

**IN THE DISTRICT COURT  
AT NAPIER**

**I TE KŌTI-Ā-ROHE  
KI AHURIRI**

**CRI-2022-041-000947**

**WORKSAFE NEW ZEALAND**  
Prosecutor

v

**LOGGED ON LOGGING 2020 LIMITED**  
Defendant

Date: 28 August 2024

Appearances: Mr S Cossey for the Prosecutor  
Mr N Beadle for the Defendant

Date of Decision 28 August 2024

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**DECISION OF JUDGE G A REA ON CONSEQUENTIAL LOSS  
REPARATION AND PROSECUTION COSTS**

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[1] On 15 December 2023 I sentenced the Defendant following its plea of guilty to a charge that on 30 June 2021, in the Aropaoanui Road area of Tangoio, Hawkes Bay, it being a PCBU and having duty to ensure as far as reasonably practicable the health and safety of workers who worked for that PCBU, including Jake William Duncan, while the workers were at work in the business or undertaking, namely work at its contracted site at Skid 3, 257 Aropaoanui Road, Tangoio, Hawkes Bay, did fail to comply with that duty and that failure exposed workers to the risk of serious injury or death. The business or undertaking was forestry work and as a result of the Defendant's failure to comply with its duties Mr Duncan was killed.

[2] At the end of the sentencing there were two issues left unresolved. The principal issue was the amount of consequential loss reparation that the Defendant

should pay for the deceased's biological child and his two de facto stepchildren. The other issue was the amount of costs that the Defendant should be ordered to pay to the Prosecutor.

[3] For some time after the sentencing the issue of consequential loss reparation could not be agreed between the parties. Each side put forward affidavit evidence from an expert but the experts were unable to agree on what the amount of emotional harm reparation should be. I concluded that the only way to resolve the matter was to resume the Court hearing and have each of the experts give their evidence and be cross examined with a view to me determining on that evidence what the appropriate figure would be.

[4] As I understand it the parties were aware that the Accident Compensation Corporation had a mechanism for determining consequential loss in circumstances similar to this case. As I understand it, it was agreed that Mr Cossey, on behalf of the Prosecutor, and with the approval of Defence Counsel, would request the relevant information from the Accident Compensation Corporation under the Official Information Act 1982.

[5] That request was made by Mr Cossey and he subsequently received a comprehensive response from ACC. The prosecution expert was then instructed to recalculate the consequential loss using ACC's methodology.

[6] Assessed on that basis the consequential loss was recalculated as being \$202,187.00. That figure is accepted by Counsel for the Defendant.

[7] Because Counsel are agreed on the figure I make an order that the consequential loss reparation to be paid by the Defendant is the sum of \$202,187.00. I also record that in arriving at this decision I do not need to consider any further evidence or any further submissions from Counsel. I record that the matter has been sensibly resolved by taking into account entitlements under the Accident Compensation Act and by the adoption of the methodology used by ACC in their letter of 2 May 2024 sent to Mr Cossey.

[8] I consider that it is sensible to incorporate the ACC advice as an addendum to this judgment and I do so. There may be reasons, which I am not familiar with, why either or both Counsel do not consider that to be an appropriate course. If that is the case they should file a memorandum accordingly and I will revisit the matter.

[9] The agreed amount of cost of \$3310.36 was ordered to be paid in paragraph [12] of my sentencing notes of 15 December 2023. No further order is required.

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Judge G A Rea

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 28/08/2024

"Addendum"

2 May 2024

Sam Cossey  
[Sam.Cossey@worksafe.govt.nz](mailto:Sam.Cossey@worksafe.govt.nz)

Kia ora Sam

Your Official Information Act request, reference: GOV-031499

Thank you for your email of 3 April 2024, asking for the following information under the Official Information Act 1982 (the Act):



He Kaupare. He Manaaki.  
He Whakaora.  
prevention. care. recovery.

RECEIVED  
25 JUL 2024

*To assist the Court's consideration of consequential loss, WorkSafe seeks from ACC information about the actuarial calculation for aggregated spousal entitlement carried out under clause 67(2) of Schedule 1 of the Act. The Court has stated that WorkSafe seeking this information from ACC is a common-sense way forward to achieve consistency of approach in calculating consequential loss. We would therefore appreciate it if you could provide information about the following:*

*1. The methodology adopted when carrying out the actuarial calculation, including but not limited to:*

- a. *what information is taken into account.*
- b. *how is the base rate of entitlement calculated*
- c. *are there any adjustments for inflation (CPI) or other variations other than CPI and if so, how are they calculated and applied, and the source of that information*
- d. *when aggregating any entitlement, if any risk-free discount rates for valuation of future cash-flows by Government departments published by New Zealand Treasury are applied*
- e. *if any discounting approaches or conventions are applied*
- f. *if the aggregation allows for mortality/survival for those entitled, and if so what criteria are used.*
- g. *is there a specific formula that is used*
- h. *how does ACC determine when the calculation is applied, and what criteria are used in setting the calculation date?*

- 2. Any internal guidance or advice applied by ACC when carrying out the actuarial calculation*
- 3. Any other information that is relevant to ACC's calculation under clause 67.*

#### **Background to spousal fatal weekly compensation**

Dependants and spouses/partners of a deceased person whose death was caused by an event covered by the Accident Compensation Act 2001 (the AC Act) are eligible for fatal weekly compensation. Under Clause 67 of Schedule 1, spouses or partners may choose to convert their weekly payments to one or more aggregated payments. Once aggregated payments are paid, the spouse is no longer eligible for any further weekly compensation.

The maximum fatal weekly compensation paid for a fatal claim is 80% of the deceased's previous earnings. Schedule 1 of the AC Act assigns a maximum of 60% of the 80% to the spouse (clause 66), and 20% of the 80% to each child (clause 70 and clause 71). The total amount payable is capped at 80% of the deceased's previous earnings (clause 74). Therefore, payments for spouses with more than two eligible dependants (children/other) are reduced pro rata so the total payments do not exceed the maximum payable.

#### **Information used in the actuarial calculation**

The assumptions used for the calculations are in line with the assumptions used for ACC's annual outstanding claims liability (OCL) valuation. The assumptions and parameters for the calculation are updated six-monthly, with the latest values available at the time of update. The main assumptions/parameters used are:

- life expectancy at selected ages from New Zealand Total Population Period Life Tables for Female and Male (currently 2017-2019),
- projected Labour Cost Index (LCI) rates,
- projected Average Weekly Earnings (AWE) rates,
- minimum weekly earnings, and
- interest/discount rate.

Life expectancy information is sourced from [StatsNZ New Zealand period life tables](#).

Projected LCI/AWE rates are based on the projected CPI rates from the Treasury economic model with additional margin (currently assumed in ACC's OCL valuation to be 1% for AWE and 0.2% for LCI).

Minimum weekly earnings are taken from [Employment New Zealand](#).

The interest/discount rate is taken from the 7-year swap rate in NZ Swap Market Closes from New Zealand Financial Markets Association (NZFMA). This is as an estimate of the single effective risk-free discount rate, assuming the average duration of entitlement to fatal spouse weekly compensation payments is seven years (estimated from historical claims).

Additional information used for the calculations is specific to the individual spouse/partner requesting the aggregated amount. This includes:

- Current weekly compensation amount paid to the spouse.
- The offer effective date: This is the first day on which the spouse would not be eligible for future weekly payments if they accepted the offer of an aggregated payment. It can be any date in the future before the weekly compensation cease date.
- Weekly compensation cease date: This is the last day on which the spouse would be eligible for weekly compensation under clause 66, Schedule 1 of the AC Act.
  - If the fatal claim was made under an earlier Act, the rules under the relevant legislation are applied to determine the cease date.
- Spouse date of birth.
- Spouse gender.
- Latest indexation year as at 1 July or 1 April (see [section 115 of the AC Act](#)):
  - This is the year to which indexation has been included in the weekly compensation amount (e.g. 2020 if the last indexation was 1 July 2020) to identify when the first inflation adjustment (indexation) is needed.
  - From 1 April 2023, an amendment to the AC Act 2001 changed the date on which indexation is applied from 1 July to 1 April, if weekly compensation is based on the minimum weekly earnings.
- Extra mortality loading from an underwriter's assessment of spouse medical notes.
- The number of payments requested (may be paid as a single aggregated payment or multiple payments).
- Requested dates of payments.

#### How the single aggregated payment amount is calculated

ACC determines the 'date of quote'. This is the day before the offer effective date. The first future weekly compensation payment date is one week after the date of quote. All subsequent future weekly compensation payment dates are a week apart. The final weekly compensation payment date does not exceed the weekly compensation cease date.

The present value of each weekly compensation payment on a given future payment date is calculated by multiplying the following three terms:

1. payment amount,
2. adjusted cumulative survival probability, and
3. discount factor.

#### Payment amount

First, the payment amount starts with the current weekly compensation gross amount. It is indexed (inflated) annually (as required by the AC Act 2001) by:

- the AWE rate as at 1 April if the spouse is currently receiving their fatal weekly compensation payments based on the minimum weekly compensation amount (80% of minimum weekly earnings),
- by the LCI rate as at 1 July if the spouse is currently receiving their fatal weekly compensation payments based on the deceased's actual earnings.

#### Survival probability

Next, the underlying source of survival probability is the Life Tables, where the weighted average mortalities of male and female are used for gender diverse and unknown gender.

The probability that the spouse of age at the time of payment date dies within a year is obtained from the Life Table. This probability is converted to the probability of dying within a week. The weekly probability is adjusted for:

- a 50% reduction in mortality assumed during the first year of payment (i.e., the first 52 payments) and
- any additional mortality loading from an underwriter's assessment of spouse medical notes.

The adjusted weekly survival probability is iteratively multiplied to obtain cumulative survival probabilities on subsequent payment dates.

#### Discount Factor

Finally, the discount factor for a given future payment is based on the interest rate (7-year swap rate), discounting to the date of quote.

The single aggregated payment amount is then calculated by summing all present values of weekly compensation payments on future payment dates. The value of the single aggregated payment amount quoted is rounded to the nearest Integer.

#### **How multiple aggregated payments amounts are calculated**

A spouse may choose to receive their weekly compensation as either one single aggregated payment or any number of aggregated payments at least six months apart. To calculate multiple aggregated payment amounts, the single aggregated payment amount is first calculated as described in the previous section. Next, the level payment amount to be paid on each requested payment date is calculated. This is the value such that the sum of present values of the level payment amount over the requested payment dates equals the single aggregated payment amount. This calculation uses the same discount factors and cumulative survival probabilities for each specified payment date as those used for calculating the single aggregated payment amount.

This means that, whether the spouse chooses to receive their weekly compensation payments as a single aggregated amount, as a number of level aggregated payments at least six months apart, or as weekly payments, the sum of the present value of all future payments at the quote date is the same.

#### **Summary**

A spouse/partner of a deceased claimant is entitled to receive fatal weekly compensation, with the option to opt for one or more aggregated payment instead of weekly payments. The spouse receives



compensation at a rate equivalent to 60% of the deceased claimant's weekly compensation, subject to adjustments in cases where two or more dependents qualify for fatal weekly compensation.

The spouse receives these weekly payments for a fixed duration specified in the ACC legislation. Specifically, clause 66(5) of Schedule 1 of the AC Act, states that weekly financial support for spouses of a deceased claimant ceases at the end of five years from the date it was first payable, or where applicable until the youngest child of the deceased under their care has turned 18, or no longer has care of all other dependents of the deceased, whichever date is later.

The calculation of the single aggregated payment amount hinges on several factors, including:

- Adjusting the payment amounts for future inflation using the projected Average Weekly Earnings (AWE) rates as at April 1 if the spouse is currently receiving the minimum weekly compensation, or the projected Labour Cost Index (LCI) rates as at July 1, if otherwise.
- The probability of the spouse being alive at each payment date, using mortality by age and gender from NZ Life tables.
- Applying a 50% reduction to the probability of mortality in the first year of payments, alongside adjustments to mortality rates based on an underwriting assessment of the spouse's medical notes.
- Applying discounting factors using the 7-year swap rate, an estimate of the single effective discount rate for the average duration of fatal weekly compensation paid to a spouse.

When the spouse requests multiple aggregated payments, a level payment is made on the requested payment dates.

**If you have any questions about this response, please get in touch**

You can email ACC's actuarial team at [actuarialrequests@acc.co.nz](mailto:actuarialrequests@acc.co.nz) if you have any questions or would like to have a discussion about any of the above information.

Ngā mihi

Christopher Johnston  
Manager Official Information Act Services  
Government Engagement