



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	Proposals for 2022 Accident Compensation Amendment Bill	Date to be published	28 November 2022

List of documents that have been proactively released		
Date	Title	Author
August 2022	Proposals for 2022 Accident Compensation Amendment Bill	Office of the Minister for ACC
3 August 2022	Proposals for 2022 Accident Compensation Amendment Bill SWC-22-MIN-0141 Minute	Cabinet Office

Information redacted: YES

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Some information has been withheld for the reasons of Constitutional conventions.

In Confidence

Office of the Minister for ACC

Cabinet Social Wellbeing Committee

Proposals for 2022 Accident Compensation Amendment Bill

Proposal

- 1 This paper seeks Cabinet agreement to amend the Accident Compensation Act 2001 (AC Act) to:
 - 1.1 introduce a duty for ACC to report annually on how different populations groups are accessing its services
 - 1.2 amend the purpose of ACC to assist all New Zealanders who have had an injury and,
 - 1.3 bring forward eligibility for the minimum rate of compensation from the sixth to the second week of incapacity.

Relation to Government Priorities

- 2 The first and second proposals deliver on our 2020 Election Manifesto to “return ACC to its original purpose of assisting all New Zealanders who have had an injury”. The third proposal meets our Manifesto commitment of “addressing the changes National made when last in office, which unfairly disadvantaged tens of thousands of New Zealand workers” by reversing a change which restricted entitlements.

Executive Summary

- 3 As part of a package to address inequities in accessing the AC Scheme, I am proposing to introduce a new duty for ACC to report on how different population groups are accessing its services and to refine ACC’s purpose in the AC Act.
- 4 Data I have obtained from ACC shows that Māori are less likely to claim and benefit from the AC Scheme, particularly Wāhine Māori. It also shows that females have slightly fewer injuries covered by the AC Scheme than males (48 percent compared to 52 percent of accepted claims respectively), and each claim costs the AC Scheme about a third less on average in entitlements.
- 5 It also shows that Pacific people are less likely to claim, and exit the AC Scheme more quickly when they do. Asian people lodge fewer new claims when compared to other ethnicities, but are more likely to have their claim accepted. Also, many disabled people have injuries covered by ACC, as well as separate disabilities which are not injury-related. Navigating across two or more support systems can be complex to manage.

- 6 My proposals to amend the purpose of the ACC and introduce a new reporting duty are aimed at better understanding the barriers to access faced by different population groups. This will support and incentivise successive governments to develop targeted future reform to the AC Scheme.
- 7 In 2010, the previous National Government made changes to the AC Act to try to lower the AC Scheme's costs by restricting access to cover and entitlements.
- 8 We committed to addressing these changes as part of our 2020 Manifesto. The Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill has begun delivering on this commitment and the third proposal in this paper continues this by bringing eligibility for the minimum rate of compensation back from the sixth to the second week of incapacity.
- 9 This proposal will also support my work to address equity issues in the AC Scheme by enhancing access to ACC compensation for low income earners.
- 10 These proposals have no or negligible financial impacts on the Crown and levy payers. Future reforms resulting from a better understanding of the barriers to access faced by different population groups may have financial impacts, but these will be subject to separate decision-making processes.

Background

- 11 In January 2022, I submitted a legislative bid to include an Accident Compensation Amendment Bill (Amendment Bill) on the 2022 legislative programme, with a priority four rating (to be referred to select committee in 2022). The Amendment Bill focuses on improving access for those experiencing access barriers to the AC Scheme – in particular, women, Māori, Pacific peoples, disabled people, and ethnic communities.
- 12 The Amendment Bill is my second package of reform to the AC Scheme. It complements the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill, which will have its Second Reading today.
- 13 The Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill has focused on expanding AC Scheme cover for the first time since 2008. These next reforms are about ACC's focus as an organisation and putting in place the building blocks to inform future reforms to Scheme settings. Seeking to understand barriers to access should be a constant and embedded feature of the future Scheme.
- 14 The AC Scheme was set up fifty years ago. In that time, it has done an amazing job serving New Zealanders, but not all of us are able to access it equally. The package of proposals in this Bill are the next steps on the journey to realising our vision of a more equitable and modernised ACC.
- 15 Constitutional conventions

Constitutional conventions

16 Constitutional conventions

17 I have also included a proposal which meets part of our 2020 Manifesto commitment to address ‘the changes National made when last in office, which unfairly disadvantaged tens of thousands of New Zealand workers’.

I seek Cabinet agreement to introduce a new duty for ACC to report annually on how different population groups are accessing its services

18 ACC has become a treasured part of Aotearoa New Zealand’s social fabric, helping rehabilitate many thousands of people each year following an accident. The benefits of ACC support can be lifelong, improving the ability for people to fully participate in society, reducing wage scarring for those in employment, and reducing the probability of further injury and disability.

19 However, not everyone is able to access ACC equally. Some key disparities include that, overall:

19.1 Māori are less likely to claim and benefit from the AC Scheme. Despite making up about 16 per cent of the population, Māori accounted for just 12 per cent of new accepted claims in 2020. In particular, Wāhine Māori are under-represented in ACC claims and entitlements. Māori are also more likely to suffer severe injury, but less likely to access treatment after serious injury.

19.2 Females have slightly fewer injuries covered by the AC Scheme than males (48 percent compared to 52 percent of accepted claims respectively), and each claim costs the AC Scheme about a third less on average in entitlements.


19.3 Pacific people are less likely to claim, and exit the AC Scheme more quickly when they do. Pacific people make up about eight percent of the population, but account for only around six percent of ACC claims lodged annually, and five percent of claims costs. This disparity is largely driven by an under-representation in claims from Pacific females, who make up only 39 percent of claims from Pacific people and 28 percent of costs.

- 19.4 Asian people lodge fewer new claims when compared to other ethnicities, but are more likely to have their claim accepted. Asian people are also less likely to suffer severe injury, but like Māori and Pacific people, are less likely to access treatment after serious injury.
- 19.5 Many disabled people with injuries covered by ACC have separate disabilities which are not injury-related and therefore not covered. Navigating two or more support systems can be complex to manage.
- 20 The drivers of these disparities are complex and influenced by wider determinants of health and wellbeing. ACC has done a considerable amount of research and analysis, predominantly using data collected through the health care system, and is always seeking to gather better insights about the underlying causes of these disparities and how to address them. From a system stewardship perspective, there is still much that is not understood about what is driving these disparities and trends. ACC will need to work with the health sector to access, and support the improved collection of, data to better understand where the disparities in accessing the AC Scheme are.
- 21 I am proposing to amend the AC Act to include a new duty for ACC to report annually on how different population groups are accessing its services, with research and analysis to understand the drivers or causes of any under claiming and disparities.
- 22 This change is aimed at better understanding the barriers to access faced by the populations ACC supports, to assist Governments developing targeted future reform to the AC Scheme and allow ACC to focus on operational improvements, where it will have the biggest impact improving access.
- 23 The key features and benefits of the new duty include:
- 23.1 A requirement to produce a report focused on levels of access to the various parts of the AC Scheme across population groups, highlighting any disparities in access, and identifying any barriers to access, and the drivers or causes of any disparities.
- 23.2 The duty will not be prescriptive about which population groups to focus on each year, as these will change over time depending on the data. I expect these to change little over the short to medium term, but may change over the longer term. The expectation will be that ACC tracks levels of access across the population as a whole and reports in more detail on those groups that are showing disparities in access.
- 23.3 ACC will have flexibility around its approach to the reports, provided the reports show the levels of access ACC is achieving, highlight any disparities, and examine the drivers or causes of those disparities. This will ensure the duty is enduring.
- 23.4 A requirement to publish reports annually and present these to the House of Representatives. The first report must be published by the

end of the 2023/24 financial year (by 1 July 2024), and within each financial year period thereafter.

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Constitutional conventions



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However, these equity issues are complex and have developed over the 50 years since the ACC legislation passed through the House. Resolving them will require a concerted effort by ACC and the Government over time. As a Crown Entity, ACC's day-to-day operations are carried out at arm's length from Ministers. This limits me to only being able to direct ACC on high level policy matters, which ACC can choose to implement how it wants, and will not necessarily endure as a priority for future ministers and governments. Putting a duty into legislation will give this kaupapa durability and ensure a longer-term change of focus for ACC that cannot easily be achieved with the current performance management framework for Crown Entities.

I seek Cabinet agreement to refine the AC Act's purpose to ensure ACC's focus is on providing cover and entitlements to all eligible injured New Zealanders


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The current wording in the AC Act's purpose is focused on ACC's obligations to claimants getting what they are entitled to, rather than all eligible New Zealanders. The relevant subsection of the AC Act's purpose is section 3(c), which is on the following page—

<p>3 Purpose</p> <p>The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs), through—</p> <p>(c) ensuring that, where injuries occur, the Corporation's primary focus should be on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to the maximum practicable extent a claimant's health, independence, and participation:</p>
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I propose to make Parliament's intent clear – that ACC's focus is on all injured people eligible for AC Scheme cover, rather than just claimants. Currently, there is no clear reference in the AC Act to the intent to support all eligible injured people, including those who have not yet made a claim (but might if they had better access), access, and benefit from, the AC Scheme.

- 28 To achieve a refined purpose focused on ensuring all eligible injured people receive the support they are entitled to, ACC will need to build an understanding of who is and is not accessing its services, why, and how it can address any underclaiming. A refined purpose, alongside the proposed new duty (**proposal one**) to report annually on levels of access, will complement work underway to address the equity of access issues shown in the data.
- 29 Proposals one and two will result in greater:
- 29.1 transparency on the levels of access ACC is achieving,
 - 29.2 focus on the drivers or causes of any barriers to access, and
 - 29.3 accountability for results.
- 30 A better understanding of barriers to access could inform a number of future reforms. For example, a future Government may consider a Te Tiriti clause for the AC Act, which would require considerable engagement with Māori, underpinned by a full policy process to determine the specific measures required in the ACC context to give effect to the principles of Te Tiriti. Understanding the barriers to access for Māori would provide important context and background for this work and may also inform future changes to the reporting requirement.
- 31 Constitutional conventions 
- 32 Future governments may also consider changes to the AC Scheme to improve equity of access, such as weekly compensation settings, co-payments for treatment, location of services, or more help with time off work. All of these types of reforms would benefit from a more nuanced and refined understanding of what specifically is causing the current barriers to access.
- 33 It will also allow a more joined up approach to solving some of the long-standing barriers to access across the social sector. The Government is already making changes to the health, disability and welfare systems with reforms underway in all of these sectors. These reforms all aim to address issues of access across different populations. The impact of these reforms will be felt in the AC Scheme, particularly the health reforms, where changes in the way primary and secondary care are delivered should improve the extent to which Māori, Pacific people, and disabled people in particular engage with health services, which for many is the gateway to accessing ACC.
- 34 Inside and outside of the health sector, all organisations must balance multiple, and sometimes competing, objectives to deliver their services. These objectives can generally include, but are not limited to, financial sustainability, various stakeholder interests, and delivering a quality service to clients/customers. Because of the way ACC has been set up, it could decide to give financial sustainability more weight over other objectives, resulting in an incentive to focus on those already accessing the AC Scheme. A refined

purpose would also ensure ACC's focus on ensuring all eligible injured New Zealanders are able to access, and benefit from, the AC Scheme is enduring.

- 35 There is a risk that these changes could create an unintended expectation of ACC to provide more generous cover and entitlements to groups that typically experience access barriers to the AC Scheme. The Courts could interpret the changes to mean that Parliament is intending ACC to provide more generous cover and entitlements to these groups. This risk can be mitigated through the drafting of the new wording and provisions and clear statements in the legislative statement and Departmental Report as to the Bill's intent.

I seek Cabinet agreement to bring forward eligibility for the minimum rate from the sixth to the second week of incapacity

- 36 Weekly compensation is intended to enable claimants to meet their everyday expenses and focus on recovery. It is paid at 80 percent of pre-injury earnings, and is paid to eligible claimants regardless of whether a worker's injury occurs at work or elsewhere.
- 37 One of the principles underpinning the AC Act is that people initially rely on their own resources for a period before becoming eligible for weekly compensation. The minimum rate recognises that some people are in very low paid full-time jobs and their rehabilitation may be delayed as a result of an inadequate income. The minimum rate of weekly compensation is set at 80 percent of the minimum wage, which is currently \$678.40 per week¹.
- 38 Previously, those on low incomes who work full time (defined as 30 or more hours per week) were entitled to a top up to a minimum rate after their first week of being incapacitated by injury (from week two). In 2010, National changes this so the minimum rate applies from the fifth week of being incapacitated by injury (from week six).
- 39 I am proposing to reverse this change. By bringing forward eligibility for the minimum rate from the sixth to the second week of incapacity, those on low incomes would not have to wait five weeks to be topped up to the minimum rate, allowing them to better focus on their recovery. This proposal means people on very low incomes struggling to meet their everyday expenses will need to rely on their own resources for a much shorter period of time.
- 40 Those most likely to benefit from this proposal are employees earning the minimum wage while working between 30 and 39 hours a week, shareholder-employees², those on training wages or apprentices, and those with a minimum wage exemption due to disability.
- 41 Having a minimum rate means that injured people who work between 30 and 32 hours at the minimum wage are slightly better off on weekly compensation than when they are working, potentially incentivising some people to seek to

¹ The minimum rate of weekly compensation increased to \$678.40 per week on 1 July 2022, reflecting a recent increase to the minimum wage, effective from 1 April 2022.

² A shareholder employee is someone who owns shares in a limited liability company, often by which they are employed, or of which they are a director.

remain on weekly compensation longer than necessary. Bringing forward eligibility for the minimum rate will mean this perverse incentive will start earlier, from the second week of incapacity. However, there is no evidence this incentive impacts how long people remain on weekly compensation.

Financial Implications

- 42 Proposals one and two have no, or negligible, financial implications. The outcomes of the reporting could inform future changes to AC Scheme settings or operations that would be subject to separate decision-making processes.
- 43 Proposal three will impact levy payers (as earnings-based weekly compensation is not available to those not earning). This means no Budget funding is required, but there will be impacts on ACC's levied accounts.
- 44. The estimated annual cost increase of proposal three is \$4 million per year across all of ACC's levied accounts. The impact on the Outstanding Claims Liability (OCL) and levied accounts is negligible³.

Legislative Implications

- 44 These proposals would be given effect through the Amendment Bill, which hold a category four priority on the 2022 Legislation Programme (to be referred to a select committee in 2022).
- 45 The 2022 Accident Compensation Amendment Bill, if passed by Parliament, would bind the Crown.

Impact Analysis

Regulatory Impact Statement

- 46 The Regulatory Impact Analysis Team at the Treasury has determined that the proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals or not for profit entities.

Climate Implications of Policy Assessment

- 47 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there is no direct emissions impact.

Population Implications

- 48 The proposals to introduce a duty for ACC to report on how different population groups are accessing its services and to refine the purpose of the AC Act will have a disproportionately positive impact on population groups where data currently demonstrates the existence of barriers to accessing the

³ The OCL is the actuarially-estimated lifetime cost (up to 80 years) of all claims incurred at a given point in time.

AC Scheme. This includes, but is not limited to, Māori, particularly Wāhine Māori, women, Pacific people, Asian people and disabled people.

Human Rights

- 49 All of these proposals are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 50 The following agencies and Crown entities have been consulted on this paper: ACC, the Treasury, Te Puni Kōkiri, the Ministry for Pacific Peoples, the Ministry for Women, the Office for Disability Issues, Inland Revenue, the Ministry of Health, the Ministry of Social Development, and the Parliamentary Counsel Office.

Communications

- 51 Subject to Cabinet decisions, I intend to make a media statement introducing these law changes to the public.

Proactive Release

- 52 I intend to proactively release this Cabinet paper on the Ministry of Business, Innovation and Employment's website, subject to any appropriate withholding of information.

Recommendations

The Minister for ACC recommends that the Committee:

- 1 **Note** that in January 2022, I submitted a legislative bid to include an Accident Compensation Amendment Bill on the 2022 legislative programme, with a Parliamentary Counsel Office category priority of four (to be referred to select committee in 2022)
- 2 **Agree** to the following three changes to the Accident Compensation Act 2001, for inclusion in the Amendment Bill:
 - 2.1 *Proposal one:* a new duty for ACC to report annually on levels of access to the AC Scheme across population groups, highlighting any disparities in access, identifying any barriers to access, and the drivers or causes of any disparities.
 - 2.2 *Proposal two:* to refine the AC Act's purpose to ensure ACC's focus is on providing cover and entitlements to all eligible injured New Zealanders
 - 2.3 *Proposal three:* bringing forward eligibility for the minimum rate from the sixth to the second week of incapacity

I N C O N F I D E N C E

- 3 **Note** the policy decisions in recommendations 2.1 and 2.2 (proposals one and two) have no financial implications
- 4 **Note** that the costs associated with the policy decision in recommendation 2.3 (proposal three) above will be incorporated into the next Levy setting process in 2024, and in the interim, absorbed by the ACC levied Accounts
- 5 **Invite** the Minister for ACC to issue drafting instructions to the Parliamentary Counsel Office giving effect to the decisions in this paper, and
- 6 **Authorise** the Minister for ACC to make decisions consistent with the policy framework in this paper, including appropriate transitional provisions on any minor or technical matters and any other issues that may arise during the drafting process.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for ACC