



## NEW ZEALAND MEDICAL ASSOCIATION

18 June 2010

The Chair  
Sensitive Claims Review Panel  
PO Box 1039  
Wellington 6140

By email: [ClinicalPathwayReviewSubmissions@researchnz.com](mailto:ClinicalPathwayReviewSubmissions@researchnz.com)

### **Review of Clinical Pathway for Clients with a Mental Injury Caused by Sexual Abuse of Sexual Assault**

The NZMA is New Zealand's largest medical organisation and has a pan professional membership. We have around 4500 members who come from all areas of medicine.

The NZMA aims to provide leadership of the medical profession, and promote:

- professional unity and values;
- the health of New Zealanders.

The key roles of the NZMA are to:

- provide advocacy on behalf of doctors and their patients;
- provide support and services to members and their practices;
- publish and maintain the Code of Ethics for the profession; and
- publish the New Zealand Medical Journal.

The NZMA has been concerned for some months -about the effect the new pathway has had on people with sensitive claims, and in particular the significant number of claimants who are now ineligible for cover by ACC and who are seemingly left without immediate and/or adequate support. We are pleased therefore that the Minister for ACC has established this independent review panel to enquire into the effect the new pathway is having on sensitive claims. This is particularly important given the inadequate consultation that took place in giving effect to the clinical pathway, and the lack of liaison with the health sector which would be required to pick up the needed cover, especially acutely.

We acknowledge that ACC has the right to review all aspects of the implementation of the accident compensation scheme, and to tighten up in those areas where ACC perceives that the corporation has been working beyond the scope of the legislation and providing funding where it need not have. We are not, however, sure that the balance presently achieved is correct – and in some instances we think that the

proposed pathway further endangers the safety of people with sensitive claims seeking access to ACC. This submission sets out our concerns in regard to the pathway.

### **Whole of Government Approach Needed**

Before addressing the problems caused by the new pathway however we think it is important to briefly raise the issue of the number of sensitive claims now being declined. Regardless of where the bar is set it is critical that those claimants who do not meet the bar still have their needs cared for by the health system. In particular there needs to be a whole of government approach to those people with sensitive claims with one government department taking the lead role in providing access to services for people with sensitive claims. This is currently not the case.

### **New Claims – The Waiting Period**

Under the new pathway funding is provided for the first couple of sessions for new claims in order to document the claim so that a determination can be made as to whether the claim is covered by ACC. No further funding is then provided until the claim is accepted. While this is entirely understandable in terms of funding and eligibility, it causes serious problems for people with sensitive claims as the documenting of the issue often re-traumatises the person and she/he needs support during the period she/he is awaiting the outcome of the claim. Leaving a person without that support can be extremely unsafe and we understand that some providers are refusing to accept new claims because of the ethical issues this funding change causes. While we appreciate that ACC are aiming to reduce the waiting time until a claim is accepted or denied, any sort of gap is dangerous for the person. If the review panel finds that it is outside ACC's responsibility to provide support during this period then it must be provided elsewhere in the health system – i.e. under a whole of government approach. We ask the committee to make such a recommendation.

Secondly, we would like to comment briefly about the waiting period. We understand from ACC that the average waiting period is now 47 days. While we accept that this figure must be correct, we wonder if there is something in the data that has skewed this statistic as anecdotally we have been told that the average waiting time is much longer than that. In any event, 47 days is still too long for a traumatised sensitive claim victim to be left without support.

### **Causation**

We understand that under the new pathway a claimant whose injury has multiple causes is unlikely to be accepted. In particular ACC now requires the provider to quantify how much the abuse contributed to the injury, and how much has been caused by other factors. While we accept that there needs to be a causal link between the abuse and the injury, we believe that the pathway should allow for multiple causalities. In cases of historic abuse for example that abuse may have lead to other coping mechanisms which in turn have caused further injury, (e.g. drug and alcohol abuse, self mutilation). The fact that the injury has multiple causes should not mean – as appears to be the case currently – that a claim is declined. Further, it

is simply not always possible for a provider to determine with any great certainty how much was caused by the original sensitive claim and how much by other behaviours.

**Safe transfer of patient sensitive information**

We would ask that the important matter of confidentiality of patient information is reviewed. We are unhappy about the increased requirements for information to be included in the ACC 45, which is sent electronically to ACC at large, and not to the specialized Sensitive Claims division.

**Administration and ACC**

There appear to be significant administration and communication problems in ACC in regard to sensitive claims. Anecdotal evidence suggests there are significant problems within ACC in communicating between teams. Advice given by one team is often inconsistent with that given by another team. Administrative delays in the billing process compounded by providers receiving multiple and inconsistent answers is also a problem.

The problems, though, are not limited to internal advisors, as ACC has not been fully utilising its external expert advisors. In particular, we thought it was a significant oversight that in preparing the pathway, ACC did not discuss the matter with its own expert reference group – the Sensitive Claims Advisory Group.

Again these are issues that need to be addressed.

In keeping with the overarching nature of this subject, it is important that patients are not allowed to suffer further because of demarcation disputes between potential health providers. SATS is not uniformly functioning across our 20 DHBs, and cannot be relied upon as part of the solution to problems created by this new pathway.

We would be pleased to discuss these matters further with the Review Panel.

Yours faithfully



Dr Peter Foley  
**Chair, NZMA**