Impact Summary: Adding new health practitioner groups to the definition of registered health professional

Section 1: General information

Purpose
The Ministry of Business, Innovation and Employment is solely responsible for the analysis and advice set out in this Regulatory Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.

Key Limitations or Constraints on Analysis
1. Our limitations mainly relate to a lack of information about the impact of the proposed change: • We do not know the exact costs of the proposal because we only have approximate numbers of the amount of treatment injury claims that were subsequently assessed as a personal injury caused by accident.
Responsible Manager (signature and date):
Kathryn MacIver Accident Compensation Policy Team Labour and Immigration Policy Ministry of Business, Innovation and Employment

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Policy proposal

2. The main policy proposal is to implement sections 3(2) and 52(1) of an amendment Act which was passed by Parliament in 2005 and has not been implemented in the 13 years since. These sections of the *Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) 2005* (2005 Amendment Act) are on Parliamentary Counsel Office's table of legislation waiting to be brought into force.[1]

3. Implementing sections 3(2) and 52(1) of the 2005 Amendment Act requires removing key definitions from the *Accident Compensation Act 2001* (AC Act) and moving them to regulations. The intent of the 2005 Amendment Act was to provide for a more administratively efficient process to change these key definitions, and add new health practitioner groups to the definitions without having to amend the AC Act.

4. This proposal would not require any regulatory impact analysis because it provides solely for the commencement of existing legislative provisions (a ground for exemption). However, there is an additional policy opportunity which does require regulatory analysis.

5. As we propose to implement these sections of the 2005 Amendment Act and create regulations to contain the definitions, there is an opportunity to update the definitions in the regulations. It would be timely to undertake this proposal alongside implementing the 2005 Amendment Act, rather than waiting for a separate occasion to update the definitions once the regulations are already in force.

Key definitions

6. The key definitions, currently in the AC Act, are registered health professional (RHP) and treatment provider, which contain a list of health practitioners and their associated definitions. Inclusion as an RHP means that clients who are injured in the course of receiving treatment from these health practitioners will be covered by the treatment injury provisions. Inclusion as a treatment provider means ACC can contribute directly to the treatment costs of that provider.

7. The new regulations would:

   - define registered health professional (RHP), treatment providers and the associated health practitioner groups, and
   - allow additional health practitioner groups to be added to the RHP and/or treatment provider definitions, along with definitions of the added health practitioner groups, through regulations made by Order in Council.

8. *Table One* lists the health practitioners that are currently specified in the RHP definition in the AC Act and will be carried over to the RHP definition contained in the

[1] Available at http://www.pco.govt.nz/assets/Uploads/pdf/legislation-waiting-to-be-brought-into-force-1-January-2018.pdf

new regulations. It also lists the health practitioners that are not currently included in the RHP definition in the AC Act, but that could be added to the RHP definition at this time.

Table One

Health practitioner group	**Health practitioner group included in the RHP definition in the AC Act**
Chiropractic	Chiropractic
Dentistry	Dentistry
Clinical dental technology	Clinical dental technician
Dental technology	Dental technician
Medical Laboratory Science	Medical laboratory technologist
Medical Radiation Technology	Medical radiation technologist
Medicine	Medical practitioner
Midwifery	Midwife
Nursing	Nurse
Occupational Therapy	Occupational therapist
Optometry	Optometrist
Pharmacy	Pharmacist
Physiotherapy	Physiotherapist
Podiatry	Podiatrist
Dental hygiene	*Not currently included*
Dental therapy	*Not currently included*
Dietetics	*Not currently included*
Anaesthetic Technology	*Not currently included*
Optical dispensing	*Not currently included*
Oral health therapist	*Not currently included*
Osteopathy	*Not currently included*
Psychology	*Not currently included*
Psychotherapy	*Not currently included*

Criteria

9. Our options were assessed against the following criteria:
    - To provide consistent accountability across the health practitioner sector where appropriate – *to ensure that health practitioner groups are treated consistently and held accountable across both the health and accident compensation systems.*
    - To provide coherent and consistent entitlement – *to ensure predictability of the ACC service for people who receive injuries during treatment.*
    - To increase the relevance of information collected about treatment injuries – *to ensure that ACC has the most relevant data about treatment injuries to minimise future injuries.*

2.2 Who is affected and how?

10. The key change is that the RHP definition will be expanded to include nine additional health practitioner groups. Injuries caused to claimants undergoing treatment provided by the nine practitioner groups, once added to the RHP definition, will be assessed under the treatment injury criteria in the AC Act, which relies on the injury being caused by a RHP.

11. This change will be beneficial for ACC. Updating the RHP list means that injuries received during treatment of the new health practitioner groups will be considered as a treatment injury rather than a 'personal injury caused by accident'. ACC will have accurate and complete information about treatment injuries across a broader group who have been identified as having the potential to cause harm to patients in the course of treatment.

12. There is a low to medium impact on the health practitioner groups who would be included in the RHP definition, as they may have increased administrative costs to provide more information under a treatment injury claim. This process requires the practitioner to provide information about the patient and the injury in two page form and attach relevant clinical reports.

13. There is a low impact for ACC claimants because they will continue to have cover for treatment injuries. However, the injury will be assessed differently (as a treatment injury claim instead of a personal injury caused by accident). An estimated 190-230 claims per year that are currently classified as a personal injury caused by accident would instead be claimed as a treatment injury.

14. There is a risk that ACC claimants may be affected if these claims were not accepted as treatment injury claims. This is because the treatment injury criteria is narrower than that for personal injury caused by an accident. However, if a treatment injury is not accepted under ACC, the general health care system will capture those injuries and provide cover for them. This minimises the risk that claimants will not be left without any cover, and ensures that the right injuries are claimed under ACC as a treatment injury.

2.3 Are there any constraints on the scope for decision making?

15. The initial policy proposal also included adding pharmacists to the definition of treatment provider. However, ACC can contract medicines management services from pharmacists without regulatory change and as a result, no change was sought. The definition of treatment provider will be moved from the AC Act to regulations with no change.

16. ACC will continue to do further work to explore the role that pharmacists can play in improving rehabilitation outcomes for ACC clients.

Section 3: Options identification

3.1 What options have been considered?

17. Options considered are:

    - **The status quo**: do not update the RHP definition
    - **Option one (preferred option)**: add new health practitioner groups to the RHP definition.

18. Another option which was considered was to change the AC Act to allow automatic inclusion when new health practitioner groups are regulated under the Health Practitioners Competence Assurance Act 2003 (HPCA Act). We did not proceed with it as an option because under section 322(3) of the AC Act, the Minister for ACC must consult relevant persons and organisations before recommending new health practitioner groups for addition to the RHP definition.

19. This requirement ensures that new health practitioner groups have the opportunity to provide feedback before being included as a RHP. It also ensures that health practitioner groups are considered appropriate before being added to the AC Act. For example, practitioners of traditional Chinese medicine are currently being considered for regulation under the HPCA Act. Not all scopes of practice of traditional Chinese medicine may be appropriate to be automatically regulated under the AC Act.

20. The requirement under section 322(3) of the AC Act ensures that the appropriate scope of practice would be considered and consulted on before being included in the RHP or treatment provider definition.

21. A legislative amendment to the AC Act would be required if the requirement for the Minister for ACC to consult was removed. This is not within the scope of this proposal and would require a new policy proposal and a longer timeframe. It may also be problematic to remove a requirement for the Minister to consult on behalf of ACC as consultation allows for a range of views to be heard.

22. For the reasons noted above, it is not considered appropriate to automatically align the two acts.

3.2 Which of these options is the proposed approach?

23. **Option one is the proposed approach.** Updating the RHP definition enables alignment between the health and accident compensation systems. This would benefit the scheme in the following ways:

    - Clinical information collected in the treatment injury claims process can be used to better understand the full picture of treatment injuries, and develop prevention strategies to lower the severity and incidence of those injuries. Adding to the RHP definition will create a richer picture of treatment injury information.
    - ACC can inform the relevant authority responsible for patient safety where it

believes there is a risk of harm to the public based on information provided as part of a treatment injury claim[2], contributing to the regulatory safety net concerning health practitioners.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary of costs and benefits

24. Adding new health practitioner groups to the RHP definition will allow injuries caused by the newly added RHPs to be assessed as treatment injuries. The proposal also expands ACC's ability to notify the responsible professional regulatory bodies about RHPs who have caused treatment injuries. This will reduce the risk of serious harm to the public.

25. ACC has advised that the addition of nine new health practitioner groups to the RHP definition will have limited impact on overall funding costs to the Scheme, levies or the Outstanding Claims Liability. Costs may increase due to increased practitioner awareness or new avenues of cover provided by treatment injury provisions, such as injury caused by omissions in care or delays caused by clinical decisions.

26. Currently, treatment injuries caused by health practitioners not defined as an RHP are treated as a personal injury and are paid from the Earners' and Non-Earners' Accounts, which fund personal injuries. The Treatment Injury Account, which funds treatment injury claims, is also funded from those two accounts. Therefore, entitlements and costs remain the same, regardless of the funding account, but ACC and MBIE will get a clearer picture of the impact of treatment injuries on the Scheme.

27. ACC estimates that 190-230 claims per year that are currently classified as a personal injury caused by accident would instead be claimed as a treatment injury. The estimate provides an indication as to how many additional claims may be assessed as a treatment injury, rather than a personal injury, if the health practitioner groups were added to the RHP definition. The total associated annual claim costs paid ranged from $200,000 to $540,000 per year over the last four years.

28. *Table Two* below illustrates the options analysis and *Table Three* illustrates the cost benefit analysis.

[2] Section 284 of the Accident Compensation Act 2001.

Table Two: Options analysis

Key

+ Positive impact

– Negative impact

Criteria	**Status Quo:** Do not update the RHP definition	**Option One (preferred option):** Add new health practitioner groups to the RHP definition
Provide consistent accountability across health practitioner sector where appropriate	– Lack of accountability for non-RHP health practitioners who carry a risk to the public during the course of treatment, as they do not have to provide the same information as RHPs do for a treatment injury claim – ACC will not be collecting relevant data on injuries caused in the course of treatment provided by non-RHPs, and will not be able to inform the authority responsible for patient safety	**+** Health practitioners who carry a risk to the public during the course of treatment are accountable to provide details about treatment injuries **+** ACC can inform the authority responsible for patient safety where it believes there is a risk of harm to the public based on information provided during a treatment injury claim
Provide coherent and consistent entitlement	– Claimants who are injured during the course of treatment by providers who are not currently listed as RHPs will have their claims assessed as personal injury caused by accident, while those whose injuries are caused by RHPs will be assessed under the treatment injury provisions. This results in an inconsistent experience between clients	**+** A broader and more aligned list of RHPs will provide a more consistent experience between clients
Provide accurate information about treatment injuries	– ACC receive information about a narrower range and lesser number of health practitioners, and will not receive information about practitioners who carry a risk to patients in the course of treatment if they are not included as an RHP	**+** ACC receive information about a broader range and greater number of health practitioners (those who are regulated) to better understand the full picture of injuries to claimants in the course of treatment, and develop prevention strategies to lower the risk of these injuries

Table Three: Cost benefit analysis

Affected parties	Comment	Impact
Additional costs of proposed approach, compared to taking no action		
Regulated parties	Possible increased administrative costs for health practitioners for providing more information through the treatment injury claim process	Low to medium, additional information is provided through a two page form[3] with information that the practitioner collects for their notes, such as patient details, medical history and injury details. The practitioner also has to attach copies of clinical records that are relevant
Other parties	ACC claimants may have additional costs if their claim is declined as a treatment injury, as it is narrower than a claim for personal injury by accident	Low, it is estimated that 190-230 claims per year which are currently assessed as personal injury caused by accident will be assessed as a treatment injury under the proposed change.
Total Monetised Cost		-
Non-monetised costs		*Low – medium*
Expected benefits of proposed approach, compared to taking no action		
Wider government	ACC will receive richer and more relevant information about injuries sustained during the course of treatment because of the broader range of health practitioners included in the RHP definition, and can use this information to inform injury prevention strategies. ACC will also have the power to notify the relevant patient safety authority where there are concerns of practitioner safety through a treatment injury claim	Medium

[3] ACC2152 Treatment Injury Claim form

Other parties	ACC treatment injury entitlements will be more predictable, and there will be a more robust explanation as to when the treatment injury provisions apply	Medium
Total Monetised Benefit		
Non-monetised benefits		*Medium*

4.2 What other impacts is this approach likely to have?

29. As previously discussed under limitations, it is possible that some of the claims that would be covered as personal injuries would not be accepted as treatment injuries if the health practitioner groups in the proposal became RHPs. This is because injuries that are a necessary part of or an ordinary consequence of treatment, taking account of the underlying health of the client, are excluded from treatment injury cover. This may decrease the amount of accepted claims from this pool.

30. Conversely, there may be an increase in claims if some of these injuries were not being reported as personal injuries previously, and injuries caused by omissions in care will now be eligible for consideration of cover.

31. However, as the entitlements to being able to claim for a treatment injury will not change, any increases or decreases to the number of treatment injuries are likely to be very small.

32. Including new health practitioners as RHPs will have additional impacts on these health practitioners as treatment injury claims require more clinical information than personal injury claims. This will be managed through the implementation process, as health practitioner groups will be informed of the new process requirements and forms to use for treatment injury claims.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

33. A discussion document outlining the proposal was released publicly from 14 April 2017 to 12 May 2017 on MBIE's website. It was also targeted to the professional bodies responsible for regulating the professions covered by the proposals, as well as health professions that work closely with those professions.

34. 14 submitters commented on the RHP proposal. Most of the submitters limited their comments to the health profession they represent. Of these submissions, 12 supported the proposals, while two expressed neither support nor opposition. These two submissions outlined concerns around:

    - the greater level of clinical information required to assess treatment injury claims under the AC Act when compared to personal injuries and
    - the impact that ACC's requirement to notify the authority responsible for patient safety if concerned about a practitioner's risk of harm to the public might have on health practitioners, given the already existing pathways for harm reporting within health professional bodies.

35. We consider that it is appropriate for all health practitioners regulated under the HPCA Act to be subject to the treatment injury process to ensure the risk of harm to the public is reduced.

36. A number of submissions recommended referring to health occupational groups by title and not profession, to ensure that non-HPCA Act regulated health professionals were not captured by the proposals. We will incorporate these comments in the drafting process.

37. One submission recommended updating the RHP definition automatically when new health practitioners became regulated under the HPCA Act. This cannot happen automatically because under section 322(3) of the AC Act, the Minister for ACC must consult relevant persons and organisations before recommending new health practitioner groups for addition to the RHP definition.

Adding a new health practitioner group

38. During consultation, the Dental Council recommended adding the additional health practitioner group of oral health therapist to the definition of RHP along with dental hygienist and dental therapist. Standalone training in dental hygiene and dental therapy are no longer offered in New Zealand. From January 2018, oral health therapy is a new profession regulated under the HPCA Act and should be included in the RHP definition.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

39. The definitions of RHP, treatment provider and the definitions of the health practitioner groups are listed in section 6 of the AC Act.

40. Implementing sections 3(2) and 52(1) of the 2005 Amendment Act to move definitions from the AC Act into regulations would require a Commencement Order, as well as an Order in Council. The Commencement Order would repeal the definitions from the AC Act, while the Order in Council would create new regulations for the RHP, treatment provider and associated health practitioner group definitions. Both Orders in Council would need to come into force at the same time to ensure continuity of the definitions.

41. ACC is responsible for operationalising the amendments. The changes to ACC's systems and processes are expected to be minor and easy to implement, as the existing processes around treatment injury claims will expand to the new RHP groups. The changes will be accompanied by internal communications to staff processing the claims.

42. The changes will also be accompanied by communication from ACC to health professional bodies and health practitioners. This will ensure that the new RHPs are aware of the requirements to provide additional information to ACC during a treatment injury. This will also ensure that health practitioners effectively communicate to claimants who may be affected by the changes.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

43. ACC currently collects treatment injury information which will continue to be collected after additional RHP groups are added. The types of information which will be collected include:
    a. the number of treatment injuries claimed
    b. the number of treatment injuries accepted as claims
    c. the specific details about the treatment injury.

44. ACC will also collect treatment injury data based on each health practitioner group. This means that the number of treatment injuries which are being claimed in each of the new health practitioner groups can be monitored.

45. MBIE will continue to monitor changes in the health sector, particularly any additions to health practitioners regulated by the HPCA Act.

7.2 When and how will the new arrangements be reviewed?

46. The implementation of sections 52(1) and 3(2) of the 2005 Amendment Act will result in an easier process to change the RHP and treatment provider definitions, and add new health practitioner groups to the definitions without having to amend the AC Act.

47. MBIE will continue to monitor the HPCA Act and update the RHP definition if new health practitioners are added to the HPCA Act.

48. MBIE and ACC propose to do a 12 month review of the new RHPs. This will involve assessing the data collected by ACC about the number of treatment injury claims caused by the new RHPs and looking at any declined claims of treatment injuries. This will provide a starting point for monitoring the impact of the change on claimants.

49. ACC also collects feedback from health practitioners which can be used in the review to assess how new RHPs are managing with the treatment injury process.