



## COVERSHEET

<b>Minister</b>	Hon Carmel Sepuloni	<b>Portfolio</b>	ACC
<b>Title of Cabinet paper</b>	Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill: Agreement to amendment	<b>Date to be published</b>	11 August 2022

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
May 2022	Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill: Agreement to amendment	Office of the Minister for ACC
18 May 2022	Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill: Agreement to Amendment SWC-22-MIN-0088 Minute	Cabinet Office

**Information redacted: NO**

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## **Budget-Sensitive**

Office of the Minister for ACC

Cabinet Social Wellbeing Committee

## **Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill: agreement to amendment**

### **Proposal**

- 1 This paper seeks agreement to add new changes to the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill (the Bill) that would amend the weekly compensation provisions in the Accident Compensation Act 2001 (the AC Act), by way of a Supplementary Order Paper.

### **Relation to government priorities**

- 2 This proposal aims to deliver on the Labour Party's 2020 Election manifesto commitment to "return ACC to its original purpose of assisting all New Zealanders who have had an injury."

### **Background**

- 3 The Bill amends the AC Act to extend cover to a list of maternal birth injuries. It also reverses some of the changes made to the AC Act by the previous National Government in 2010 and makes other minor amendments.
- 4 The Education and Workforce Select Committee is due to report back on the Bill on 24 June, with the second reading scheduled for June/July.
- 5 The Bill responds to information I obtained from ACC that showed different population groups, including women, do not have equity of access to or outcomes from the ACC Scheme. It represents a first step in our mahi to improve the gender balance, fairness and equity of the Scheme.
- 6 Under the AC Act, the minimum level of weekly compensation for earners and Loss of Potential Earnings (LOPE) compensation for non-earners is set by reference to the minimum wage. However, these rates are only adjusted for changes to the minimum wage as at 1 July each year, three months after the minimum wage is usually set.
- 7 Cabinet agreed on 11 April 2022 [CAB-22-MIN-0129 refers] to include the initiative "Align the timing of increases to the minimum and LOPE rates of weekly compensation with increases to the minimum wage" in the final Budget package. This initiative will benefit claimant groups, including Māori and Pacific peoples, who are more likely to be receiving LOPE after suffering an injury that is covered by ACC.
- 8 This initiative, and the levy funded aspect of the change, require amendment to the AC Act in order to implement the decisions made by Cabinet.

- 9 To ensure that the changes apply before the next minimum wage change is implemented next year, I consider the Bill should be amended to include an amendment to the AC Act to align the timing of increases to the minimum and LOPE rates of weekly compensation with increases to the minimum wage.
- 10 Subject to Cabinet decisions on this paper, Parliamentary Counsel Office will draft a Supplementary Order Paper (SOP) amending the Bill. I anticipate seeking agreement from the Cabinet Legislation Committee in June 2022 to print the SOP for the House of Representatives. The SOP would then be considered during the Committee of the whole House debate on the Bill.

**Proposed changes to the Bill relating to aligning minimum weekly compensation with minimum wage changes**

- 11 I propose to amend the Bill to implement the Budget 2022 bid “Align the timing of increases to the minimum and LOPE rates of weekly compensation with increases to the minimum wage,” and the associated levy funded weekly compensation change. This adjusts the timing of changes to ACC’s minimum full-time weekly compensation rate so that it aligns with changes made under the annual Minimum Wage Order.
- 12 Under the AC Act, the minimum level of weekly compensation for earners and LOPE compensation for non-earners is set by reference to the minimum wage. Individuals who are paid the minimum wage (or who would meet the criteria for LOPE) and who are injured and are receiving weekly compensation or LOPE currently only receive an increase in those amounts three months after an increase in minimum wage (usually) takes effect.
- 13 There is no policy rationale for this difference, which is often criticised by stakeholders. Implementing the proposed amendment will address this and enhance fair compensation under the AC Act by providing alignment between claimants and their working peers.
- 14 The proposed change will also benefit some claimant groups, including Māori and Pacific peoples, who are more likely to be receiving LOPE after suffering an injury that is covered by ACC.
- 15 The funding agreed in Budget 2022, for the portion of the initiative funded out of Government appropriations (the Non-earners Account funding for LOPE) rounds out to \$1 million per annum, from 2022/23.

*Aligning the rates would be administratively simple*

- 16 Implementing this initiative requires a minor technical amendment to Schedule 1, clause 42(3) of the AC Act, which currently requires changes to the minimum full-time weekly compensation to happen on 1 July each year.
- 17 I am proposing that the AC Act be amended to replace the reference to 1 July with wording that refers to the date on which the minimum wage order comes into effect so that the minimum full-time weekly compensation rate amount

would align with the minimum wage at the time the new minimum wage rate comes into effect.<sup>1</sup>

- 18 The Minimum Wage Order is usually gazetted in February, before coming into force on 1 April. This would provide ACC with enough time to operationalise the changes.

### **Financial Implications**

- 19 The annual recurring cash cost of this change would be approximately \$4 million - \$7 million.<sup>2</sup> ACC has estimated that the impact to its outstanding claims liability (OCL) would be \$30 million - \$50 million.<sup>3</sup>
- 20 A significant component of the estimated OCL impact relates to claimants receiving compensation for loss of potential earnings (LOPE), as they receive a rate tied to the minimum wage. To fund this, an increase to the Non-Earners' Appropriation of \$1 million per year has been approved in Budget 2022, beginning in the 2022/23 Financial Year.
- 21 There is also an expected increase in the funding required for the ACC levied accounts of \$7 million - \$11 million per year, which correlates to:
- 21.1 Less than 1c on the Earners' and Work Accounts
  - 21.2 \$0.30 - \$0.50 increase to the Motor Vehicle Levy.
- 22 These levy impacts cover both the cash costs and expected OCL impacts. Changes will likely be reflected in the next levy round consultation in 2024 for the levy period 2025/26 to 2027/28.

### **Legislative Implications**

- 23 The proposals in this paper require an amendment to the AC Act 2001, by way of an SOP to the Bill. The Bill is currently before Parliament and has a category 2 priority (must be passed in 2022) on the 2022 Legislation Programme. The SOP would insert a new amendment into the Bill to make the change to Schedule 1, clause 42(3) of the Accident Compensation Act 2001.

### **Impact Analysis**

#### *Regulatory Impact Statement*

- 24 The Treasury's Regulatory Impact Analysis team has determined that the proposal to align changes to the ACC minimum weekly compensation and

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<sup>1</sup> The wording will aim to allow for scenarios where changes occur outside of the usual 1 April uplift ensuring that the minimum full-time weekly compensation rate amount would align with the minimum wage as the time the new minimum wage rate comes into effect.

<sup>2</sup> This is based on an assumption of minimum wage increases occurring every year, so may be a conservative estimate.

<sup>3</sup> The OCL is the estimated future cost of all claims that have already occurred, and this figure reflects that cumulative effect of the annual cost into the future, for existing claims.

LOPE rates with minimum wage changes is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

### *Climate Implications of Policy Assessment*

- 25 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

### **Population Implications**

- 26 In 2020/21 approximately 1,100 accepted ACC claims received LOPE weekly compensation payments. In the same year, 11,769 claimants who are earners (ie not LOPE claimants) received weekly compensation for loss of earnings at the minimum fulltime rate (approximately nine per cent of total claims for non-LOPE weekly compensation).
- 27 During the period from 1 July 2015 to 30 June 2021, of the total accepted claims involving LOPE payments, 54% were for men 46% were for women. Of claims lodged from 2015/16 to 2020/21 that received weekly compensation at the minimum rate (80% of the minimum wage), 32% were for women and 68% were for men.
- 28 Of the accepted claims that received LOPE in this period, about 30 per cent were for Māori and Pacific peoples.
- 29 I note that MBIE's 2021 minimum wage review found that that a high proportion of Māori and Pacific Peoples are minimum wage earners.
- 30 The proposed change will therefore disproportionately benefit these population groups and the Bill will disproportionately benefit women.

### **Next Steps**

#### *Tabling of Supplementary Order Paper*

- 31 Subject to Cabinet decisions on this paper and drafting of the SOP by Parliamentary Counsel Office, I anticipate seeking agreement from the Cabinet Legislation Committee in June 2022 to print the SOP for the House. The SOP would then be considered during the Committee of the Whole House debate on the Bill.

### **Human Rights**

- 32 The proposal contained in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Consultation**

- 33 In preparing this paper the Ministry of Business, Innovation and Employment consulted with the Accident Compensation Corporation. The Department of the

Prime Minister and Cabinet was informed.

**Proactive Release**

- 34 I intend to proactively release this Cabinet paper after the SOP has been tabled at the Committee of the Whole House stage.

**Recommendations**

The Minister for ACC recommends that the Committee:

- 1 **note** the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill (the Bill) amends the Accident Compensation Act 2001 (AC Act) to extend Accident Compensation Scheme cover to a specified list of maternal birth injuries which share similar features to other physical injuries that are already covered as accidents, and includes an additional five policy changes and seven technical amendments;
- 2 **agree** the Bill be amended to align the timing of increases to the minimum and LOPE rates of weekly compensation with increases to the minimum wage;
- 3 **invite** the Minister for ACC to issue drafting instructions to Parliamentary Counsel Office (PCO) to give effect to the policy decision through the development of a Supplementary Order Paper (SOP);
- 4 **authorise** the Minister for ACC to make decisions, consistent with the proposals in these recommendations, on any issues which arise during the drafting process;
- 5 **note** subject to Cabinet decisions on this paper and drafting of the SOP by PCO, I will seek agreement from the Cabinet Legislation Committee in June 2022 to print the SOP for the House, in order for it to be considered during the Committee of the Whole House debate on the Bill.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for ACC