



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill: Approval for Introduction	Date to be published	14 January 2022

List of documents that have been proactively released

Date	Title	Author
17 November 2021	Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill: Approval for Introduction	Office of the Minister for ACC
17 November 2021	Departmental Disclosure Statement: Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill	Ministry of Business, Innovation and Employment
25 November 2021	Cabinet Minute of Decision, Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill: Approval for Introduction [LEG-21-MIN-0199 refers]	Cabinet Office

Information redacted

YES/NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister for ACC

Cabinet Legislation Committee

Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill: Approval for Introduction

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the introduction of the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill (the Amendment Bill).

Policy

Background

- 2 On 16 August 2021, Cabinet agreed to extend Accident Compensation Scheme (AC Scheme) cover to a specified list of maternal birth injuries [CAB-21-MIN-0314.01 refers]. This important change is the first of its kind and a first step towards improving the gender balance, fairness, and equity of the AC Scheme. It delivers on our 2020 Election Manifesto commitment to return ACC to its original purpose of assisting all New Zealanders who have had an injury.
- 3 This change means that maternal birth injuries which have the same characteristics as other injuries that are currently covered by the AC Scheme (i.e. injuries caused by accidents) will no longer be excluded from AC Scheme cover. It will help up to 18,000 more women per year, who will be able to receive cover for birth injuries.
- 4 This extension to cover will incur a cost of approximately \$25 million per year from both levy-funded accounts and Non-Earners' Account appropriations. Cabinet agreed that the non-earners portion of the costs be charged as a pre-commitment against the Budget 2022 operating allowances, and the earners portion of the costs be incorporated into the next Levy setting process in 2024 and, in the interim, absorbed by the Earners' Account [CAB-21-MIN-0314.01 refers].
- 5 Cabinet also agreed to five other policy proposals, which are relatively non-controversial with minimal financial implications to both Government and levy payers [CAB-21-MIN-0314.01 refers]. Notably, three of these policy changes meet our 2020 Election Manifesto commitments to address 'the changes National made when last in office, which unfairly disadvantaged tens of thousands of New Zealand workers'.

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

- 6 Other low-cost technical changes agreed by Cabinet will provide greater clarity to claimants and better give effect to the policy intent of the Accident Compensation Act 2001 (the AC Act) [CAB-21-MIN-0314.01 refers].

Need for legislation

- 7 An Amendment Bill to the AC Act is required to progress these legislative changes.
- 8 On 16 August 2021, Cabinet agreed to the inclusion of these proposals in the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill, and noted that it has a category 4 priority on the 2021 Legislation Programme (to be referred to a select committee in 2021).

Possible contentious aspect of the Bill: maternal birth injury legislative design

- 9 The maternal birth injury legislative design (i.e. extending the AC Scheme cover to a *specified list* of maternal birth injuries) will attract interest and scrutiny during its select committee stage. There may be feedback that extending cover to a specified list of injuries will not provide comprehensive cover to *all* injuries resulting from childbirth.
- 10 The list of maternal birth injuries included in the Amendment Bill was developed carefully with input from experts in gynaecology and urogynaecology to make sure it includes all injuries that could result from childbirth, from the onset of labour to the completion of delivery. I will ensure the list is properly tested with a wider group of experts during the select committee process.
- 11 I considered, but decided against, the alternative approach of providing AC Scheme cover to all injuries that meet a legal definition of 'maternal birth injury'. For example: *all injuries resulting from the process of a foetus being born, from the onset of labour to the completion of delivery*. This approach would be reliant on ACC clinicians and health professionals interpreting the definition when making decisions about who will be covered. We know from implementing other parts of the AC Scheme that wide-ranging cover provisions (i.e. not a specified list of covered injuries) has resulted in cover decisions being inconsistent and imprecise due to inconsistent application.
- 12 There is also a greater risk of cover being extended wider than envisaged, as there will be some injuries on the boundary that could be contested in the courts (although having a specified list of covered injuries will not totally eliminate this risk). For example, a court could decide that other pregnancy *related* illnesses meet the definition for cover. This possibility of extension would expose the government to significant fiscal risk.

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

Impact analysis

- 13 A regulatory impact statement¹ for extending AC Scheme cover to a specified list of maternal birth injuries was prepared in accordance with the necessary requirements, and was submitted at the time Cabinet approval for extending AC Scheme cover to a list of specified maternal birth injuries was sought [CAB-21-MIN-0314.01 refers].
- 14 The Regulatory Impact Analysis Team at the Treasury determined that the remaining proposals in the Amendment Bill 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.

Compliance

- 15 The Amendment Bill complies with:
 - 15.1 the principles of the Treaty of Waitangi;
 - 15.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 15.3 the disclosure statement requirements (a Departmental Disclosure Statement has been prepared and is attached to the paper as **Annex One**);
 - 15.4 the principles and guidelines set out in the Privacy Act 2020;
 - 15.5 relevant international standards and obligations;
 - 15.6 the [Legislation Guidelines](#) (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 16 The following agencies and Crown entities have been consulted on this paper: the Treasury, ACC, WorkSafe New Zealand, Inland Revenue, the Ministry of Health, the New Zealand Transport Agency, the Ministry of Transport, Te Puni Kōkiri, the Ministry for Women, the Ministry for Pacific Peoples, the Ministry of Social Development, the Office for Disability Issues, the Ministry of Justice, Veterans' Affairs, Oranga Tamariki, the Commerce Commission, and the Parliamentary Counsel Office.
- 17 The Department of the Prime Minister and Cabinet has been informed about this proposal.

Binding on the Crown

- 18 The Amendment Bill, if passed by Parliament, would bind the Crown.

¹ This regulatory impact statement can be accessed at: <https://www.mbie.govt.nz/dmsdocument/17157-regulatory-impact-statement-extending-the-accident-compensation-scheme-cover-to-obstetric-injuries-proactiverelease-pdf>

Creating new agencies or amending law relating to existing agencies

- 19 The Amendment Bill does not seek to create a new agency or amend law relating to existing agencies.

Allocation of decision making powers

- 20 The Amendment Bill does not involve the allocation of decision making powers between the executive, the courts, and tribunals.

Associated regulations

- 21 No regulations will be needed to bring the Amendment Bill into operation.

Other instruments

- 22 The Amendment Bill includes one provision empowering the Accident Compensation (Work Account Levies) Regulations 2019 to prescribe a method for setting the credit interest rate.
- 23 This would mean that the rate could be changed to reflect different circumstances without amending the Work Account Levies Regulations, making the process more efficient.
- 24 The Amendment Bill also makes one change to the Injury Prevention, Rehabilitation, and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002, enabling ACC to charge interest on late levy payments from the date after the levy invoice is due, rather than 30 days after the payment of the levy is due.
- 25 This change would mean ACC no longer has to wait for 30 days before being able to charge interest on late levy payments. This change would align ACC with the normal practice of charging interest on late payments, such as the one in the Tax Administration Act 1994.

Definition of Minister/department

- 26 The Amendment Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

- 27 The provisions relating to maternal birth injury cover (clauses 6 and 17 will have a commencement date of 1 October 2022, aligning the changes with the funding allocated to deliver the policy.
- 28 The provisions relating to the interest rate for late payment of levies (clauses 12 and 19 of the Amendment Bill) will commence on 1 July 2023. This will align these changes with the next ACC levy round.

- 29 The rest of the Amendment Bill will come into force 30 days after the date on which it receives Royal assent. This will give ACC the time needed for implementation of the new provisions.

Parliamentary stages

- 30 I propose that the Amendment Bill be introduced into the House in December 2021, referred to the Education and Workforce Committee, and passed by July 2022.

Proactive Release

- 31 Subject to Cabinet's agreement to the recommendations in this paper, I propose to issue a press release when the Bill is introduced.
- 32 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 that would be justified under the Official information Act 1982.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill holds a category 4 priority on the 2021 Legislation Programme (to be referred to a select committee in 2021);
- 2 **note** that the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill will 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;
- 3 **note** that the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill will also include an additional five policy changes and seven technical amendments to the Accident Compensation Act 2001;
- 4 **approve** the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 5 **authorise** the Parliamentary Counsel Office to make minor and technical amendments to the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill that may arise before introduction;
- 6 **agree** that the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill be introduced on 7 December 2021;
- 7 **agree** that the Government propose that the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill be:
 - 7.1 referred to the Education and Workforce Select Committee for consideration;

7.2 enacted by July 2022.

Authorised for lodgement

Hon Carmel Sepuloni
Minister for ACC

Departmental Disclosure Statement

Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill 2021

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation, and Employment.

The Ministry of Business, Innovation, and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

17 November 2021

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features	9

Part One: General Policy Statement

The Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill 20021 (the Bill) has 2 main objectives,

- to provide more equitable coverage of injuries covered by the Accident Compensation Scheme (the AC Scheme),
- to provide greater clarity to claimants, and better give effect to the policy intent of the Accident Compensation Act 2001 (the AC Act).

Maternal birth injuries (that are not treatment injuries) are not eligible for cover under the AC Scheme, although they have the same characteristics to injuries (such as sprains or strains) already covered under the AC Act.

The Bill will extend cover to a specified list of maternal birth injuries, which have the same characteristics as injuries that are already covered. This new cover is intended to apply to the specified list of maternal birth injuries (that are not treatment injuries) that occurred on, or after the commencement date, which is 1 October 2022.

For clarity, maternal birth injuries that are treatment injuries can continue to be covered as treatment injuries. Examples below illustrate how this new cover provision interacts with the existing treatment injury provision.

Example 1: A birthing parent has an episiotomy during delivery, and it is, in this instance, an appropriate treatment, and is performed correctly. No other tears occur and the episiotomy wound heals without infection. This event would likely not meet the test for cover as a **personal injury caused by accident** (under section 25(1)), or as a treatment injury (under section 32).

Example 2: A birthing parent has an episiotomy, and this is performed appropriately. The birthing parent suffers some tearing, despite the episiotomy. This injury may meet the test for cover under **personal injury caused by accident provisions** (section 25(1)).

Example 3: During delivery, an episiotomy is not performed, despite it being clinically appropriate to do so. The birthing parent suffered tearing. This injury may meet the test for cover under either **personal injury caused by accident** (section 25(1)) **or treatment injury** (section 32) provisions.

Example 4: An epidural is given to a birthing parent during labour and causes nerve damage. This injury may meet the test for cover under **treatment injury** provisions (section 32).

The Bill will also make 5 additional policy changes to the AC Act and 7 technical changes intended to make the AC Scheme coverage more equitable, provide greater clarity to claimants, and better give effect to the policy intent of the AC Act.

The additional 5 policy changes are:

- clarify the section 30 test for work-related gradual process, disease or infection cover, and restore the more claimant-friendly test that was in place before 2010;
- require that occupational assessors 'must' (rather than 'may') consider pre-incapacity earnings when undertaking occupational assessments to support certainty and transparency;

- reduce the threshold for injury-related hearing loss cover from 6% hearing loss to 5% hearing loss to ensure greater support to those with low-level hearing loss;
- increase the size of the ACC Board by one, which will assist the ACC Board in representing a wider range of specialists and stakeholders; and
- ensure legislative certainty that dependants of claimants would not be disentitled from fatal injury entitlements under the AC Scheme following a claimant's assisted death in accordance with the End of Life Choice Act 2019.

The 7 technical changes are:

- move the definition of 'medical practitioner' to the Accident Compensation (Definitions) Regulations 2019. This will allow the definition to be more easily updated in future via regulations;
- update the definitions of 'child' and 'other dependant' to improve clarity of the AC Act;
- enable a method to be set in regulations for the rate of interest for levy overpayments on interim assessments, to better and more efficiently enable the rate to reflect changes in economic circumstances;
- enable ACC to use the most recent employer filing to Inland Revenue (IR) when determining a client's weekly compensation;
- align ACC's penalty rules with IR's rules, by charging the one percent monthly interest rate from the day after a levy invoice is due, rather than 30 days after the payment is due;
- exclude Veterans' Support Act 2014 weekly compensation top-ups from abatement against ACC's weekly compensation payments to better give effect to the policy intent for abatement;
- align the definitions of 'moped' and 'motorcycle' in the AC Act with the definitions in the Land Transport Act 1998 to ensure legal clarity.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
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One regulatory impact statement was prepared for the Bill. It is "Regulatory Impact Statement: Extending the Accident Compensation Scheme Cover to Obstetric Injuries", MBIE, 30 July 2021, available at: <https://www.mbie.govt.nz/dmsdocument/17157-regulatory-impact-statement-extending-the-accident-compensation-scheme-cover-to-obstetric-injuries-proactiverelease-pdf>

Regulatory impact statements were not required by the Treasury for the remaining proposals in the Bill.

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Refer to the “Regulatory Impact Statement: Extending the Accident Compensation Scheme Cover to Obstetric Injuries”, MBIE, 30 July 2021, available at: https://www.mbie.govt.nz/dmsdocument/17157-regulatory-impact-statement-extending-the-accident-compensation-scheme-cover-to-obstetric-injuries-proactiverelease-pdf	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

None. The policy to be given effect by the Bill is not expected to impact on any international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

None. The policy to be given effect by the Bill is not expected to impact on the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Targeted consultation with medical experts has been undertaken to test and firm up the list of specified maternal birth injuries the Bill will extend cover to.</p> <p>Targeted consultation with key stakeholders was also carried out on four of the other five policy changes to the AC Act (changes to the section 30 test, occupational assessment, hearing loss threshold, and the number of ACC board).</p> <p>The Accident Compensation Corporation was consulted on the draft of this Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>As above, the policy details to be given effect by this Bill have been tested with the Accident Compensation Corporation. Consultation with medical injury experts was used to test the list of maternal birth injuries the cover will be extended to.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
The Bill creates the power for the Accident Compensation (Definitions) Regulations 2019 (the Regulations) to define the meaning of 'medical practitioner' in the AC Act. The rationale for this is to allow the definition of 'medical practitioner' to be more easily updated in future via Regulations.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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