your weekly compensation was suspended.

2. **District Court Appeals**

If you are unhappy with a review decision you can appeal by applying to the District Court, within 28 days of the review decision. We also recommend that you involve us early in the process of lodging an appeal.

A District Court hearing is much more formal than a review hearing. It will be held at the District Court and is a re-hearing of the case. With the leave of the Court, new evidence can be adduced if necessary. Each party will draft written legal submissions. Generally, you will not be asked to give oral evidence at the hearing in the District Court.

Occasionally ACC will settle a case before it is heard by a Judge. In this case, we can negotiate for ACC to pay some of the costs of our legal fees as part of the settlement.

If a settlement is not reached, the appeal is then heard in front of a Judge. Both sides are given the opportunity to present their argument. The Judge does not make his or her decision immediately, and in fact may take a number of months to issue a decision. The District Court decisions are published in the public domain. You can ask for your name to be suppressed, which is granted, in some limited circumstances by the Court.

If you are not satisfied with the decision of a District Court appeal, you may be able to appeal to the High Court on matters of law (not fact). However, this is very rare; you will need to be granted leave to appeal. We can provide you with more information about appealing to the High Court. High Court decisions set precedents for District Court decisions.

We estimate our fees for a District Court appeal to be approximately $5,000 to $9,000 excluding GST, if we have not acted for you at the review stage. If we have acted throughout the review stage, the appeal will likely generate less in legal fees. Please note that this does not include the cost of any medical reports or other disbursements. Costs may increase or decrease depending on how complex the appeal is and the amount of time spent on it. We may or may not gather further evidence. You may be able to claim “costs” (legal fees and expert reports/opinions) from ACC, but only if you are successful at appeal.

Costs awarded by the Court for legal fees are typically between $1500 and $4000. Therefore, you do not necessarily recover the actual legal costs incurred, even if successful. Reasonable costs for qualifying disbursements and expert reports/opinions can also be recovered from ACC if you are successful.

You may also qualify for legal aid assistance for your District Court appeal. You may have to pay some or all of the funding back depending on your financial status.

**Qualifying for Legal Aid**
Before we begin to act for you and provide you with advice, you will either need to apply for legal aid and be approved, or complete and sign the billing forms for our firm. This Fact Sheet should help clarify whether you would qualify for legal aid. We have set out information about qualifying for legal aid below:

To qualify for legal aid, the maximum level of income you can be earning is:

- $22,366 per year for a single applicant
- $35,420 per year for an applicant with a spouse or partner, or with 1 dependent child
- $50,934 per year for an applicant with a spouse or partner and one dependent child, or two dependent children
- $57,880 per year for an applicant with a spouse or partner and 2 dependent children, or three dependent children
- $64,678 per year for an applicant with a spouse or partner and 3 dependent children, or four dependent children.

The maximum level of “disposable capital” is $3,500 if single or $5,000 if there is a spouse or 1 dependent child. The first unmortgaged $80,000 of the family home is also excluded from the disposable capital calculations. Ultimately, the Legal Aid Service will decide whether you qualify for legal aid by assessing your total income and assets. Please check the Ministry of Justice website.

Please note that all legal aid applications require a user charge of $50.00. If you are successfully granted legal aid, this user charge is deducted from the amount paid to us by the Legal Aid Agency.

Also note that you may have to repay some or all of your legal aid, depending on how much you earn, and what property you own. The financial information you give on your application form is used to work out whether you have to pay anything. You will be told the maximum amount you have to repay when you are told if you have been granted legal aid. If you are a beneficiary with no assets, it is unlikely that you will have to repay any of your legal aid.\(^1\)

If you think you may qualify for legal aid, please let us know. We can provide you with the legal aid forms that need to be completed. We can assist you with completing the forms.

**Costs recoverable for a Review Hearing**

If you dispute a decision, and the matter proceeds to a Review hearing, there are certain costs and expenses the Reviewer can award, regardless of whether you win or lose the review. The Reviewer will award these costs as long as he or she believes that the review was reasonably brought.

The maximum amounts the Reviewer can award are set out in Schedule 1 of the Injury, Prevention, Rehabilitation, and Compensation (Review Costs and Appeals) Regulations 2002. The following table is from the Regulations:

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\(^1\) This information is taken directly from the Legal Aid website. Please see http://www.justice.govt.nz/services/legal-help for more information.
| Item | Maximum award ($) | Rate ($/

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Applicant’s or another person’s representation—
- (a) preparation and lodging of application for review under section 116.94 135
- (b) participation in a case conference on behalf of applicant or another person before review hearing
- (c) other preparation of case for review
- (d) appearance at hearing on behalf of applicant or another person
  - (i) 1st hour of hearing (or part thereof)
  - (ii) 2nd hour of hearing
  - (iii) later hours of hearing

All relevant and reasonably necessary reports for applicant or another person by any registered specialist

All relevant and reasonably necessary reports prepared for applicant or another person by a person with a recognised qualification to express a competent view on a matter in issue (for example, a person undertaking an occupational assessment, an architect, or a general medical practitioner)—
- (a) if only 1 report is provided
- (b) if 2 or more reports are provided

at the following rates:
- (a) 1st hour (or part thereof) of preparation
- (b) 2nd hour of preparation
- (c) 3rd hour of preparation

Other expenses reasonably incurred by applicant or another person, or on behalf of an applicant or other person, associated with a hearing (for example, transport to a hearing or time off work for an applicant, another person, representative, or a witness or support person such as whanau support; disbursements such as photocopying, childcare, or telephone charges)—

for transport within this category

| 1 Awards for items under this heading may be made in respect of 1 representative only.
| 2 As defined by regulation 3.