

# Departmental Disclosure Statement

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

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## Part One: General Policy Statement

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

<b>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?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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<b>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?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
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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.

<b>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?</b>	<b>NO</b>
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<b>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?</b>	<b>NO</b>
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### Extent of impact analysis available

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

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

## 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

<b>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?</b>	<b>YES</b>
<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

<b>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?</b>	<b>YES</b>
<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

<b>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?</b>	<b>YES</b>
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.	

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

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