

GOOD HEALTH WANGANUI

Cancer misdiagnosis claims may test removal of lump sum ACC

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The launch of legal action by a group of patients from Wanganui Hospital who received incorrect cancer diagnoses is expected to test the government's decision to remove lump-sum accident compensation.

Two weeks ago the corporation's medical misadventure unit had received eight claims as a result of the case. Wanganui Hospital has said 60 people are affected, 28 seriously.

ACC spokesman Fred Cockram said five of the claims were from people who had had unnecessary treatment. Two were from people who did not have treatment they needed. One required further details, he said.

A specialised ACC officer has been assigned to cover the case in Wanganui.

Dunedin lawyer **Grant Cameron**, who successfully represented claimants in the \$24 million Renshaw Edwards case, announced last week he had been retained by 15 patients.

In the first instance, the intention was to seek exemplary and punitive damages from the Crown. So far he had a "goodly chunk of the worst end of cases".

While a suit for exemplary damages is technically outside the scope of ACC, Mr Cameron acknowledges that inevitably his case will collide with the government's ACC reforms.

Mr Cameron said he had not yet decided his course of action, but hoped to be able to reach a negotiated settlement with the government.

There were two lines of attack on the government for compensation.

The first was through the ACC, which will in any event pick up the costs of any medical treatment required to correct harm done as a result of misdiagnosis, and the second was to seek exemplary damages.

Mr Cockram said it was quite possible a case taken on this basis would test a "grey area" of the law - namely whether a claim under the old law could be laid in spite of the 1992 amendments cancelling that right.

Such a claim would also test "whether by implication changes to the act had returned the right to sue for personal injury," he said. Mr Cameron said it was impossible to take a broad brush approach to cases. Each case would have to be examined from both an ACC and an exemplary damages viewpoint.

Whether it chooses to fight or roll over on the compensation for Wanganui victims, the government faces a dilemma.

If it makes a one-off payment, it runs the risk of opening the floodgates to compensatory claims against the Crown. If it refuses to pay, the 1992 ACC changes will be tested in court with the probable outcome that the floodgates will be opened anyway.

Alternatively, a court decision may force an amendment to the Accident Compensation Act. Mr Cameron agreed the potential challenge to ACC law was a strong bargaining chip.

The "flipside" was that the government might see a "vicarious benefit" in placing health quality control issues under a spotlight in court, he said.

In this case, it is possible the government could invite a court probe of the Wanganui situation in order to push home its point about the risks of decentralised rural health services.

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