

Accident Compensation (Access Reporting and Other Matters) Amendment Bill

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Accident Compensation (Access Reporting and Other Matters) Amendment Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The bill would amend the Accident Compensation Act 2001. The bill would require the Accident Compensation Corporation (ACC) to report annually on the level of access Māori and other population groups have to the accident compensation scheme. This change is intended to increase transparency, including by identifying any disparities in access.

The bill would also amend the purpose of the Act and the functions of ACC. These amendments are intended to ensure that ACC has a focus on the level of access that Māori and other population groups have to the scheme, and on what it can do to improve the delivery of its services. These amendments would make it clear that ACC's goal to minimise the impact of injury is not restricted to minimising the impact of injuries for which claims are made.

The bill would also bring forward eligibility for the minimum full-time rate of weekly compensation from the sixth week of incapacity to the second week. This would mean that claimants on low incomes who worked full-time prior to their incapacity would not have to wait 5 weeks to receive the minimum weekly compensation rate.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative design. We initially had some queries regarding Māori data sovereignty and the possible collection of personal data, but are satisfied these have been answered.¹ We have no issues regarding the legislation’s design to bring to the attention of the House.

About this commentary

This commentary covers the amendment we recommend to the bill as introduced. We also discuss a theme that arose from the submissions process, but that did not result in a proposed amendment.

Recognition of Māori as a Tiriti o Waitangi partner

The bill as introduced would require ACC to “monitor access to the accident compensation scheme by Māori and other population groups”. Māori are specified in the bill to reflect the Crown’s obligation to Māori as partners under te Tiriti o Waitangi.

We heard from some submitters that the phrase “Māori and other population groups” positions Māori as just another population group, and does not reflect their unique status as tangata whenua and partners under te Tiriti.

We recommend replacing all references in the bill to “Māori and other population groups” with the phrase “Māori and identified population groups”. Following consultation with Pou Tangata of the National Iwi Chairs Forum on 27 March 2023, we believe our proposed wording would better acknowledge the status of Māori as Tiriti partners compared to the bill as introduced.

The Green Party is disappointed that despite submissions on the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill, no progress has been made on creating a te Tiriti clause.

A theme that arose from submissions, but did not result in a proposed amendment

Most submissions recommended that we specify the “other population groups” that ACC would be required to monitor. The main groups that were identified include women, Pasifika and other ethnicities, refugees and asylum seekers, people who identify as LGBTQIA+, people with disabilities, and young and old people. We recognise that these are important population groups that may face disparities in access to the scheme.

¹ Refer to the appendix of the departmental report, which fully outlines our queries and the responses from the Accident Compensation Corporation and the Ministry of Business, Innovation and Employment.

We understand that this proposal was previously considered during the development of the bill. Government advisers continue to recommend against defining “other population groups”. This is in order to enable ACC to be flexible and responsive in its approach, as opposed to being focused only on what is required by legislation. Defining “other population groups” in legislation could make it harder for ACC to respond to new evidence as it arises, for example by reporting on groups not previously identified as facing disparities in access to the scheme.

We accept this rationale for not specifying in legislation the population groups ACC would need to monitor. However, it is our expectation that ACC will monitor the population groups identified by this commentary, should the bill pass. It would also be our expectation that ACC’s reporting include an intersectional analysis, and that it continue to monitor groups even if those groups achieve greater equity of access to the scheme.

The Green Party supports calls for the legislation to provide direction on an intersectional approach, and to include a non-exhaustive list of population groups that would need to be monitored.

National Party differing view

The National Party does not believe this bill is necessary, outside of giving better effect to the purpose of weekly compensation.

There is nothing that stops ACC from reporting on these issues in their annual report; therefore this legislation serves no purpose other than to waste the House’s time.

Until the Clark Government dispensed with the practice in 2006, ACC produced comprehensive annual injury statistics. It was a mine of information that did not have a legal basis. It could easily be reintroduced without the need of legislation to do so. As a matter of fact, the 2022 annual report of ACC included 12 pages of the work it is doing to improve access for Māori, which is not something legally required.

It is for this reason that the National Party presents this differing view.

ACT Party differing view

The ACT Party opposes the Accident Compensation (Access Reporting and Other Matters) Amendment Bill in its current form.

This bill seeks to legislate the data collection and reporting requirements of the Accident Compensation Corporation (ACC) and improve access to the Accident Compensation Scheme (AC Scheme) for Māori and other population groups. Additionally, it expedites eligibility for the minimum rate of weekly compensation for an approved ACC claimant from the sixth week of incapacity to the second week of incapacity.

The ACT Party supports the notion that those who are unable to continue working in their full-time role because of injury should be able to claim compensation following two weeks of incapacity as opposed to six. This measure will prevent claimants who are on lower incomes from being disadvantaged due to injury. Treasury and the Min-

istry of Business, Innovation and Employment noted that the costs of this are negligible.

Moreover, the ACT Party endorses this bill's requirement that ACC must collect and report on the ability of population groups in New Zealand to access the AC Scheme. Providing a clear picture of any disparities that population groups may face while accessing the AC Scheme will better inform ACC's decision-making. ACT hopes that this approach will result in long-term cost savings for healthcare provision in the future.

Despite this, the ACT Party cannot support this bill because it sets a double standard, specifying ACC's data collection and reporting requirements for Māori above all other population groups. In a report to the Education and Workforce Committee, Government advisers noted that by specifying population groups, ACC's ability to adapt data collection and reporting would be reduced in future. In contrast, a high proportion of the submissions to the committee recommended that "other population groups" were specified in the legislation.

In attempting to do both, this bill has identified and favoured the Māori population group above all others. This singling-out of one population group is inconsistent with the view of the ACT Party that all New Zealanders are inherently equal in society. Subsequently, the ACT Party cannot support this bill in its current form.

Appendix

Committee process

The Accident Compensation (Access Reporting and Other Matters) Amendment Bill was referred to the committee on 22 November 2022. We called for submissions on the bill with a closing date of 10 February 2023.

We received and considered written submissions from 15 interested groups and individuals. We heard oral evidence from 9 submitters at hearings in Wellington and via videoconference. We invited the Minister for ACC, Hon Peeni Henare, to make the first oral submission on the bill. He did so on 22 February 2023.

We received advice on the bill from the Accident Compensation Corporation and the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Camilla Belich (Chairperson)

Marja Lubeck (member and Chairperson until 8 February 2023)

Chris Baillie

Jan Logie

Jo Luxton (until 14 February 2023)

Ibrahim Omer

Angela Roberts

Dan Rosewarne (from 8 February 2023)

Penny Simmonds

Erica Stanford

Tim van de Molen and Toni Severin participated in our consideration of this bill.

**Accident Compensation (Access Reporting and Other
Matters) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peeni Henare

Accident Compensation (Access Reporting and Other Matters) Amendment Bill

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Contents

	Page
1 Title	2
2 Commencement	2
3 Principal Act	2

Part 1

Access reporting

4	Section 3 amended (Purpose)	2
<u>4A</u>	<u>Section 6 amended (Interpretation)</u>	<u>2</u>
5	Section 262 amended (Functions of Corporation)	2
6	New section 278B inserted (Corporation to report in each financial year on access to accident compensation scheme by Māori and other <u>identified</u> population groups)	2
	278B Corporation to report in each financial year on access to accident compensation scheme by Māori and other <u>identified</u> population groups	3

Part 2

Transitional and other matters

7	Schedule 1AA amended	3
8	Schedule 1 amended	3

Schedule

New Part 4 inserted into Schedule 1AA

The Parliament of New Zealand enacts as follows:

- | | | |
|----------|--|----|
| 1 | Title | |
| | This Act is the Accident Compensation (Access Reporting and Other Matters) Amendment Act 2022 . | |
| 2 | Commencement | 5 |
| (1) | Section 8 comes into force 3 months after the date on which this Act receives the Royal assent. | |
| (2) | The rest of this Act comes into force on the day after the date on which it receives the Royal assent. | |
| 3 | Principal Act | 10 |
| | This Act amends the Accident Compensation Act 2001. | |

Part 1
Access reporting

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|-----------|---|----|
| 4 | Section 3 amended (Purpose) | |
| | After section 3(b), insert: | 15 |
| | (ba) ensuring that the Corporation monitors access to the accident compensation scheme by Māori and other <u>identified</u> population groups in order to deliver services under this Act in a manner that supports access to the scheme by <u>injured Māori and</u> injured persons in those population groups: | |
| 4A | Section 6 amended (Interpretation) | 20 |
| | In section 6(1), insert in its appropriate alphabetical order: | |
| | <u>identified population group</u> means a population group identified by the Corporation as appropriate for the purposes of a report under section 278B | |
| 5 | Section 262 amended (Functions of Corporation) | |
| | After section 262(1)(b), insert: | 25 |
| | (ba) monitor access to the accident compensation scheme by Māori and other <u>identified</u> population groups to identify how to improve delivery of services under this Act to <u>injured Māori and</u> injured persons in those population groups; and | |
| 6 | New section 278B inserted (Corporation to report in each financial year on access to accident compensation scheme by Māori and other <u>identified</u> population groups) | 30 |
| | After section 278A, insert: | |

278B Corporation to report in each financial year on access to accident compensation scheme by Māori and other identified population groups	
(1) The Corporation must, in each financial year, prepare a report concerning access to the accident compensation scheme by <u>Māori and identified population groups</u> .	5
(a) Māori; and	
(b) other population groups as the Corporation considers appropriate.	
(2) The report must provide analysis of the following matters:—	
(a) the level of access to the accident compensation scheme in that financial year by the population groups referred to in subsection (1) <u>Māori and identified population groups</u> ; and	10
(b) any disparities <u>the Corporation identifies</u> between any of those population groups, or between any of those population groups and any other group, in accessing access to the accident compensation scheme, as identified by the Corporation, that affect Māori or any identified population group; and	15
(c) any barriers <u>the Corporation identifies</u> that affect affecting access to the accident compensation scheme by those population groups, as identified by the Corporation <u>Māori or any identified population group</u> ; and	
(d) the causes of, or factors contributing to, those disparities and barriers, as identified by the Corporation.	20
(3) The Corporation must provide the report to the Minister as soon as practicable after the end of each financial year.	
(4) The Minister must present the report to the House of Representatives as soon as practicable after receiving it.	25

Part 2

Transitional and other matters

7 Schedule 1AA amended	
In Schedule 1AA,—	
(a) insert the Part set out in the Schedule of this Act as the last Part; and	30
(b) make all necessary consequential amendments.	
8 Schedule 1 amended	
(1) In Schedule 1, clause 42(1)(c), replace “5 weeks” with “1 week”.	
(2) In Schedule 1, clause 42(2), replace “5-week period” with “first week of incapacity”.	35

Schedule

New Part 4 inserted into Schedule 1AA

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Part 4	
Provisions relating to Accident Compensation (Access Reporting and Other Matters) Amendment Act 2022	
12 Interpretation	
In this Part,—	
2022 amendment Act means the Accident Compensation (Access Reporting and Other Matters) Amendment Act 2022	5
annual scheme access report means a report prepared by the Corporation under section 278B .	10
13 First annual scheme access report	
(1) The Corporation must, before preparing the first annual scheme access report, consult with such organisations and people as the Corporation considers appropriate about the methods that it proposes to use in preparing that report, including the methods the Corporation proposes to use to identify—	15
(a) the levels of access to the accident compensation scheme by Māori and other identified population groups the Corporation proposes to report on in the first annual scheme access report; and	20
(b) <u>disparities in access to the accident compensation scheme that affect Māori or any identified population group</u> , between—	
(i) any of the population groups the Corporation is required to or proposes to report on in the first annual scheme access report; or	
(ii) any of those population groups and any other group.	25
(2) The Corporation must provide the first annual scheme access report to the Minister as soon as practicable after 30 June 2024.	
(3) Section 278B(2)(c) and (d) does not apply to the first annual scheme access report and subclauses (4) and (5) apply instead.	
(4) The first annual scheme access report must also describe—	30
(a) <u>state that Māori will be reported on in all subsequent annual scheme access reports; and</u>	
(ba) <u>describe the identified population groups that the Corporation is required or proposes to report on, in addition to Māori, in the second and third annual scheme access reports; and</u>	35

	(cb) describe the methods that the Corporation proposes to use in preparing the second and third annual scheme access reports.	
(5)	The description of the methods referred to— at <u>in</u> subclause (4)(bc) must include,—	
	(a) in the cases of the second and third annual scheme access reports, a description of how the Corporation, when preparing those reports, proposes to engage with Māori and the other <u>identified</u> population groups that the Corporation proposes to report on in those reports:	5
	(b) in the case of the second annual scheme access report, a description of the methods the Corporation proposes to use to identify any barriers affecting—that affect access to the accident compensation scheme by Māori and the other <u>identified</u> population groups that the Corporation proposes to report on in that report:	10
	(c) in the case of the third annual scheme access report, a description of the methods the Corporation proposes to use to identify the causes of, or factors contributing to, those disparities and barriers.	15
14	Second annual scheme access report	
	Section 278B(2)(d) does not apply to the second annual scheme access report.	
15	Minimum weekly earnings of earners in full-time employment	20
	The amendments set out in section 8 of the 2022 amendment Act apply only in respect of claimants—	
	(a) whose entitlement to weekly compensation arose on or after the date on which section 8 commences; or	
	(b) who were receiving weekly compensation before the date on which section 8 commences and remain entitled to receive weekly compensation on or after that date.	25

Legislative history

22 November 2022

Introduction (Bill 189–1), first reading and referral to Education and Workforce Committee