

## Legal alert - ACC privacy consent form ruled unlawful

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The Dunedin District Court has ruled this week that the Accident Compensation Corporation's (ACC) decision to stop entitlements, because a claimant had not signed ACC's privacy consent form 167, was unlawful. Once signed by a claimant, the 167 form authorises ACC to collect, use and disclose the claimant's information, for broad purposes of assessment of the claims, evaluation of ACC's performance and research. The authorisation applies for the duration of time that the claimant seeks assistance from ACC. The Court ruled that the form was too broad, and did not authorise ACC to decline entitlements simply because a client refused to sign the form.

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### Background

The case was brought by Denise Powell, an ACC client who refused to sign the 167 form. Her preference was to give consent to ACC to collect, use, and disclose her personal information each time that ACC wished to do that. Dr Powell was concerned that by signing the 167 form she would lose control over the use of her health and personal information for the duration of her ACC claim.

The 167 form states:

*"I give my consent for information about me to be collected, used and disclosed to:*

- *Assess my entitlement to compensation, rehabilitation and medical treatment*
- *Help with the evaluation of ACC's services and performance*
- *Help with research into injury prevention and effective rehabilitation.*

*I understand that:*

- *This consent applies to all aspects of my claim and includes external agencies and service providers, such as general practitioners, specialists and employers etc. from whom ACC asks for information*
- *I have the right to see and correct any information ACC holds about me*
- *This consent applies for the whole period during which ACC provides assistance for my claim, unless I negotiate a different arrangement with my ACC Claims Management staff member*
- *The information collected will only be used or disclosed in relation to the purposes of the Accident Compensation Act 2001*
- *When collecting, using and storing information, ACC will at all times comply with the Privacy Act 1993 and the Health Information Privacy Code 1994."*

Dr Powell's argument was that the 167 form was too broad in relation to:

- The type of information collected
- The source of the information authorised
- The duration of the authority
- The scope of the information obtained.

The Court had to decide whether ACC's decision on 7 October 2009 to stop Dr Powell's entitlements as a result of her refusal to complete a 167 form was lawful. The Court noted that there were several previous Court decisions that had upheld ACC's decision to stop entitlements in similar cases.



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## The decision

The case turned on two specific sections of the Accident Compensation Act 2001 (the Act):

- Section 72(1) sets out a number of obligations on ACC claimants who are receiving entitlements. Subparagraph (c) states that a claimant must, when reasonably required to do so, authorise ACC to obtain medical and other records that are or may be relevant to their claim.
- If the claimant unreasonably refuses or fails to comply with the requirements of section 72(1), section 117(3) provides that ACC may decline to provide any entitlement to the claimant.

The Judge ruled that the authorisation required by the 167 form was considerably broader than the authorisation ACC could require under section 72(1)(c) in two respects:

- Section 72(1)(c) only authorises ACC to "*obtain medical and other records that are or may be relevant to the claim*". By contrast, the 167 form requires the claimant to consent to the collection, use and disclosure of "*information*", which is a broader concept.
- The 167 form requires the claimant to consent to information gathered being "*collected, used and disclosed*" for the purposes of information gathering and reporting by ACC. This goes beyond the purpose authorised by section 72(1)(c) of assessing the claim.

On that basis, the Judge ruled that a claimant's refusal to consent to the wide-ranging authority in form 167 could not be an unreasonable refusal or failure to comply with section 117(3) of the Act. ACC's decision to stop Dr Powell's entitlements on the basis that she had refused to sign form 167 was therefore wrong in law.

The Judge recommended that ACC adopt a new consent form as soon as possible. ACC has committed to changing the 167 form within the next fortnight. Following the decision, ACC's general manager of claims management has stated that ACC may owe people substantial amounts of money, due to claimants' entitlements being incorrectly suspended on the basis that they would not sign the 167 form

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## Comment

In some respects, ACC's error was relatively limited. If the 167 form is amended to apply to medical and other records only, and not "information", and the second and third purposes are removed, then ACC would be entitled to rely on non-signature as a basis for stopping entitlements. The Judge did not criticise the duration of the authorisation, nor the range of authorised sources of information.

The Judge also found that it was lawful and appropriate for ACC to seek authorisation to use information for the wider purposes of information gathering and reporting. However, it was not lawful to stop entitlements if a claimant did not provide consent for these purposes.

The broader lesson arising from this decision is that where a statutory power is being exercised, the decision-maker must pay very close attention to the statutory criteria for the exercise of this power. In this case, that required ACC to ensure that its documents and forms were very closely aligned to the language used in the Act.

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