



Submission on Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill

To: Members of the Education and Workforce Select Committee

This submission is from:

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Child Poverty Action Group (CPAG) is an independent charity working to eliminate child poverty in New Zealand through research, education, and advocacy. CPAG believes that New Zealand's high level of child poverty is not the result of economic necessity but is due to policy neglect and a flawed ideological emphasis on economic incentives. Through research, CPAG highlights the position of tens of thousands of New Zealand children, and promotes public policies that address the underlying causes of the poverty they live in.

We are grateful for the opportunity to submit on the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill.

The main objectives of this bill are to provide more equitable coverage for injuries covered by the Accident Compensation Scheme, to provide greater clarity for claimants, and to better give effect to the policy intent of the Accident Compensation Act 2001. However, the bill, in its current form, will not result in the full improvements for women that the public expects.

We urge more boldness. We recommend five changes to ensure equity and wellbeing for families

1. Extend the scheme to cover all injuries, including mental injuries, for the birthing parent
2. Extend cover for injuries to the baby
3. Extend cover to include existing injuries

4. Ensure the Accident Compensation Scheme honours Te Tiriti
5. Repeal s.119 (suicide cover)

In our network, the disparities that exist between the Accident Compensation system, and the health and welfare systems, are seen as deeply unfair and untenable. The limited coverage of birthing injuries has resulted in many women left to cope with their injuries by either self-funding their treatment and/or waiting in the public system. There are on-going impacts on the children as mothers struggle, often in intense pain, and these may have serious long-term consequences.

Although the current bill goes some way to addressing some of these inequalities, it does not go far enough. By making five main changes to the Bill, the select committee could transform people's lives and improve maternal and infant wellbeing now and in the future.

Recommendation 1: Extend scheme to cover all injuries, including mental injuries, for the birthing parent

Although we are pleased that more obstetric injuries will be covered, we strongly recommend the scheme cover all birth-related injuries, including mental injuries. Failing to do so means the system continues to be inequitable and unfair.

As it stands, the bill includes a very narrow and arbitrary list of injuries to be covered. This raises several problems. Not only will it perpetuate inequities between injured mothers, but it will also open ACC up to diagnostic disputes about what can and cannot be covered. In contrast, providing umbrella cover is both fairer to ACC users, and less fraught for ACC to administer.

MBIE's own advice is that a narrow, arbitrary list "could impact confidence in the AC scheme and be difficult to defend boundaries in the long term." This is correct. Indeed, we say it is also indefensible not only in the long-term, but in the short-term too.

We strongly urge the Select Committee to extend cover for all injuries to birthing people, not just those related to physical injuries but also mental injuries. New Zealand is in the midst of a mental health crisis, and has particularly appalling maternal suicide rates – seven times worse per capita than the United Kingdom.¹ Of those who died by suicide in pregnancy or within 6 weeks after birth, 57% are wāhine Māori.² People who experience traumatic births are one of the most at risk group. Covering all mental injuries sustained in the birthing period would go some way in addressing this crisis.

It would also help the government meet the goals of the Maternity Action Plan 2019-2023 which recognises the importance of strong parental mental wellbeing for the long-term emotional, mental and physical wellbeing of children. As noted in the Ministry of Health's 2021

¹<https://www.hpa.org.nz/sites/default/files/Mai%20te%20whai-ao%20ki%20te%20ao%20m%C4%81rama%20July%202020.pdf>, p. 4

²<https://www.hpa.org.nz/sites/default/files/Mai%20te%20whai-ao%20ki%20te%20ao%20m%C4%81rama%20July%202020.pdf>, p. 4

Maternal Mental Health Service Stocktake, 'early screening and intervention as soon as issues begin to present are critical to achieving the best outcomes for mothers, babies and the wider whānau. Services need to be equitable, include appropriate cultural models of care and support women across the continuum of care'.

By extending cover, we would also expect ACC to extend investment in injury prevention such as funding pelvic floor physio in the antenatal and postnatal periods. We would also expect ACC to provide full-coverage for treatment, as part-charges would be a barrier to many people, especially those in low-income families.

Recommendation 2: Extend scheme to cover injuries to the baby

We believe in putting the health and wellbeing of mothers and their babies at the centre of policy, not the needs of ACC to limit its spending.

It is difficult to comprehend how injuries to babies that are caused by the same forces of birthing as the mothers suffer are excluded from ACC coverage. We see this as completely arbitrary and unnecessarily cruel. Children whose care for other reasons falls under ACC are demonstrably better off than those that have to rely on the health and welfare systems.³

The example of Ben Dickson will be familiar to you. Ben is a ten year old child whose birth injury has recently been accepted by ACC after a long and drawn out battle. The case illustrates the two-tier health and welfare system that exists in Aotearoa. Before ACC, the family had no teacher aide and received around \$200 a week for support. Amongst other benefits, under ACC Ben gets a full-time teacher aide, and the family gets funded as carers for 22 hours a week.⁴ His case also illustrates the lottery-like nature of having some birth injuries included and others excluded.

More broadly, our research shows that children with disability are doubly vulnerable to income inadequacy: both as children, and as people with disability.⁵ The Government's February 2021 child poverty statistics showed that the material hardship rates for disabled children, and children in households which have at least one disabled member, is nearly 1 in 5 (20.4% for each group). Disabled children have double the rate of severe material hardship to non-disabled children (8.6% and 4.1% respectively), while children in households with a disabled member have over three times the rate of severe material hardship to children in a non-disabled household (8.9% and 2.7% respectively).⁶

³ Welfare Expert Advisory Group, *Whakamana Tangata*, p. 14

⁴ Anusha Bradley, 'Child wins five-year battle with ACC for birth-related injury cover', RNZ, 24 January 2022.

⁵ Whānau must also dedicate significant energy to receive what little financial support they are entitled to, which privileges those who have networks, more time and resources, and navigational knowledge of Pākehā systems. Given that Māori and Pacific people are disproportionately represented among those with disability, the current system is widening inequities in health and economic outcomes. Child Poverty Action Group, *Living Well? Children with disability need far greater income support in Aotearoa*, 2020, p. 5

⁶ <https://www.stats.govt.nz/information-releases/child-poverty-statistics-year-ended-june-2020>

However, the link between disability and poverty is not inevitable. Decision makers have the power to change this. Comparisons with other international contexts such as the United Kingdom demonstrate how more robust and accessible systems of support can close this gap.⁷

As it stands, the disparity in support that children and families receive depending on whether their birth injuries are considered accidents or not, is substantial, deeply unfair and unacceptable.⁸ We believe it is morally wrong that two children with the same disability are treated differently by our public institutions depending on how their injuries are interpreted.

Recommendation 3: The bill should be applied to all birth injuries, not just prospectively.

Our third main recommendation is to ensure that this bill covers existing injuries, and not just those that occur following the 1 October 2022. From an equity perspective, the bill as it stands is both deeply unfair and frustrating to those who have already sustained a birth injury.

Take, for example, Susan’s story recounted in Anusha Bradley’s article: ‘Susan’s injuries are horrific. Her daughter tore through her vaginal wall, all her perineal and pelvic muscles and into her rectum’. She thought she was going to die. And, seven years on, her life is still affected by the injuries she received: ‘She’s not only incontinent and in constant pain, her mental health is also affected. “I felt isolated a lot. I spent a lot of time at home because I was too scared to go out in case I had accidents. It’s been really horrific.” Although she was initially covered, ACC has since revoked her claim.

The bill in its current state would not reinstate Susan the support both her, and her family need. It is simply unacceptable that people like Susan would still be excluded from the scheme.

Recommendation 4: Ensure the Accident Compensation Scheme honours Te Tiriti

The Accident Compensation Act does not include any mention of Te Tiriti O Waitangi. This needs to be addressed. The Act should include a commitment to Te Tiriti and equitable care for Māori, who at present, are less likely to be referred to ACC or receive help from ACC for any injuries than others. The legislation should cover all birth-related injuries so whānau can access holistic maternal healthcare.

Recommendation 5: Repeal s.119 (suicide cover)

CPAG thinks that the proposed changes to suicide cover are misleading at best, and only reflect a tinkering of the legislation. The 2010 changes that saw suicide excluded from ACC coverage need to be instated as soon as possible. Suicide rates are rising and have huge economic consequences for those left behind. Help with funeral costs and ongoing help for dependents is

⁷ Child Poverty Action Group, *Living Well? Children with disability need far greater income support in Aotearoa*, 2020, p. 5

⁸ A recent ACC Aide Memoire discusses how those disabled by injury are treated better than those born disabled. *ACC’s delivery to priority populations: Part 4 – Disabled people*, GOV-010519, 4 June 2021

very important and imposing these costs in full on grieving families is contributing to the mushrooming poverty problem.

The way forward

To fully implement a well-being approach we recommend creating a new section in the ACC scheme dedicated to supporting the health of the parent and baby.

How and why greater coverage should be funded

It appears the main reason these necessary and morally right changes are not in the bill is financial. The current proposal is estimated to cost \$25m for the first year. In light of the \$55b reserves that exists, this is a tiny cost indeed. ACC is not a private insurance company, it is social insurance, and it does not have to adhere to strict insurance principles. If ACC does not pay these costs, they do not just go away, they fall unfairly on women, children and their families. This cost-shifting can result in both personal debt to the family, and costs to the public purse later down the track. It is well-established that the earlier the treatment after the injury, the greater the benefit through the lifetime.