

**Guidelines to Practice and Procedure
for
Accident Compensation Appeals
in the
District Court
("Practice Guidelines")**

The Practice Guidelines issued by the Chief District Court Judge

1 April 2023

Introduction

The District Court (“the Court”) has jurisdiction to determine appeals against review decisions made under the Accident Compensation Act 2001 (“the Act”).¹ Appeals against review decisions are dealt with in accordance with the District Court Rules 2014, as modified by the Act and any regulations made under it.² The Court also determines applications for leave to appeal from the Court to the High Court.³

Appellants in the Accident Compensation Appeals jurisdiction are required to prosecute appeals with due diligence.⁴ A Judge may make any directions that appear best adapted to secure the just, expeditious, and economical disposal of the appeal proceedings.⁵

The Practice Guidelines are intended to assist appellants and others to prosecute appeals in a diligent and timely way by:

- setting out clear, coherent and comprehensive standards for practice in this jurisdiction;
- providing assistance to those who have not previously appeared before the Court (whether appellants personally or their representatives) by outlining accessible explanations of how the accident compensation appeal process works; and
- setting out the Court’s expectations of those appearing before it.

The Practice Guidelines have been produced after constructive consultation with representatives of appellants, the Corporation and the New Zealand Law Society. The Practice Guidelines use the same language as their foundational legal sources so as to be accurate and precise. These sources are the Act, its regulations and the District Court Rules. To make the Practice Guidelines more accessible, a Flowchart and Checklist for processing an appeal in the Accident Compensation Appeals jurisdiction are attached (**Appendix E**).

¹ Section 149. In terms of section 134, persons claiming from the Accident Compensation Corporation (“the Corporation”) may apply for review of its decisions. Fair Way Resolution Limited is the dispute resolution service currently contracted to conduct reviews. See www.fairwayresolution.com.

² Section 150. The District Court Rules are made under section 228 of the District Court Act 2016.

³ Section 162.

⁴ Section 161(3)(b).

⁵ Accident Compensation (Review Costs and Appeals) Regulations 2002 (“Regulations”), Regulation 10(2).

The Practice Guidelines apply to all appeals filed on or after 1 April 2023 and, with any necessary modifications, to pre-existing appeals processed after that date. The Practice Guidelines replace all previous practice notes. The Practice Guidelines will continue to be reviewed and updated as required, to ensure that they remain relevant and useful.

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1 Filing the Appeal

1.1 Notice of Appeal

1.1.1 An appellant brings an appeal by filing a Notice of Appeal in the Accident Compensation Appeals District Court Registry (“the Registry”).⁶

1.2 Form of Appeal

1.2.1 The Notice of Appeal must be in the prescribed form.⁷ The form is attached to the Practice Guidelines as **Appendix A** and is available for downloading on the Registry website.⁸ A copy of the review decision being appealed must be attached to the Notice of Appeal.⁹ An appellant whose Notice of Appeal has been sent to or filed in the Registry may, with the leave of the Court, amend the grounds of appeal stated in the Notice.¹⁰

1.2.2 A cross-appeal may be filed if a Notice of Appeal is sent to or filed in the Registry and a person (other than the appellant) intends to submit at the hearing of the appeal that the decision appealed against should be modified or quashed. The cross-appeal must also be in the prescribed form.¹¹

1.3 Contact Details of Appellant

1.3.1 The Notice of Appeal must include the contact details of the appellant. The appellant must keep the Registry notified of any changes to these contact details for the duration of the appeal. Failure to notify the Registry of changes could lead to the appellant being unaware of directions issued by the Court and may result in the appeal being struck out for non-compliance with those directions (see Section 5.3.4(j) below).

1.4 Filing

1.4.1 The Notice of Appeal can be hand delivered, posted, couriered or emailed to the Registry. The Notice must be actually received by the Registry within the time specified. It is not sufficient for the Notice of Appeal to have only been *sent* by the specified date.

⁶ Section 151(1). The Registry is managed by the Tribunals Unit, Wellington.

⁷ Section 151(2), Regulations 6 – 7 and Schedule 2.

⁸ www.justice.govt.nz/tribunals/accident-compensation/appeals-district-court-registry/how-to-apply/

⁹ Regulation 6(1)(b).

¹⁰ Regulation 6(2).

¹¹ Regulation 7(1) – (2).

1.4.2 The address details for the Registry are:

- *Postal:*
Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
DX SX 11159
Wellington
- *Physical:*
Accident Compensation Appeals District Court Registry
Tribunals Unit
Level 1
86 Customhouse Quay
Wellington
- *Email:*
AppealsACR@justice.govt.nz

1.4.3 The time specified for the Registry to receive the Notice of Appeal is as follows:

- (a) review decisions: the Notice must be received within 28 days after the date on which the Reviewer gives a copy of the review decision to the appellant;
- (b) deemed review decisions: the Notice must be received within 28 days of the expiry of three months after a review application has been received by the Corporation and the review has not been set down for hearing.¹²

1.4.4 A cross-appeal must be filed within 30 working days after the day on which the Notice of Appeal was served.¹³

1.4.5 An appeal which is lodged in the correct form and signed by the appellant is registered by the Registry as soon as it is received. However, if the appellant does not sign the form, and it is signed by the appellant's representative, the appeal will not be registered until the Authority to Act for the representative is received (see Section 3.1 below).

¹² Section 151(3)(a) – (b) and section 146.

¹³ Regulation 7(2).

1.5 Late Filing

1.5.1 If an appeal or a cross-appeal is filed late, leave must be sought from the Court to file the appeal or cross-appeal.¹⁴ The appellant must provide reasons why the appeal was filed late.

1.5.2 If an explanation for the late filing is provided in the Notice of Appeal, this will be sent to the Corporation or any other party for a response. If an explanation is not provided in the Notice of Appeal, then one will be directed by the Court when the Initial Minute is issued (see Section 5.1 below).

1.5.3 The standard timetable for the late filing application process is:¹⁵

- (a) 14 days after the Initial Minute for an explanation by the appellant (if not provided in the Notice of Appeal);
- (b) 14 days for the Corporation or any other party to provide comment;
- (c) 7 days for the appellant to provide a final response.

1.5.4 The Court will then decide the late filing application on the papers, unless the Court considers otherwise.¹⁶

1.5.5 The grant of leave for late filing of an appeal is a necessary requirement, and so the appeal will proceed only if the Court grants leave.

2 Filing Other Documents

2.1 Any other document required to be filed by a party in the appeal can be hand delivered, posted, couriered or emailed to the Registry. However, documents must be actually received by the Registry within the time specified in the Act or, in the event there is no time so specified, as directed by a Judge.¹⁷

¹⁴ Section 151(3)(c) and Regulation 7(2).

¹⁵ Unless otherwise stated, "days" refer to calendar days and are not restricted to working or week days.

¹⁶ The principles which guide the exercise of the discretion to grant or deny an extension of time to lodge an appeal are set out in the Supreme Court's judgment in *Almond v Read* [2017] 1 NZLR 801.

¹⁷ Regulation 10(1): "a Judge may make any directions that appear best adapted to secure the just, expeditious, and economical disposal of the appeal proceedings".

3 Representation

3.1 Authority to Act

3.1.1 A party may be self-represented in an appeal or be represented by a lawyer or a non-lawyer advocate. If a representative is engaged by a party other than the Corporation, the party must complete and file an Authority to Act form, attached as **Appendix B**, available to be downloaded from the Registry website.¹⁸

3.1.2 Once the Authority to Act has been filed, the representative can:

- (a) gain access to personal information relating to the party's case;
- (b) receive correspondence relating to the case; and
- (c) act on behalf of a party in all matters relating to the case.

3.1.3 The Registry and/or Corporation can only provide personal information about a party to the representative if the Authority to Act has been completed and filed.

3.2 Withdrawal from Acting

3.2.1 In the event that a representative seeks to withdraw from acting for a party, the representative must file a memorandum seeking leave to withdraw. The memorandum must set out:

- (a) the reason why the representative seeks leave to withdraw;
- (b) the current timetable directions in place and whether the party has been made aware of those directions; and
- (c) the current address and contact details for the party.

3.2.2 The application to withdraw will be referred to a Judge for directions. In the event that a new representative acts for the party, a new Authority to Act must be completed and filed with the Registry (see Section 3.1 above).

¹⁸ See www.justice.govt.tribunals/accident-compensation/appeals-district-court-registry/how-to-apply/

3.3 *Representation for Deceased Appellant*

3.3.1 If an appellant dies before or after the appeal is filed, an appropriate person may be substituted for the deceased appellant.¹⁹ An executor may sue as representative of the estate.²⁰ The Court may order a person beneficially interested to be joined as a party instead of an administrator.²¹

3.3.2 An application for substitution of an appropriate person for the deceased appellant must be filed together with an affidavit from a representative stating that:

- (a) the estate of the late appellant wishes to continue with the appeal;
- (b) the estate is represented by a named person as executor or other appropriate person as representative for the deceased appellant.

3.4 *Amicus Curiae*

3.4.1 On rare occasions, an *amicus curiae* ("a friend of the court") may be appointed by the Court to provide advice on points of law or matters of practice.²² The Court may do this if the Court determines there are exceptional circumstances to avoid a potential miscarriage of justice.²³

3.4.2 The above appointment is exceptional because of the need to respect the right of self-representation, not relieve the Court of its own obligations to a self-represented appellant, and not undermine the legal aid system.²⁴

4 **Notifying Other Parties**

4.1 As soon as practicable after receiving the Notice of Appeal, the Registrar must notify the Corporation that an appeal has been lodged, and request the names and contact details of any person who had a right to be present and heard at the review hearing (other than the appellant). The Corporation must provide the Registrar with the information within seven days of receiving the request from the Registrar.²⁵

¹⁹ District Court Rule 4.50.

²⁰ District Court Rule 4.23(1).

²¹ District Court Rule 4.23(3). The Administration Act 1969 allows for payments by the Corporation to a surviving *de facto* partner without formal grant of letters of administration where the amount payable is less than \$15,000.

²² *Fahey v R* [2018] 2 NZLR 392 (CA) at [55] and [80].

²³ See Regulation 10(1).

²⁴ *Fahey v R* at [85].

²⁵ Section 152.

4.2 An Initial Minute will be served on all parties who participated in the review hearing to notify them of the appeal and the requirements for participation in the appeal (see Section 5.1 below).

4.3 If a party who participated in the review hearing and who is served with an Initial Minute does not wish to participate in the hearing of the appeal, that party must inform the Registry as soon as possible. A Minute will be issued confirming that the party is no longer participating in the appeal.

4.4 A person who had a right to be present and heard at the hearing of the review, but did not attend, is entitled to be heard at appeal. The Corporation must inform the Registrar of the contact details of any person who had a right to be present and heard at review. When this information is received, the Registrar will send a copy of the Notice of Appeal and the Initial Minute to the person. That person must notify the Registrar within 10 days of receiving these documents whether that person wishes to be a party to the appeal or not. Whatever position is taken by the person, a Judge will issue directions accordingly, in relation to the appeal.

5 Progressing the Appeal

5.1 Initial Minute

5.1.1 When an appeal has been filed, the Judge will issue an Initial Minute to the appellant, the Corporation and any other parties. It will set out preliminary directions for progressing the appeal. The Initial Minute will:

- (a) certify that the appellant has filed an appeal and the Registrar has allocated an Appeal Court Registry (ACR) number to formally identify the appeal;
- (b) direct, if the appeal has been filed late and an explanation for the late filing has not been provided in the Notice of Appeal (see Section 1.5 above), that the appellant provide an explanation for the late filing of the appeal, and outline a timetable for this explanation, the Corporation's reply and the appellant's final reply;
- (c) direct that an Initial Case Management Conference (see Section 5.2 below) will be convened within two months after the filing of the appeal, and outlines the purpose of this conference;²⁶

²⁶ Regulation 9.

- (d) direct that the parties discuss the following in advance of the Initial Case Management Conference:
 - (i) the relevant facts and the issues requiring determination in the appeal;
 - (ii) whether new evidence is required to be produced before the appeal can be set down for hearing and, if so, a timetable for the production and filing of that evidence (see Section 5.4 below);
 - (iii) the timetabling of submissions; and
 - (iv) whether the parties wish the hearing to be "in person" or agree to the hearing being conducted by audio-visual means;
- (e) direct that:
 - (i) if agreement is reached on the above matters, the parties will file a joint memorandum, no less than seven days prior to the Initial Case Management Conference; or,
 - (ii) if no agreement is reached, each party will set out a separate view of the matters, which is filed no less than five days prior to the Initial Case Management Conference;
- (f) direct the Corporation to provide the following, on or before a specified date, being four weeks from the date of the Minute:
 - (i) the names and contact details of any person who had a right to be present and heard at the hearing of the review (other than the appellant);
 - (ii) a copy of the review file;
 - (iii) the name of the legal representative for the Corporation in the appeal.²⁷

5.2 *Initial Case Management Conference*

5.2.1 No later than two months after the Initial Minute is issued, the Registrar will notify the parties the date and time of the Initial Case Management Conference and whether attendance is required by telephone or "in person". If the parties agree, the Initial Case Management Conference may be held on a named date as soon as possible after the issue of the Initial Minute.

²⁷ Section 154(1) states that the information the Corporation must provide comprises the decision appealed against, the record of the review hearing, all documents, items, and exhibits relating to the review that are in the custody of the Corporation or the reviewer, and a copy of any notes made by, or by direction of, the reviewer relating to the hearing of the review. See also Regulation 8 for the time frame.

5.2.2 The purpose of the Initial Case Management Conference is to enable the Judge:

- (a) to identify, define, and refine the relevant facts and the issues requiring determination at the hearing of the appeal;
- (b) to determine what steps need to be taken in order to progress the appeal;
- (c) to decide how best to facilitate the hearing of the appeal as soon as possible, if required.

5.2.3 To achieve these objectives, the parties are expected to be able to discuss the following case management issues at the conference:

- (a) the relevant facts and the issues requiring to be determined in the appeal;
- (b) whether new evidence (see Section 5.4 below) is required to be produced before the appeal can be set down for hearing and, if so, a timetable for the production and filing of that evidence;²⁸
- (c) the timetabling of submissions (see Section 5.5 below); and
- (d) whether the parties wish the hearing to be “in person” or agree to the hearing being conducted remotely by audio-visual means.

5.2.4 Before the Initial Case Management Conference, the parties may have reached agreement about the case management issues. If so, they must file a joint memorandum no less than seven days prior to the Conference. In this case, if the presiding Judge is satisfied that no further information is required, the Conference will not need to proceed, and the Judge will issue a Minute with directions to the parties.

5.2.5 If no agreement has been reached and recorded, or if the presiding Judge considers it necessary, the conference will proceed. Following discussion with the parties, the Judge will issue a Minute with directions to the parties. A Judge may make any directions (following this conference or any subsequent directions conference) to secure the just, expeditious, and economical disposal of the appeal proceedings.²⁹

²⁸ Regulation 10(2)(a) provides that the Judge may consult the parties as to the necessity for or desirability of the appointment of medical or other assessors for the purposes of the appeal.

²⁹ Regulation 10(1).

5.2.6 The directions in the Judge's Minute may include:

- (a) confirmation of the agreed statement of facts and issues by the parties, or, if there is no agreement, separate statements of facts and issues;
- (b) the filing of a memorandum by both or one of the parties, providing information and/or proposing next steps;
- (c) directions and a timetable for the filing of further expert medical or any other evidence (see Section 5.4 below);
- (d) a timetable for filing submissions so the appeal can be set down for hearing, if required;
- (e) a date for a Directions Conference to enable any timetable to be monitored;
- (f) confirmation whether the parties wish the hearing to be "in person" or agree to the hearing being conducted by audio-visual means.

5.3 *Further Directions and/or Directions Conferences*

5.3.1 An appeal will be referred to a Judge for directions, if:

- (a) a party has not complied with the directions issued in the Initial Minute or the Case Management Conference Minute, or any other direction made by a Judge at any point;
or
- (b) there are outstanding applications by a party or the parties; or
- (c) the appeal raises complex issues.

5.3.2 The Judge may issue further directions addressing the particular issue or issues arising. The further directions may determine the issue/s or require either or both parties to take specified steps by a certain date, including filing submissions. The further directions will be recorded in a Minute of the Judge and issued to the parties.

5.3.3 The Judge may also hold a further directions conference to enable the parties and the Judge to discuss the outstanding issues before the Judge issues further directions.³⁰ If a further directions conference is necessary, the Registry will inform the parties the date and time of the conference and whether attendance is required by telephone or "in person".

³⁰ Regulation 9.

5.3.4 Examples of the types of issues that can be addressed include:

- (a) specifying dates for filing further evidence and/or submissions;
- (b) enlarging or extending an existing timetable;
- (c) granting leave for a party to obtain further evidence;
- (d) consolidating two or more appeals so that they are to be heard at the same time;³¹
- (e) facilitating discussions and statements of expert witnesses prior to the hearing of the appeal, and/or counsel agreement to a joint referral to a medical specialist;
- (f) determining if there should be *amicus curiae* or court-appointed counsel (see Section 3.4 above);
- (g) determining if an assessor should be appointed;³²
- (h) directing, on the application of a party, that the appeal is dismissed because the appellant has not prosecuted the appeal with due diligence;³³
- (i) directing that the appeal will be dismissed if by a certain date a Court direction is not complied with by the appellant;
- (j) directing that an appeal is struck out for failure of the appellant to comply with a direction;
- (k) ordering costs if a party fails to comply with a direction;
- (l) directing where and/or when an appeal will be heard and how much time should be set aside for the hearing;
- (m) granting leave for evidence to be presented at appeal or to cross-examine a witness;
- (n) granting an adjournment of a hearing.

5.4 *New Evidence at Appeal*

5.4.1 The appeal in the Court is a rehearing.³⁴ There is normally a significant amount of evidence already available at the time the appeal is filed. A copy of the review file is provided

³¹ District Court Rule 10.18.

³² Section 157(1) provides that a Judge hearing an appeal may appoint a person to be an assessor for the purposes of the appeal if the Judge considers that the appeal involves consideration of matters of a professional, technical, or specialised nature, and it would be desirable to appoint as an assessor a person with expert knowledge of those matters. Section 158(1) provides that the assessor sits with the Court and assists in the determination of the appeal, but the Judge alone determines the appeal.

³³ Section 161(3)(b).

³⁴ Section 155(2).

by the Corporation to the Registry (see Section 5.1.1(f) above). The review transcript will be placed on the Court file. Since the issues at appeal may be different or may have developed further following the review, the entire review file is not necessarily placed on the Court file.

5.4.2 The following procedure is required for the filing of new evidence (including medical reports or statements of evidence written after the review):

- (a) a party seeking to call new evidence must advise the Registry and the other party of their intention to do so;
- (b) when the new evidence becomes available, it must be filed with the Registry and provided to the other party;
- (c) if the other party objects to the new evidence, the question of whether leave should be given, to rely upon the additional evidence, will be referred to a Judge for directions.

5.4.3 If a party wishes to have a witness present evidence “in person” at the Court hearing, or to cross-examine a witness who has prepared a report or statement, an application must be made prior to the hearing. The application will be referred to a Judge for directions.

5.4.4 If a witness is to present evidence at the hearing, a brief of evidence and contact details must be provided by the witness, as directed by the Court.

5.4.5 The Court may hear any evidence that it thinks fit, whether or not the evidence would be otherwise admissible in a court of law.³⁵ If a question of fact is involved in an appeal, the evidence taken before or received by the Reviewer about the question may be brought before the Court, subject to any order of the Court.³⁶

5.5 *Joint Statements of Expert Practitioners*

5.5.1 Joint discussions and statements of expert practitioners (“experts”) may lead to matters being resolved. This may be by agreement or, if necessary, by Court decision addressing limited remaining issues. Where experts disagree, a joint statement of what they agree, what they disagree, and their supporting reasons, enables the issues and arguments to become more clearly defined.

³⁵ Section 156(1).

³⁶ Section 156(2).

5.5.2 A Judge may direct that, by a certain date, the parties shall discuss and, if possible, agree the topics for the relevant experts' discussion and the questions for them to answer. If the parties cannot agree, then the list of topics shall include the relevant questions which each party wishes to ask.

5.5.3 The Judge may then direct that, by a certain date, the relevant experts shall discuss the issues using the list of topics and shall produce a signed joint statement. This statement shall set out the matters they agreed, the matters disagreed and their respective reasons. The experts' discussion may be by whatever means they choose, including (but not limited to) telephone, audio-visual means or similar, or email. Parties may, with the leave of the Court, have their experts available at the hearing to speak to their statements and/or ask questions of each other.

5.6 Finalising Evidence

5.6.1 In the interests of efficiency and natural justice, the evidence-gathering phase needs to be completed before submissions are filed. Submissions are to address the issues raised by the evidence. The filing of submissions occurs when all evidence relevant to the appeal has been filed.

5.6.2 The Judge has regard to securing the just, expeditious, and economical disposal of the appeal proceedings. To do so, the Judge may make directions to prevent an ongoing cycle of filing new evidence and counter-evidence. It is not in the interests of justice for there to be ongoing unnecessary delays in the progress of the appeal. Where it is difficult to obtain expert medical evidence in New Zealand, other avenues may be considered, such as seeking evidence from overseas experts (for example, located in Australia). These overseas experts may use audio-visual means to discuss matters with the appellant.

5.6.3 All evidence relevant to the appeal intended to be relied on by the parties will be provided to the Court in an indexed and paginated Common Bundle of Documents (the Common Bundle). This includes information available at the review and new evidence prepared after the review. The Common Bundle will be filed, in electronic and hard copy, no later than seven days before the hearing of the appeal. The responsibility for preparing the Common Bundle rests with the appellant's representative, or with the Corporation when the appellant is self-represented.

5.7 Submissions

5.7.1 The purpose of submissions required before the appeal is set down for hearing is to ensure the Judge hearing the appeal and/or other parties are fully informed of each party's case in light of the evidence provided.

5.7.2 It is important that the submissions:

- (a) identify the points in support of the case and where in the evidence those points are supported;
- (b) identify any statutory provisions which are relied upon;
- (c) identify any previous Court decisions which are relied upon; and
- (d) otherwise identify matters which the party considers to be important to his or her case.

5.7.3 The standard period allowed for filing the appellant's submissions is 28 days after the finalisation of evidence, and the standard period for the respondent/s submissions is 28 days after the period directed for filing the appellant's submissions. The Court may direct shorter or longer periods in light of the particular circumstances of the parties.

5.8 Discontinuing the Appeal

5.8.1 The appellant may, at any time before the Court's judgment, discontinue the appeal:

- (a) by filing, in the Registry, a Notice of Discontinuance attached as **Appendix C** which will give an explanation for the discontinuance and whether there is any issue as to costs; and
- (b) by serving a copy of the Notice of Discontinuance on the Corporation or any other party in the proceeding, who will likewise indicate whether there is any issue as to costs.³⁷

5.9 Reinstating the Appeal

5.9.1 If an appeal is struck out or dismissed for failure to comply with a Judge's directions before the appeal hearing, it will remain dismissed unless the appellant successfully applies for reinstatement of the appeal. An application for reinstatement should be made as soon as possible after the appellant has learnt that the appeal has been struck out or dismissed. An

³⁷ District Court Rule 12.15.

application for reinstatement will be supported by a signed statement or affidavit and should address the following points:

- (a) that the appellant wishes the appeal to be reinstated;
- (b) why the appellant was unable to comply with the Judge's directions; dismissing or striking out the appeal;
- (c) whether the Judge's directions have now been complied with or when they will be complied with;
- (d) whether any other party will be affected if the appeal is reinstated; and
- (e) any other relevant matters.

5.9.2 The application will then be referred to the other party for a response before being placed before a Judge to decide whether the appeal should be reinstated. If the application is successful, the Judge may direct the terms of reinstatement, which may include a costs order in favour of the other party.

5.10 Determination on the Papers

5.10.1 An appeal that is otherwise ready for hearing may be determined on the papers if both parties consent to the appeal being determined without the need for a hearing.

5.10.2 If a party wishes to have the appeal determined without the need for a hearing, the party should advise the Registry when all submissions have been filed. The Registrar will then ascertain the position of the other party. In the event both parties agree that a hearing is not necessary, the appeal will be referred to the presiding Judge who will make a final determination as to whether or not a hearing is necessary.

5.11 Setting the Appeal down for Hearing

5.11.1 When any new evidence and all submissions have been filed, the appeal will be set down for hearing at the earliest opportunity. The hearing will not take place if the appeal is being determined on the papers or has been disposed.

5.11.2 If the parties and the presiding Judge agree, the hearing may be held remotely by audio-visual means. Such hearings may be more appropriate than "in person" hearings, including in the following circumstances:

- (a) where the appellant lives in an area where scheduled hearings are infrequent, and the hearing of appeals is delayed;
- (b) where the appellant lives some distance from the nearest Court, and/or the representative lives in a different centre;
- (c) where hearings involve only lawyers or advocates;
- (d) where the appellant's health issues may prevent his/her attendance at an "in person" hearing.

5.11.3 Where an appeal is heard "in person", the hearing will normally be located nearest to the appellant's place of residence.³⁸ If this venue is not available for a hearing "in person", the Registry will liaise with the parties whether another centre is available, to avoid delay. An appeal may be listed by the Registry as a back-up hearing and will proceed only if another appeal already scheduled in the same set of hearings does not proceed. Back-up hearings require at least 48 hours' notice to the parties.

5.11.4 If a party is not available for a scheduled hearing (either a confirmed hearing or back-up hearing) the party must inform the Registry immediately and request an adjournment of the hearing. The party must set out in detail why he or she is unable to attend the hearing. The request for adjournment will then be referred to the presiding Judge for directions.

5.11.5 If there are any special requirements for the hearing of the appeal, the Registry must be advised as soon as possible. This means the requirement can be addressed prior to hearing and, if necessary, referred to a Judge for determination. Examples of special requirements include:

- (a) the logistics of a hearing by audio-visual means or telephone;
- (b) the need for an interpreter;
- (c) medical issues that affect a party's participation in the appeal;
- (d) the need for specific equipment such as a DVD player or other data projection equipment;
- (e) other special arrangements required for the presentation of evidence, including collaborative presentation of evidence by competing expert witnesses.

³⁸ Section 153(2).

5.12 *Protecting Privacy*

5.12.1 A Judge may consider it necessary and appropriate to protect the privacy of a party to the appeal (other than the Corporation), a person entitled to appear and be heard, or a witness. If so, a Judge can make an order forbidding the publication of:

- (a) the evidence presented;
- (b) submissions made; and/or
- (c) the name, address or occupation, or particulars likely to lead to the identification of the party, person entitled to appear, or witness.³⁹

5.12.2 The need to suppress details may arise at any time. A party or a representative who considers that a suppression order is necessary should immediately advise the Registry or the Judge in a hearing. The party or representative should set out the reasons for the request. The presiding Judge has a discretion to suppress details at any time as the Judge considers necessary and appropriate, even if no party has made an application for suppression.⁴⁰

6 Hearings

6.1 Procedure at Hearing

6.1.1 The hearing begins with all parties or their representatives introducing themselves to the Judge hearing the appeal. If the appellant or representative does not appear at the time appointed for hearing the appeal and has not provided a reasonable excuse or prior explanation to the Court, the hearing may proceed and the Judge may dismiss the appeal.⁴¹

6.1.2 If the Judge has previously determined that evidence is to be presented or cross-examination is to occur, such evidence will be presented and a party and/or witnesses will be made available for cross-examination at the beginning of the hearing.

6.1.3 If there is no evidence to be produced, or the party or witness has finished giving evidence, submissions on behalf of the appellant will normally be presented first to the Judge. This will be followed by submissions on behalf of the respondent. Then the appellant has a

³⁹ Section 160(1).

⁴⁰ See also section 159.

⁴¹ Section 161(3)(a).

right of reply. This order of presentation may be reversed as the presiding Judge thinks fit. However, an appellant will always have a final right of reply.

6.2 *Conclusion of Hearing*

6.2.1 Most appeals conclude at the end of the scheduled hearing. If issues arise at the hearing that require further matters for the parties to address, the Judge will issue directions at or subsequent to the hearing. These directions may relate to a timetable for the receipt of further relevant evidence and/or written submissions. In such situations, the hearing will not conclude until the parties have complied with those additional directions.

6.2.2 Otherwise, the Judge will confirm the hearing has concluded and that the judgment on the appeal is formally reserved. The Judge will aim to issue a judgment as expeditiously as possible, normally no later than three months after the hearing.

6.2.3 If the parties settle an appeal after the hearing has finished, but before the judgment is issued, the parties will inform the Registry in writing as soon as possible.

7 **Judgment**

7.1 *Decision on Appeal*

7.1.1 When completed, the Judge's decision on the appeal ("the judgment") will be in writing and will be forwarded electronically to the parties as soon as it is issued, or couriered if requested by a party.⁴²

7.1.2 The Judge must determine the appeal by:

- (a) dismissing the appeal;
- (b) modifying the review decision; or
- (c) quashing the review decision.⁴³

⁴² Regulation 11 provides that, on the determination of an appeal, the Registry must give a copy of the Court's decision to the appellant and each person who was entitled to appear at the hearing of the appeal. After the time for lodging an appeal against the Court's decision has expired, the Registry must give to the Corporation any documents forwarded to the Registrar under section 154(1) of the Act.

⁴³ Section 161(1).

7.1.3 If the Judge quashes the review decision, the Judge may:

- (a) endorse the Corporation's decision;
- (b) require the Corporation to take the action the Judge specifies in relation to the Corporation's decision; or
- (c) require another review to be conducted in accordance with directions the Judge gives.⁴⁴

7.1.4 In rare cases, the Judge will specify that the judgment is an interim one, and that further steps are required by the parties before a final judgment can be issued.

7.2 *Costs and/or Disbursements*

7.2.1 The judgment will refer to costs. The default position is that costs are reserved. Otherwise, the Judge will state which party is to receive costs, and provide an opportunity for the parties to reach an agreement following the hearing. If an agreement cannot be reached on the amount of costs and/or disbursements, the parties can file submissions and the Judge will make a determination.

7.2.2 The Judge has a discretion to award costs and/or disbursements in an appeal or incidental to it.⁴⁵ The following general principles apply to the determination of costs:⁴⁶

- (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds, except that the Corporation does not normally seek costs against an appellant who fails in an appeal;
- (b) an award of costs should reflect the complexity and significance of the proceeding;
- (c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application;
- (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:

⁴⁴ Section 161(2).

⁴⁵ District Court Rule 14.1(1).

⁴⁶ District Court Rule 14.2(2), as adapted for the Accident Compensation Appeals jurisdiction. See further, in particular, Rule 14.3 (categorisation of proceedings), 14.4 (appropriate daily recovery rates), 14.5 (determination of reasonable time), 14.6 (increased costs and indemnity costs) and 14.12 (disbursements).

- (e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the solicitor or counsel involved or on the time actually spent by the solicitor or counsel involved or on the costs actually incurred by the party claiming costs;
- (f) an award of costs should not exceed the costs incurred by the party claiming costs;
- (g) so far as possible the determination of costs should be predictable and expeditious.

7.2.3 If the representative is a non-lawyer advocate, and a level of assistance was provided, the appropriate daily rate percentage is normally 50 per cent of the scheduled daily rate.⁴⁷

7.3 *Publishing Judgments*

7.3.1 All judgments will be published in the Accident Compensation Appeals District Court Registry decision finder and in the New Zealand Accident Compensation Appeals Section of the New Zealand Legal Information Institute website, which are both publicly available.⁴⁸

7.4 *Correcting Judgments*

7.4.1 A judgment or order may be corrected by the Judge who made it, if the judgment or order:

- (a) contains a clerical mistake or an error arising from an accidental slip or omission, whether or not made by an officer of the Court; or
- (b) is drawn up so that it does not express what was decided and intended.

7.4.2 The correction may be made by the Judge on his or her own initiative or on an application by a party.⁴⁹

8 Challenging a Judgment

8.1 *Leave to Appeal to the High Court*

8.1.1 A party to an appeal who is dissatisfied with the decision of the Court as being wrong in law may, with the leave of the District Court, appeal to the High Court.⁵⁰ There is no general

⁴⁷ *Accident Compensation Corporation v Carey* [2021] NZHC 748 at [96].

⁴⁸ <https://www.justice.govt.nz/tribunals/accident-compensation/decisions/> or <http://www.nzlii.org/nz/cases/NZACC/>

⁴⁹ District Court Rule 11.10.

⁵⁰ Section 162(1).

right to appeal merely because a party disagrees with the District Court decision. Leave will be granted only where there is an issue of law capable of *bona fide* and serious argument.⁵¹

8.1.2 Leave to appeal to the High Court must be sought within 21 days of the decision.⁵² There is no set form for seeking leave but the party applying must inform the Registry in writing that he or she wishes to appeal the Court judgment. The party seeking leave to appeal can use the Notice of Application for Leave to Appeal form set out in **Appendix D**.

8.1.3 If an application for leave to appeal to the High Court is not filed within the 21 days, it can be accepted only if the other party waives the late filing of the application.⁵³

8.1.4 When an application for leave to appeal to the High Court is filed, a Leave to Appeal Minute will be issued by a Judge:

- (a) confirming the application for leave to appeal has been filed;
- (b) notifying the respondent/s of the filing of the application;
- (c) setting dates for submissions to be filed on the application:
 - (i) the applicant will have 28 days to file submissions after the application is filed;
 - (ii) the respondent/s will have 28 days to file submissions after the applicant's submissions are filed; and
 - (iii) the applicant will have 14 days to file reply submissions after the respondent/s' submissions are filed.
- (d) advising that, once submissions are filed, the application for leave to appeal will be determined by a Judge on the papers; and
- (e) advising that, if submissions are not filed as directed, the application will be referred to a Judge for further directions, including setting the application down for a directions conference or striking out the application for want of prosecution.

⁵¹ *O'Neill v Accident Compensation Corporation* [2008] NZACC 250 at [24(ii)]. See also *Impact Manufacturing Ltd v Accident Rehabilitation and Compensation Insurance Corporation* HC Wellington AP 266/00, 6 July 2001 at [4] per Doogue J; *Edwards v Birstow* [1955] 3 All ER 48 at 57; and *Kenyon v Accident Compensation Corporation* [2002] NZAR 385 at [15].

⁵² Section 162(2).

⁵³ *Siola'a v Wellington District Court* [2008] NZCA 483 at [33].

8.1.5 The Judge determining the leave to appeal application will not normally be the Judge who issued the judgment from which leave is sought to appeal. However, there may be rare occasions where the Judge who originally heard the appeal could dispose of the application expeditiously. In particular, this may be the case where the Judge believes that there are good reasons to grant the application for leave to appeal.⁵⁴

8.1.6 When a Judge determines the application on the papers, a judgment on the leave application will be issued. The judgment will set out the reasons for either granting leave to appeal or declining leave to appeal. If leave to appeal to the High Court is granted, the Judge will identify a question or questions of law for the High Court to consider when the appeal is heard.

8.1.7 If the District Court refuses to grant leave to appeal, an application may be made to the High Court for special leave to appeal.⁵⁵ The special leave of the High Court must be sought within 21 days after the District Court refused leave.⁵⁶

8.1.8 If leave to appeal is granted in the District Court or special leave to appeal is granted in the High Court, a notice of appeal will then need to be filed in the High Court.

8.2 *Recalling a Judgment*

8.2.1 When a judgment has been issued, a party can apply to have the judgment recalled. A party must do this before the time limit for seeking leave to appeal has expired. The three categories of cases where a judgment can be recalled are:

- (a) where, since the judgment, there has been an amendment to a relevant statute or regulation, or a new judicial decision of higher authority;
- (b) where counsel have neglected to direct the Court's attention to a statute, regulation or judicial decision of plain relevance;
- (c) where, for some other special reason, justice requires the judgment be recalled.⁵⁷

⁵⁴ *Vehicle Testing New Zealand v Accident Compensation Corporation* [2015] NZACC 154 at [3] – [5].

⁵⁵ Section 162(3).

⁵⁶ Section 162(4).

⁵⁷ *Horowhenua County v Nash (No 2)* [1968] NZLR 632.

8.2.2 The application to recall must specify the category of recall the application relies on and the reason why the judgment should be recalled. Once an application for recall is made, it will be referred to the Judge who heard the appeal.

8.2.3 When an application for recall is filed, the Judge will issue an Application to Recall Minute:

- (a) confirming the application for recall has been filed;
- (b) notifying the parties of the filing of the application;
- (c) setting dates for submissions to be filed on the application:
 - (i) the applicant will have 14 days to file submissions after the application is filed;
 - (ii) the respondent/s will have 14 days to file submissions after the applicant's submissions are filed; and
 - (iii) the applicant will have 7 days to file reply submissions after the respondent/s' submissions are filed.
- (d) advising that, once submissions are filed, the application to recall will be determined by a Judge on the papers;
- (e) advising that, if submissions are not filed as directed, the application will be referred to the Judge for further directions, including setting the application down for a directions conference or striking out the application for want of prosecution.

8.2.4 A decision on a recall application is separate from any decision about whether leave to appeal against the judgment should be granted.



Judge Heemi Taumaunu
Chief District Court Judge
1 April 2023

Appendices

Appendix A: Notice of Appeal

Appendix B: Authority to Act

Appendix C: Notice of Discontinuance

Appendix D: Notice of Application for Leave to Appeal to the High Court


Appendix E: Flowchart and Checklist



Accident Compensation Appeals District Court Registry

For more information visit www.justice.govt.nz/tribunals

Notice of Appeal

 **What is this form for?** This form is used to lodge an appeal against your recent review decision. It will also inform the other parties and the District Court Registry what your appeal is based on. This form is prescribed under Regulations 6 & 7 of the Accident Compensation (Review Costs and Appeals) Regulations 2002.

Important Information

1. Please print clearly.
2. You may return this 'Notice of Appeal' and all relevant documents by post or email to the District Court Registry address at the end of this form.
3. This form must be lodged with the District Court Registry within 28 days after the date on which the reviewer gives you a copy of the review decision. This 28 day period starts the day after the decision is posted or emailed to you.

Definitions

Appellant	An appellant is the person who appeals a decision.
Respondent	The term used to refer to any other party or parties to the appeal.
Mistake of Law	A mistake of law is when an error is made in how the law was applied to a case. The error is made by the person making the decision (reviewer).
Reviewer	The Reviewer is the person who made the decision you are appealing.
Quashed	When a decision is quashed, it is no longer valid.

IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

Under the Accident Compensation Act 2001

In the matter of an appeal against either a review decision under section 145 or 146 or a decision as to an award of costs and expenses under section 148

Notice of Appeal to the District Court

Section 151, Accident Compensation Act 2001

Take notice that the appellant appeals against a decision made under section (either section 145, 146 or 148) of the Accident Compensation Act 2001 on an application for review.

Please fill in all sections below:

Part 1: Appellant

What is your name?

Surname(s)
First name(s)
Middle name(s)

Where do you live?

Flat/house number	Street name	
Suburb	City/town	Post code

Contact details?

Email address	
Daytime contact phone number ()	Mobile

*If you give us your email address we can use this to send you emails regarding your appeal
Please inform the Registry if your contact details change before your case is heard.

Have you appointed a representative? (Please tick) Yes No

Representative's details and address for service

Surname(s)	Title
First name(s)	
Firm	<input type="checkbox"/> Lawyer or Advocate
Address for service	
Email address	
Daytime contact phone number ()	Mobile

*If you approve a representative an **Authority to Act form** must be completed

Are you represented by a lawyer? (Please tick) Yes No

Lawyer's details and address for service

Surname(s)	
First name(s)	
Firm	<input type="checkbox"/> Lawyer or Advocate
Address for service	
Email address	
Daytime contact phone number ()	Mobile

*If you approve a representative an **Authority to Act form** must be completed

Part 3: Grounds (What are your reasons for appealing this decision?)

(For example, that the decision appealed against includes the following mistakes of fact or law...)

The appellant bases this appeal on the following grounds:

(If you need more space please attach a separate sheet)

Part 4: Relief sought (What do you want the Court to do for you?)

(Please outline the relief you are requesting. An example of relief requested may be that the review decision be quashed)

The appellant seeks the following orders:

(If you need more space please attach a separate sheet)

A copy of the decision appealed against must be attached to this notice of appeal as required by regulation 6(1) (b) of the Injury Prevention, Rehabilitation, and Compensation (Review Costs and Appeals) Regulations 2002.

(Please tick to confirm)

Appellant's signature	Date	/	/	(day / month / year)
-----------------------	------	---	---	----------------------

District Court Registry Contact Details



Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
DX SX11159
Wellington



Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
Level 1, 86 Customhouse Quay
Wellington 6011



Email: AppealsACR@justice.govt.nz




Ph: (04) 462 6660



Accident Compensation Appeals District Court Registry

For more information visit www.justice.govt.nz/tribunals

Authority to Act

 **What is this form for?** This form must be completed if you wish a representative, whether a lawyer or an advocate, to act on your behalf on the appeal.

Unless this form is completed, the District Court Registry will be unable to recognise the authority of your representative to act on your behalf. You can terminate the authority at any time by giving notice in writing to the District Court Registry (managed by Tribunals Unit, Wellington).

Important Information

1. Please print clearly.
2. You may return this form by post, email or in person to the Tribunals Unit address at the end of this form.

Part 1: Appellant

Appeal Name (Parties)

ACR Number (if known)

What is your name?

Surname(s)

First name(s)

What is your address for service?

Street

Suburb

City/town

Post code

Contact details?

Daytime contact phone number ()

Mobile

Email address

Part 2: Representative

Who do you want to appoint as your representative?

Full name of representative

Organisation

Representative address for service

Street

Suburb

City/town

Post code

Representative's Contact details

Daytime contact phone number ()

Mobile

Email address

Part 3: Time Period

How long do you wish your nominated person to act on your behalf?

Start Date / / (day / month / year)

End Date

/ /

(day / month / year)

Or: Indefinitely (please tick) This person will be your agent for this case until you advise otherwise

Part 4: Declarations

Appellant's declaration

I agree to the appointment of the representative named in this form.

The information I have provided on this form is true and complete.

Appellant's signature

Date

/ /

(day / month / year)

Representative's declaration

I agree to the appointment of the representative named in this form.

The information I have provided on this form is true and complete.

Representative's signature

Date

/ /

(day / month / year)

District Court Registry Contact Details



Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
DX SX11159
Wellington



Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
Level 1, 86 Customhouse Quay
Wellington 6011



Email: AppealsACR@justice.govt.nz



Ph: (04) 462 6660



Accident Compensation Appeals District Court Registry

For more information visit www.justice.govt.nz/tribunals

Notice of Discontinuance



What is this form for? This form is used to stop an appeal process.

Important Information

1. Please print clearly.
2. You may return this 'Notice of Discontinuance' by post or email to the District Court Registry address at the end of this form.
3. This form may be lodged with the District Court Registry at any time before the decision has been issued.

IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

ACR CASE NUMBER: _____/20__

UNDER

THE ACCIDENT COMPENSATION ACT 2001

IN THE MATTER OF

AN APPEAL UNDER SECTION 149 OF THE ACT

BETWEEN

APPELLANT (NAME OF PARTY SEEKING TO APPEAL)

AND

RESPONDENT (NAME OF OTHER PARTY)

NOTICE OF DISCONTINUANCE

1. Take notice that _____, the appellant, discontinues
the appeal against the Respondent.
NAME OF APPELLANT

2. There are no issues of costs between the parties.

DATED AT _____

THIS / /
DAY / MONTH / YEAR

SIGNED BY

SIGNATURE OF APPELLANT

SIGNATURE OF RESPONDENT

District Court Registry Contact Details



Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
DX SX11159
Wellington



Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
Level 1, 86 Customhouse Quay
Wellington 6011



Email: AppealsACR@justice.govt.nz



Ph: (04) 462 6660



Accident Compensation Appeals District Court Registry

For more information visit www.justice.govt.nz/tribunals

Application for Leave to Appeal to the High Court

IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI- Ā-ROHE
KI TE WHANGANUI-A-TARA

ACR CASE NUMBER: _____/2____

UNDER

THE ACCIDENT COMPENSATION ACT 2001

IN THE MATTER OF

AN APPLICATION FOR LEAVE TO APPEAL TO THE
HIGH COURT ON A QUESTION OF LAW UNDER
SECTION 162 OF THE ACT

BETWEEN

APPLICANT (NAME OF PARTY MAKING THE APPLICATION)

AND

RESPONDENT (NAME OF OTHER PARTY)

APPLICATION FOR LEAVE TO APPEAL TO THE HIGH COURT

The above named Applicant applies for leave to appeal to the High Court against the decision of the District Court dated

DATE OF DECISION

NAMES OF THE PARTIES

DECISION NUMBER EG: 2022 NZACC 173

UPON THE GROUNDS that the Applicant is dissatisfied with the decision of the District Court as being wrong in law.

AND UPON THE FURTHER GROUNDS appearing in submissions to be filed.

DATED AT _____ **THIS** _____
CITY DAY/MONTH/YEAR

SIGNATURE
Applicant

SIGNATURE
Counsel for the Applicant

TO: Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
DX SX11159
Wellington

AND TO: The Respondent

The Application is filed by _____
NAME OF PERSON FILING THIS APPEAL

Whose address for service is _____

CONTACT DETAILS FOR PERSON FILING APPEAL



Accident Compensation Appeals District Court Registry

For more information visit www.justice.govt.nz/tribunals

Flowchart: How do I appeal?






Accident Compensation Appeals District Court Registry

For more information visit www.justice.govt.nz/tribunals

Checklist with definitions

 **What is this checklist for?** This checklist will help you file a Notice of Appeal, prepare for the Initial Case Management Conference, and prepare for the hearing. Read it alongside the "How do I appeal" diagram and the Practice Guidelines.

Important Information You do not need to send this checklist to the Court.

You should file an appeal if:

- I disagreed with ACC's decision and asked for it to be reviewed
- I disagree with the Review Decision

Before filing the Notice of Appeal, check you have done the following:

- I have filled out the Notice of Appeal form
- I have provided the Review Decision I am appealing
- I have provided the documents I want the Judge to look at
- I have provided my contact details
- I or my representative have signed the form
- If I have a representative, I have provided the Authority to Act form
- I have hand delivered, couriered, posted or emailed my form and documents to the Registry:



Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
Level 1, 86 Customhouse Quay
Wellington 6011



Accident Compensation Appeals District Court Registry
c/o Tribunals Unit
DX SX11159
Wellington



Email: AppealsACR@justice.govt.nz

- My form will arrive within 28 days of me receiving the review decision
- If my form will not arrive in time, I have provided reasons why my appeal is late

Before the Initial Case Management Conference, check you can do the following:

- I will tell the Judge the facts about my appeal
- If I want to get new evidence, I will tell the Judge what it is and when I will have it
- I will tell the Judge if I want someone to give evidence at the hearing
- I will tell the Judge whether I want to do the hearing "in person" or remotely

To prepare for the hearing, check you can do the following:

- I will send my evidence for the hearing
- I will send my submissions telling the Judge my view on the issues and the evidence

Definitions

Minute	A document from the Court telling you what will happen and what to do.
Case Management Conference	A meeting to discuss how the case will be decided.
Evidence	Information which supports your view or ACC's view.
Submissions	Reasons for your view on the issues and evidence. These are written for the Judge before the hearing and you will talk about them at the hearing.
Issue	Something the Judge needs to decide because you and ACC disagree.
Hearing	A meeting where you and ACC's legal representative talk to the Judge about your views about the issues and evidence.