



**National Council of
Women of New Zealand**

Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04) 473 7623
www.ncwnz.org.nz

21 September 2004

S04.47

**Submission to the Health Select Committee on the
Injury Prevention, Rehabilitation and Compensation
Amendment Bill (No 3)**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 41 nationally organised societies. It has 33 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action. NCWNZ has a longstanding history of encouraging the promotion of social and health issues, particularly as they affect women.

This submission sits well with the two recent submissions made by NCWNZ, namely, the "Review of ACC Medical Misadventure" and "Disclosure of Harm" (Medical Council of New Zealand).

In 2003, when NCWNZ was asked to make a submission on the "Review of ACC Medical Misadventure" we were in favour of the term "treatment injury." It is gratifying to see that this term is being adopted as we believe that it is clear and unambiguous.

Members of the Health Standing Committee and other interested parties were asked for their input into this document. The following is a summary of their comments.

GENERAL COMMENTS

NCWNZ strongly supports the general direction of the changes that include replacing "medical error" and "mishap" with a single reference to "treatment injuries", and removing "rare and severe" criteria. The new provisions do not require ACC to make any findings of fault but ACC will be required to report, e.g. to the Director General of Health or the registration authority, a risk of harm to the public, thus providing a safety net for the public. The current medical mishap criteria are at odds with the no-fault system and hinders the current medical misadventure claim process. NCWNZ agrees that encouraging the reporting of treatment injuries, moving away from punitive systems and supporting quality learning initiatives are most likely, in the long run, to lead to treatment improvements.

SPECIFIC COMMENTS

Explanatory Note

General Policy Statement

New provisions for treatment injury arising from medical misadventure review (p1-3)

Members welcome the move away from the punitive system of medical mishap and medical error and of moving away from a faultfinding role to one of capturing information for injury prevention. However, concern has been raised that this might give ACC the power to stop creative intervention when required. Members hope that this legislation works as a catalyst for quality learning initiatives in the health sector as ACC proposes.

The more rapid processing of straightforward claims is desirable from the patient's point of view. The public must have the confidence to believe that ACC is sympathetic to their problems.





Summary of key changes

Key changes to medical misadventure cover provisions (p3-4)

Members agree that a treatment injury must be clearly differentiated from underlying conditions. Presently, claimants may be failed by the system with the result that they have no entitlement. Members hope, therefore, that the change in legislation will serve to clarify this situation.

Discretion for ACC to fund certain rehabilitation entitlements in special circumstances (p4)

It is encouraging to see that ACC will have some discretion to provide other than statutory entitlements in certain situations as it signals some flexibility in the system. It is to be hoped that the regulations that are developed from the Act will maintain this degree of flexibility. NCWNZ is mindful of the Bali explosions when the Australian system did far more for their citizens who sustained injury as compared with cover provided for New Zealanders.

Members also expressed concern, however, that this discretion could lead to inequalities in relation to the differing views/value judgements of those responsible for exercising this discretion. Checks and balances must be in place to ensure that this cannot happen.

Fair compensation for self-employed and shareholder-employees (p5)

NCWNZ supports the proposed changes for the self-employed hoping that they will result in less confusion and be seen to be fairer in their implementation. For seasonal workers there have been circumstances where they have been seriously disadvantaged (e.g. a shearer who has been injured soon after starting work in a season when the workload has been spasmodic due to adverse weather conditions.)

ACC cover for sexual abuse claimants for whom sexual abuse occurred before 1974 (p5)

Members are pleased to see that ACC is still providing cover for these claimants.

Information exchange between ACC and Department of Labour (p7)

NCWNZ supports good working relationships between ACC and Occupational Safety and Health and the Department of Labour to monitor work related injuries that would also yield more accurate data for research purposes. Duplication of information, through careful monitoring, should then be minimised.

Changing ACC account into which private domestic workers pay levies (p7)

NCWNZ supports the changing of ACC accounts into which private domestic workers will pay their levies, as long as these levies are not also increased at the same time as a result of this change. This sort of change affects lower socio economic groups such as those in South Auckland; the communities affected being mainly Pacific Island, Indian, Maori groups some of whom will have a language barrier and hence low status employment.

Providing cover for injuries sustained during twisting movements (p8)

Health professionals and patients alike will be very relieved that the accident definition now includes "a twisting movement of the body". This was in the original 1974 Woodhouse definition but was changed in the 1992 Act. That change created unfairness for patients and a huge bureaucratic nightmare for health professionals. This change is also listed under Substantive Amendments to the Principal Act, Section 10.

**Cover for personal injury for poisoning from eating fungi (p8)**

“Accident” now includes ingesting fungi and while it is understood that this change is primarily to give cover for children who ingest mushrooms, concern was expressed that it may open a loophole for those who eat “magic mushrooms” but who deny criminal intent. It is also understood that as this then becomes a deliberate action a certain level of proof may need to be required.

Independence allowance transitional provisions (p8)

NCWNZ is pleased to see that the Independence Allowance is to continue. Members are concerned that there may be continuing confusion between when an Independence Allowance should begin in the case where a lump sum has already been paid. It is recognised that it is hard to determine when entitlements arise differently for people because of differing times when an injury occurred, with respect to the rules or regulations at the time.

Date on which personal injury first resulted in person’s incapacity (p9)

Members expressed concern regarding people with work-related gradual-process disease, or infection claims whose last exposure at the relevant workplace that occurred before the specified dates will be precluded, for example those at present citing problems resulting from exposure some years ago to hazardous chemicals used at that time in timber preservation e.g. PCPs. Problems arise after time and can be associated with a previous occupation. These people should be entitled to compensation although not necessarily a lump sum.

SPECIFIC COMMENT**Clause 13 New sections 32 - 34 substituted**

33 Treatment

(1) (a-h) Members agree that the definition of “Treatment” is well covered.

Clause 16 Time for making claims

Members agree with the requirement for a clear time frame for claiming. It is believed that will preclude retrospective compensation.

Clause 23 Corporation may suspend, cancel or decline entitlements

Members agree that non-compliance is always a difficult problem, with no easy answers, as excuses can always be seen to have some credibility. These claimants may have deep-rooted convictions about their rights to entitlement. This clause amending section 117 of the principal Act clarifies the circumstances under which ACC covers periods of non-compliance.

Clause 28 Employer levy not payable on earnings over specified maximum

Members were concerned about how each employer would know the total earnings of an employee to be able to apply for a refund.

NCWNZ thanks you for this opportunity to make comment on this Bill. As this appears to be a tidy up document it is hoped that the end result will clarify the various situations with which people have struggled over the years. We look forward to seeing the final document.

Beryl Anderson
National President

Catherine Gurnsey
Convener, Health Standing Committee