



# New Zealand Women's Law Journal Te Aho Kawe Kaupapa Ture a ngā Wāhine

By email

11 February 2022

Education and Workforce Committee

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

1. Thank you for the opportunity to submit on the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill. **(Amendment Bill)**
2. This submission is made on behalf of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust (the **Trust**). The Trust is responsible for administering the New Zealand Women's Law Journal, which is the only academic publication that is solely dedicated to publishing legal scholarship about women's issues in the law and supporting the work of women lawyers in New Zealand. The primary aims of the Trust are to promote awareness about gender justice in the law and to support women in the New Zealand legal profession in their careers. This includes contributing to wider society discourse about legal issues facing women.
3. In this submission, the Trust acknowledges that people of any gender can give birth and experience birth injuries. Accordingly, this submission uses gender-neutral language throughout. However, the Trust wishes to emphasise that birth injuries are a gendered issue, and one that overwhelmingly affects women, trans and non-binary people.
4. The Trust has previously published an article on the Accident Compensation Act 2001 (**AC Act**) and its inequitable effect on women. In 2018 Anthea Williams wrote a commentary titled "*Wrongful birth and lost wages: J v Accident Compensation Corp.*" That article highlighted the significant gender issues in the conception of "wrongful birth" claims and the complainant's resulting financial award.<sup>1</sup>
5. In summary the Trust supports the Amendment Bill and agrees the amendments are a first step to addressing the gender inequity in the Act. The Trust would however like to see further steps and amendments taken by the Legislature to continue to address the inequalities of the AC Act.

---

<sup>1</sup><https://static1.squarespace.com/static/577228a5e4fcb512c064f2a7/t/5e86aa1513dcc502664efd47/1585883670168/Anthea+Williams+Wrongful+birth+and+lost+wages+J+v+Accident+Compensation+Corp.pdf>

## **The AC Act**

6. The ACC scheme, established by the AC Act, is currently an inherently inequitable system. The system has perpetrated gender disparities due to its focus on accident-related physical injuries – which are more common in male dominated industries and activities. Women are both less likely to make a claim and to have their claim accepted.<sup>2</sup>
7. The AC Act has failed to recognise the impact and effect of a range of appreciable injuries faced by people during childbirth and throughout pregnancy.

## **Maternal Birth Injuries Amendment**

8. The AC Act needs to be extended to cover all maternal childbirth injuries.
9. The AC Act currently only permits cover for maternal childbirth injuries when an injury is caused by medical treatment. For years, a restrictive approach to the injuries covered by the AC Act for maternal childbirth injuries has left thousands of people without access to appropriate and adequate medical care.
10. Maternal childbirth injuries share similar features as the injuries which are covered under the AC Act. Unlike other injuries, maternal childbirth injuries are not considered to be by “the application of force (including gravity) or resistance, external to the human body.” Instead they are considered to be caused internally by the foetus, which, until born, is considered internal.
11. The Trust supports the proposal to extend cover to the list of specified maternal childbirth injuries. However, it recommends that in keeping with the purpose of the AC Act, to assist all New Zealanders who have an injury, the equitable and fair approach would be to include **all** maternal childbirth injuries.
12. The list focuses on an exclusive subset of acute maternal birth injuries caused by mechanical trauma during delivery and labour, but fails to recognise that some 85% of people experience injuries during childbirth. Those injuries can include non-mechanically caused injuries, and other injuries where there is not the requisite application of force or resistance. That many of those people will be left without cover and support is not in line with the purpose of the AC Act.
13. Further the Trust is concerned that the focus on maternal childbirth injuries fails to recognise other injuries suffered by people throughout their pregnancy, including but not limited to injuries sustained from (usually late-stage) miscarriages.
14. Limiting the coverage to people who experience a particular subset of maternal birth injuries fails to recognise the significant economic, social and personal costs inequitably borne by all people experiencing birth injuries and other injuries resulting from pregnancy.

---

<sup>2</sup> Bradley, Anusha, “ACC Biased against women, Māori and Pasifika – agency’s own analysis shows” Radio New Zealand 21 June 2021. <https://www.rnz.co.nz/news/national/445178/acc-biased-against-women-maori-and-pasifika-agency-s-own-analysis-shows>

15. The Amendment Bill also fails to address the number of people who have previously and continue to suffer from these injuries prior to commencement date on 1 October 2022. The commencement date fails to recognise that injuries may not be identified until months or years after a birth has occurred and those people will not be covered. To deny those people cover for injuries that are still being treated is inequitable.
16. The commencement date removing the ability for retrospective coverage fails to recognise the purpose of the Act at 3(f) ensuring persons who suffered personal injuries before the commencement of the Act continue to receive entitlements where appropriate.

#### **Additional Five Policy Changes/ Seven Technical Changes**

17. The Amendment Bill also suggests a number of minor policy and technical changes. The Journal supports those changes in assisting and clarifying a claimant's ability to seek cover and rewind work done by the National Government in 2010 to reduce the ambit of cover by the AC Act.
18. The Trust makes two directed comments in support of the policy clarification amendments:
  - a. The Trust supports the amendment clarifying a dependent's entitlements where claimants who have covered terminal conditions have chosen an assisted death in accordance with the End of Life Choice Act. The Trust believes it is an important clarification to the entitlements of dependents, many of whom are often women and young children. The Trust is disappointed that the Minister has not taken the opportunity to repeal section 119 which disentitles cover for wilfully self-inflicted personal injury and suicide. This remains an area requiring immediate reform.; and
  - b. The Trust also supports the return to the more claimant friendly test for work-related gradual process, disease or infection cover to the test prior to 2010. The AC Act should not be prohibitive and changes which encourage and support claims by claimants should be encouraged. Where appropriate the burden should fall on ACC to establish an injury is not entitled to cover. The Trust supports the amendment which clarifies the burden falls on ACC to establish the disease or infection is not work-related.

#### **Conclusion**

19. Thank you for the opportunity to submit on the Amendment Bill. Please feel free to contact me if you have any questions or wish to discuss anything further.

Ngā mihi



Victoria Rea

**Law Reform Manager**

The New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust