

## Sentencing Amendment Act

**Recent laws could lead to very different outcomes for New Zealanders who suffer injuries as the result of criminal acts - depending on who the offender is. Vero sets out recent changes to the Sentencing Act 2002 and its implications.**

### **What are the changes and why have they been introduced?**

In late 2014, new laws significantly extended the circumstances where New Zealand's courts could order an offender to make payments to a victim of crime, including in situations such as careless driving. These laws amend the Sentencing Act 2002 and only apply when someone is convicted in criminal proceedings. In particular:

- The laws allow the courts to order offenders to pay additional financial compensation over and above what someone may receive under ACC, including loss of current and future earnings stemming from a personal injury. Previously the courts could only order payments for property damage and emotional harm.
- The laws were designed to reverse a Supreme Court decision called *Davies v New Zealand Police*, which found that making reparation awards to cover an injured person's losses over and beyond ACC would go against the core principles of ACC.
- When sentencing an offender to make reparation, the judge will take account of the offender's ability to pay – whether from the offender's own resources or from insurance.

In response to these changes, Vero has amended relevant policies to help protect our customers.

#### **Four key shortfalls under ACC that a reparation order may now cover:**

- Top-up above the 80% ACC cap on weekly compensation i.e. 20% of loss of income up to a maximum of \$1,847.23 per week
- Pay losses above the ACC maximum of \$1,847.23
- Non-earners with future earning potential
- Non-NZ residents injured during a visit, who cannot claim loss of earnings under ACC

### **What is Vero's view on the changes?**

Vero believes the changes – which only 13% of New Zealanders are aware of<sup>1</sup> – have the potential to create unnecessary financial exposure for New Zealanders.

In situations where there is a genuine accident following human error, Vero believes that the ability to get reparation runs counter to the principles of fairness underpinning New Zealand's no-fault ACC scheme.

<sup>1</sup> UMR research commissioned by Vero, March 2016

For more serious crimes, these laws may result in fairer outcomes, but in many cases the laws mean that there could be more inequality for victims, and higher costs for New Zealanders.

We've engaged with the government on this matter and it has undertaken to monitor the situation to see what trends emerge. We are also actively monitoring developments.

### **Same accident, different outcomes**

To highlight the law in action, here is an example of an accident caused by careless driving:

*Stuart is driving through an intersection on a green light. Another driver, Rachel, is travelling across the intersection and is temporarily distracted. She fails to notice the intersection and the red light, and crashes into Stuart's car, causing him significant injuries. She is found guilty of careless driving causing injury.*

*Stuart is unable to work for at least two years and his employer is unable to continue to pay him during this period.*

*He is entitled to ACC up to \$1,847.23 per week, about 60% of his salary. He has a young family, a mortgage and, now, medical bills. He seeks reparation from Rachel to recover the gap between what ACC is paying and his salary before the accident.*

*How much reparation do you think Stuart will be entitled to? The answer depends on who the other driver is. If Rachel has the financial means to pay reparation or has insurance, Stuart could get some, or all, of the amount he seeks. If Rachel is broke with no insurance then Stuart is likely to get nothing.*

The law change means the same accident could result in very different outcomes for New Zealanders. Since the sentencing judge takes account of the offender's means to pay – either through the offender's financial circumstances or insurance – it is inevitable that this consideration, perhaps more than any other factor, will drive the amount that will be awarded to the victim. This means:

- If an offender has the means to pay – either through insurance or through their own means – a victim is more likely to receive greater compensation than if the offender doesn't.
- A victim of more serious offending (such as physical assault) will not be covered by their offender's insurance and so those victims may receive less than victims of, say, careless driving.

### ***More court cases***

A fundamental part of ACC is that anyone – regardless of how they received an injury – is covered. This also means that except in very limited circumstances, those who have suffered a personal injury are not able to sue a party at fault.

A risk from the law is that New Zealand becomes more like other common law based societies such as the United States, Australia, United Kingdom and Ireland, where court cases following minor accidents are common and an entire legal industry springs up around accidents. In Ireland elevated court awards are a factor in the 30 per cent rise in motor insurance premiums, according to experts. As recently as March 2016 the Irish Court of Appeal signalled an end of 'compo culture' as they set out to reduce injury awards by up to 50 per cent.

Research conducted for Vero in 2016 by UMR shows that 39% of New Zealanders feel the changes in New Zealand breach the social principles of the ACC scheme.

### ***Higher costs***

Insurers will inevitably need to pass on the costs of extra coverage, leading to customers paying higher insurance costs, in addition to the ACC levies they already pay.

### ***Further information***

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