



POLICY PAGE

Managing cover that is deemed on a claim policy

Tīmatanga kōrero | Introduction

Audience: All ACC Staff

Purpose: This policy outlines the guidelines and criteria for managing a claim when ACC fails to meet the required timeframes for making a cover decision, resulting in cover becoming 'deemed'.

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Policy statement

If ACC fails to make a cover decision within the required timeframes, the AC Act 2001 stipulates that the client must be regarded as having a decision that they have cover for that injury (the cover is deemed).

Clients with cover that is deemed are eligible for entitlements in a manner comparable to clients with substantive cover, however a number of principles and exclusions apply.

Guidelines and rules

Deemed cover and substantive cover	Identifying when cover is deemed on a claim
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Deemed cover and substantive cover

While the term 'deemed cover' is commonly used to refer to cover that has been deemed to be accepted, this is not a formal term used in the AC Act 2001 and should not be seen to imply that this is a distinct form of cover that is different to cover that has been substantively assessed and approved by ACC ('substantive cover').

While some specific principles and considerations apply, cover that has been deemed should be treated in the same manner as substantive cover.

Relevant legislation

- [AC Act 2001, s56, Steps Corporation takes to action claims for cover](#)
- [AC Act 2001, s57, Steps Corporation takes to action complicated claims for cover](#)
- [AC Act 2001, s58, Effect of failure to meet time limits](#)
- [AC Act 2001, s65, Corporation may revise decisions](#)

Identifying when cover is deemed on a claim

Cover may become deemed as a result of:

- a failure to make a decision on a request for cover within the required timeframe; or
- a failure to identify a request for cover (e.g. a request for cover for an additional injury) resulting in the timeframe for that cover decision lapsing; or
- an administrative error made when calculating timeframes or extensions; or
- an administrative error made when revoking cover that has been deemed, but failing to substitute a new decision (to decline cover).

Ensuring the request is a valid claim for cover

ACC is only required to make a cover decision when we have received a valid request for cover, and a lodgement date and associated cover assessment timeframes apply.

When ACC receives written communication from a treatment provider and it is not clear whether it is a request for cover, we can follow up with the provider to clarify their intention at that time. However, when a potential deemed cover decision is retrospectively identified on a claim, ACC no longer has the opportunity to clarify the treating provider's intention.

ACC must therefore be confident that the request was a valid request for cover at the time it was received, in order to determine that cover has been deemed. This includes considering whether the request meets the criteria for a cover request (i.e. it clearly requests cover or an entitlement for that injury), and any contextual information available on the claim.

Cover may be deemed for an injury, diagnosis or condition (or similar) that would not otherwise be covered by ACC under the AC Act 2001 when cover has been clearly requested for that injury, diagnosis or condition.

Date of deemed decision

The date of the deemed decision is the day of expiry (i.e. last day) of the relevant cover assessment timeframe.

Example

A cover decision is required no later than Tuesday 11 April. ACC fails to make a decision within the required timeframe, and so cover is deemed on that day (11 April). See [Cover decision timeframes policy](#).

Date of injury

The date of injury is the relevant date specified in the AC Act 2001 for that type of claim.

Managing a cover request that is deemed on a claim

Making a substantive cover decision

When ACC identifies cover that has become deemed on a claim, we must assess that cover request on an urgent basis and make a decision as soon as possible.

Upon completion of the substantive cover assessment, ACC must revise the deemed cover decision as required by the AC Act 2001:

- amend the deemed cover decision and approve substantive cover – when it is established that the client should have cover based on the merits of the claim; or
- revoke the deemed cover decision and substitute a new decision to decline cover – when it is established that the client should not have cover based on the merits of the claim.

Unlike a substantive cover decision, ACC does not need to prove an error has been made in order to revise cover that has been deemed to be accepted due to a failure to meet assessment timeframes. See [When to revise a decision on a claim policy](#).

Any revised cover decision is a new decision and client review rights apply.

Managing multiple cover decisions on a claim

There may be multiple cover requests that have become deemed on a single claim. Each request must be assessed on its own merits and a substantive cover decision made in its own right.

ACC can address all cover requests concurrently. However, whenever possible we must determine substantive cover for an original ('index') injury that has been deemed, before making any decision on a consequential injury, treatment injury or mental injury cover request lodged on the basis of a causal link with that index injury.

Managing entitlements when cover is deemed on a claim

Clients with cover that is deemed are eligible for entitlements in a manner comparable to those granted substantive cover.

Principles for considering entitlements when cover is deemed on a claim

The following three principles apply when assessing any entitlement request where cover for that injury or condition has been deemed:

Principle 1

If ACC has sufficient information to make a substantive cover decision, it must do so prior to determining any entitlement requests associated with that claim for cover.

Principle 2

ACC cannot retrospectively approve a new entitlement request relating to a prior period of deemed cover, when the entitlement is requested after that deemed cover decision has been revoked and cover declined.

Principle 3

ACC cannot retrospectively approve an entitlement request that was 'live' during a prior period of deemed cover, after that deemed cover decision has been revoked and cover declined.

Example

ACC is assessing a surgery request on an Assessment Report and Treatment Plan (ARTP) and discovers that it relates to an additional cover request that has become deemed. There is sufficient evidence for ACC to approve the surgery

request as 'necessary and appropriate' treatment for the injury for which cover is deemed. However, ACC also has sufficient information available to revoke the deemed cover and decline substantive cover. In this scenario, ACC should revoke and decline cover before making the entitlement decision, which would be to decline surgery on the basis of there being no cover for that injury (see Principle 1).

Example

A deemed cover decision has been revoked and cover declined on a claim. A new weekly compensation request is lodged with ACC seeking support for the prior period when cover was deemed to be in place on the claim. In this scenario, ACC must decline that entitlement request as cover has been revoked and declined for that injury (see Principle 2).

Example

ACC declines a surgery request on the basis that the client does not have cover. The entitlement decision is subsequently challenged at review, on the basis that the client had deemed cover which was not acknowledged at the time the decision was made. ACC undertakes a substantive cover assessment and revokes and declines cover. In this scenario, while an 'error' was made, ACC cannot approve the surgery request as cover has been revoked and declined for that injury. We must however, amend the original surgery decision to recognise that cover was deemed at the time and an error in decision making was made, and decline surgery on the basis that the deemed cover has now been revoked and cover declined (see Principle 3).

Reasonable timeframes for making an entitlement decision

ACC can provide an entitlement where:

- cover is in place (deemed) on the claim; and
- the entitlement request relates to the covered injury; and
- the client is eligible for that entitlement under the AC Act 2001.

ACC cannot unreasonably delay making a decision on a request for entitlement when cover has been deemed on the claim, and we are unable to revoke and decline that cover (see Principle 1).

However, ACC has the same obligation to confirm that cover is in place and appropriate for that injury, and that all relevant eligibility criteria are met before approving any entitlement request, as we do for any claim with substantive cover.

That is, any entitlement request must be considered on its own merits and a decision made that is reasonable, timely and considers all circumstances of the claim and requirements of the AC Act 2001:

- ACC considers up to 21 days to be a reasonable timeframe to investigate and make an entitlement decision where all relevant information is available, cover does not need to be reviewed and the entitlement request is low cost or poses minimal risk.
- ACC considers it reasonable to undertake a more substantial assessment beyond 21 days when more information is needed to establish the client's eligibility, including where there is a need to confirm that cover is appropriate and the entitlement request is high cost or high risk.

Timeframes for making an entitlement decision commence on either:

- the date that cover is deemed – for any entitlement request that is 'live' on the claim at that time; or
- the date that a 'new' entitlement request is received on that claim for which cover is deemed.

Example

A client requests a knee scooter for an Achilles tendon rupture. As this is a low cost and low risk entitlement request, ACC would expect to make a decision within 21 days (maximum).

Example

A client requests a multi level non core spinal surgery procedure for non contiguous spinal damage. Due to the complexity of the request and associated client recovery risk, ACC's assessment may extend beyond 21 days, including confirming the nature and severity of the injury, the client's recovery expectations and the appropriateness of the proposed treatment.

Example

A client requests backdated weekly compensation spanning a period of 5 years and multiple covered injuries (including cover that has been deemed) exist on the claim. Due to the complexity of the request and associated financial cost, ACC's assessment may extend beyond 21 days, including establishing earner status, continuous incapacity, and eligibility through the whole of the client's claim history, and calculating the appropriate level of backdated support available (if any).

Relevant legislation

- [AC Act 2001, s54, Responsibility of Corporation to make reasonable decisions in timely manner](#)
 - [AC Act 2001, s67, Who is entitled to entitlements](#)
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Significant entitlement requests while cover is deemed on a claim

Due to the significance of certain entitlement decisions, substantive cover must be confirmed before any decision is made for the following requests:

- 'whole of life' entitlement requests:
 - converted weekly compensation; or
 - permanent injury compensation (Independence Allowance or lump sum); or
- entitlement requests associated with longer term or complex injury claims that require a needs assessment (such as social rehabilitation assessments).

Provision of entitlements approved while cover is deemed on a claim

Entitlements approved for an injury for which cover has been deemed are provided from the date of injury or incapacity (or the relevant date specified in the AC Act 2001 for that entitlement) in a manner comparable to substantive cover claims.

Managing entitlements following a substantive cover decision

Once a substantive cover decision has been made on the claim, entitlement decisions must be revised as follows:

- **ACC revokes the deemed cover decision and declines cover** - ACC revokes and declines any entitlements that were approved for the injury for which cover was deemed. All relevant entitlement notification and stand-down periods apply.
- **ACC amends the deemed cover decision and approves substantive cover** - ACC manages all entitlements in the same manner as any claim for which

substantive cover has been approved. This includes progressing any entitlement requests such as 'whole of life' payments.

ACC is unable to recover any payments made in respect of the deemed cover claim unless the client has made statements or provided information that ACC considers to be intentionally misleading.

This includes reimbursing costs incurred by a client on the understanding that they had cover for their injury, or funding an entitlement for which no prior approval is required (such as physiotherapy appointments) where the entitlement was provided to the client while cover was deemed, but ACC receives the request for payment after cover has been revoked and declined.

Honouring an entitlement decision after cover has been revoked and declined

ACC can 'honour' i.e. fund an entitlement (such as a treatment) where the decision to approve the entitlement was made while cover was deemed, but that entitlement cannot be provided until after cover has been revoked and declined.

Any decision to honour an entitlement must be made on a case by case basis and clearly demonstrate an unacceptable level of impact on client recovery outcomes or service failings should ACC revoke and decline that entitlement. No further entitlements may be provided for that injury.

Client notification

Notification when cover is deemed on a claim

ACC must notify the client when cover is deemed on a claim, and inform them that:

- timeframes for their cover request have expired without ACC making a substantive decision; and
- as a result, their cover request has been accepted for that injury or diagnosis; and
- the date of that decision is the date of the expiry of the cover assessment timeframe.

Notification of a substantive cover decision

ACC must notify the client of the outcome of the substantive cover assessment and revised decision (to revoke and decline cover, or amend and approve substantive cover on the claim).

ACC must also notify the client of any entitlement decision including any revised decision.

Referral to Technical Services

If you are unsure how to manage a claim where cover has been deemed, refer to Technical Services for guidance, see [Seek Internal Guidance](#).

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