

# Questions you should ask yourself when running an ACC Review

Philip Schmidt, Partner, Schmidt & Peart Law

- **Am I reviewing the correct decision?**
  - Make sure that you have a chronological record of the prior relevant decisions.
  - Make sure that you have claim files for any prior relevant injuries.
  - Make sure that there are claims for cover for any relevant prior injuries.
  - Make sure that there are claims for entitlements where these are relevant to the remedy your client is seeking.
  - Is it necessary to file late review applications against prior decisions?
  - If it is, does your client have extenuating circumstances?
  - Has any genuinely new medical evidence come into existence since the decision in issue that would justify filing a fresh claim?
  - Are there any prior electronic communications that could amount to a decision?
  - In terms of fresh claims for cover or entitlements, what further investigations will be required by your client or ACC?
  - Does your client need to make a statutory declaration about the past?
  - Will a fresh claims process allow you to clarify the causes of your client's covered condition?
  - All communications must be in writing.
  - If a time limit is looming, file a best effort. An imperfect filing or review is better than a late filing.

- **Where does the balance of probabilities lie?**

- The balance of probabilities is determined by reference to evidence, not opinion.
- Bear in mind that only experts can provide opinions on medical matters, and then generally only in their specialist field.
- What sworn evidence will you gather for the review?
- Will your client be giving evidence at the review?
- What other testimonial evidence should be presented at the review hearing?
- A bundle of medical records prepared chronologically is essential.
- Evidence that is unrebutted should generally be accepted.
- It is not necessary to be certain, it only needs to be “more likely than not”.
- Gather evidence in haste, repent at leisure – you are best to prepare thoroughly and slowly.
- If you are not likely to win, you generally won’t win – yes, that is stating the obvious, but it is still a mistake that we all make.

- **Do my submissions look like a review decision?**

- Your review submissions should follow the traditional outline of introduction, background, medical evidence, submissions and conclusion.
- Your written submissions should contain an outline of the testimonial evidence given by your witnesses.
- Your written submissions should set out the extracts of the medical reports that you will be producing in evidence.
- Generally, you should focus less on the law and more on the facts.

- Reviewers are generally overworked and underappreciated – making their life easier will make your life easier.
- The quality of your written material will carry more weight than the quality of your oral submission.
- Your written submissions should assume that the matter will proceed to the District Court.

- **The review hearing**

- All proceedings should be recorded because the Reviewer's notes will be incomplete.
- Your witnesses should give their evidence before submissions.
- If you need more time request it in advance, not at the hearing.
- Do not forget to re-examine your client's testimony, but do so honestly – only lead to clarify an answer.
- Do not overlook the importance of an indexed chronological bundle.
- Substance trumps process – focus on evidence supporting the claim.
- Accept that there is significant variation in the experience and quality of Reviewers.
- Do not be afraid to alter your position in the course of the hearing.
- If it will be difficult to get the remedy requested, identify a solution and timeframe it.
- Your reputation will precede you – reasoned persistence trumps emotive pleas.