

ACC overpaid compensation in error but agreed to write-off debt

Legislation	Ombudsmen Act 1975, Accident Rehabilitation and Compensation and Insurance Act 1992
Agency	Accident Compensation Corporation
Ombudsman	Sir Brian Elwood
Case number(s)	C5336
Date	1999

Accident Compensation Corporation overpaid compensation in error and then tried to recover the overpayment debt from young debtor in poor financial position—Ombudsman found for the complainant and ACC agreed to write off debt and revise debt recovery policy

The complainant, a young person who had been in low paid employment only a short time when he was injured, received compensation payments in excess of his entitlement through no fault of his own. As a consequence, he incurred a debt to the ACC Corporation of several hundred dollars. Faced with a lengthy period of unemployment as a result of his injury and minimum weekly compensation, he believed it was unreasonable of the Corporation to seek to recover the debt. The Corporation agreed to defer taking recovery action until he was back in the work force, but did not agree to remit the debt.

The Corporation's authority to remit debts arising from overpayments was contained in section 77(2) of the Accident Rehabilitation and Compensation Insurance Act 1992. That provision identified the criteria which the Corporation is required to use when considering whether to remit all or part of a debt arising from an overpayment. The three criteria were:

- the debtor did not intentionally contribute towards the debt;
- the debtor received the overpayment in good faith; and
- has so altered his/her position in reliance upon the validity of the payment that it would be inequitable to require repayment of the debt.

In considering the complainant's case, the Corporation accepted that he had not contributed towards the debt and had received the money in good faith. However, it did not believe that it would be inequitable to seek to recover the overpayment once the complainant had returned to work.

In fact, the weekly compensation payable to the complainant, by virtue of his low previous earnings, was insufficient to meet his essential outgoings and he was going into debt. It also appeared likely that it would be some time before he was able to return to work. In these circumstances, the view was formed that it was unreasonable of the Corporation to add to the complainant's debt situation by insisting on recovering the amount by which he had been overpaid through no fault of his own. The Corporation was asked therefore to reconsider its position.

The Corporation agreed to remit the debt. At the same time, it took the opportunity to review its debt recovery policy and to delegate authority to write off small overpayments in terms of section 77(9) of the Accident Rehabilitation and Compensation and Insurance Act 1992.

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