



10 December 2009
Embargoed until 12.30pm

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Injury Prevention, Rehabilitation and Compensation Amendment Bill

Today the National Council of Women of New Zealand (NCWNZ) made an oral submission to the Transport and Industrial Relations Committee on the Submission on the Injury Prevention, Rehabilitation and Compensation Amendment Bill that highlights the negative impact that the changes will have on women.

As a signatory to CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, the New Zealand government is required to ensure newly introduced legislation does not discriminate against women. However, it is evident that the Injury Prevention, Rehabilitation and Compensation Amendment Bill has not been subject to a gender analysis.

NCWNZ is concerned that the following clauses will have a detrimental impact on women and society:

- The amendment to **Clause 4** where vocational independence will be defined as 30 hours may disadvantage those – particularly women – who are on minimum wages.
- The changes introduced by **Clause 7** have a greater impact for women, who do the bulk of unpaid work in society. While work done at home is unpaid, it is still work. Injury suffered through that unpaid work should be recognised as equally entitled to ACC treatment as paid work.
- The changes to be introduced by **Clause 119** are of serious concern in light of recent ACC cost-cutting around counselling for victims of sexual abuse. NCWNZ supports the stance taken by the NZ Association of Psychotherapists and believes that a description of impairment should be sufficient proof of mental injury rather than a clinical diagnosis. Women, particularly rural, Maori and migrant women, are experiencing difficulty in accessing resources, and this leads to delays in receiving the assistance needed. Moving the requirement from primary health care to secondary health care will not improve this situation and could even add trauma to the victim through the stigma of a diagnosis of mental illness with its consequent repercussions in employment, obtaining insurance, and status in society.
- The impact of levy categories as outlined in **Clause 24** has received a fairly vocal reaction. NCWNZ's stance is that the risk is held by the driver of a vehicle (no matter what sort) and the levy should be based on driver safety records. Alternatively, the no-fault ethos of the ACC scheme should apply and all drivers should be levied at the same rate.

As a supporter of the ACC Scheme since its inception, NCWNZ urges the Government to preserve the no-fault, pay as you go nature of the Scheme. Any improvements that ACC makes to its administrative efficiency should not impact detrimentally on claimants.

END

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"Women Influencing Policy"

The full submission to the Transport and Industrial Relations Committee was sent on the 26th of November and can be read below:

Submission on the Injury Prevention, Rehabilitation and Compensation Amendment Bill

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 46 nationally organised societies. NCWNZ has 28 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, families and the community through research, study, discussion and action.

NCWNZ welcomes the opportunity to comment on this amendment bill on behalf of women and their families. This submission is made in consultation with a number of NCWNZ member organisations, although time constraints have prohibited a wider canvassing of membership.

The ACC Scheme suffered a 'credit crunch' drop in investment earnings as well as levy volatility, which has created a perceived cash flow crisis, prompting the Government to call for cost containment to reduce future shortfalls. NCWNZ welcomes moves by ACC to improve efficiency and information sharing with other Government departments as a way of cutting costs, as long as privacy laws are not breached.

However, there is grave concern with a number of other measures outlined in this Bill, and with the lack of analysis of the impact on claimants, stakeholders and Government departments that implementation of this Bill may create.

Clause 4: Interpretation.**(2) The definition of vocational independence**

By substituting '30 hours' for '35 hours', this Bill may be directly injurious to workers on a low wage. Vocational independence cannot be a reality if the injured worker can manage only 30 hours on a minimum wage. Women with families to support will be materially disadvantaged if they are judged 'vocationally independent' but through continuing injury are still unable to earn enough to pay the bills. Even 35 hours may not be enough in such a case.

Clause 7: Personal Injury caused by work-related gradual process, disease or infection.

The repeal of key amendments made in 2008 is of concern to NCWNZ. The amendment referring to the above clause went some way towards recognising that although work done at home is unpaid, it is nevertheless work. If an environment at a workplace causes injury by gradual process, disease or infection, then a similar environment in a non-workplace will cause the same injury. To disentitle a claimant because both environments have contributed is patently unfair. The definition of 'work' is also in question, and of most interest to women and their families. Women do the bulk of unpaid work in society, and injury suffered through that unpaid work should be recognised as equally entitled to ACC treatment as paid work.

Clause 10: New section 119 inserted

"119 – Disentitlement for wilfully self-inflicted personal injuries and suicide."

In light of recent ACC cost-cutting around counselling for victims of sexual abuse, this clause is of grave concern indeed. With these cuts and changes, women who have experienced domestic violence that involves sexual abuse will face delays in treatment, emotionally painful diagnosis sessions and the very real stigma of mental illness before they can access ACC funded treatment. The protracted and distressing process will create unnecessary trauma for these victims, who are then far more likely to attempt self-harm or suicide. If sexual abuse did not exist, the rate of suicide attempts would drop by 28% for women and 7% for men¹. A lack of adequate counselling could raise the figures even higher.

In addition, even before the funding cuts women in rural areas experienced a lack of resources, social services and trained staff, causing further delays in getting the help they needed. Adding the cost cutting measures to what is already a barrier to treatment will put rural, Maori and migrant women in an extremely vulnerable position. Clause 10 will further deny their need for recognition and treatment of injury, when it is clear to those closest to the problem that self harm and suicide are all too often linked to experience of sexual abuse.

Clause 11: New sections 122 and 122A substituted

“122 – Disentitlement for certain imprisoned offenders.” and “122A – Exemption from section 122(1)”

This clause releases ACC from the necessity of going through a Court to disentitle a claimant who is a convicted felon, and may well reduce costs. As a general rule, NCWNZ members would probably agree with the ‘repugnant to justice’ intent of this clause. However, there is concern that the families of the disentitled claimant may be adversely affected by the disentitlement, through bearing medical or other costs or losses created by the injury. Section 122A(2) denies the right of the claimant to apply for an exemption, but it is hoped that an adversely affected family will have such a right and will be informed of the application process.

Clause 14: Rates of levies.

Although this Bill will go some way to cutting bureaucracy costs for ACC, this clause will increase costs for employers. The new subsections move ACC much closer to commercial insurance practice, and if encouraging workplaces to implement safety guidelines and maintain a good safety record may be achieved by offering such incentives, the savings for employers in ACC levies may be offset by increased administrative costs.

NCWNZ is concerned that these extra costs may impact unfairly on employees, particularly casual and part time workers, many of whom are women working for the minimum wage. If a rise in levies does affect worker net incomes, NCWNZ would seek an assurance that any no-claims bonuses or other advantages are also passed on to these workers, and that the process involved will not be overly complex or time-consuming for self employed persons, creating barriers to qualifying for lower levies or claim thresholds.

Clause 24: Levy categories.

This clause refers to motor vehicles, adding a subsection that allows classification of vehicles that “most accurately describes their risk rating”. This classification has already been announced as regards motorcycles, with levies rising according to the size of motor.

NCWNZ would argue several points:

- Whatever the size or kind of vehicle driven, as long as it has passed a warrant of fitness and is registered to drive on the open road, the risk factor will first and foremost be the driver, or the drivers of other vehicles. Motorcycle riders may suffer more serious injury than car drivers during an accident, but the majority of serious injuries to motorcyclists are caused by cars and trucks.
- Newer model cars have more safety features, theoretically reducing their risk rating. As asserted in the first point, it is drivers who are the true risk factors. In fact, studies have

¹ Bebbington P et al. 2009. Suicide Attempts, Gender and Sexual Abuse: Data from the 2000 British Psychiatric Morbidity Survey. Am J Psychiatry 2009 166: A 28

shown that the more safety features are added to vehicles, the more drivers feel free to take risks. Air bags may save the driver from injury, but not passengers, cyclists or pedestrians. NCWNZ is concerned that people on lower incomes will be penalised through higher ACC levies because they can't afford to buy late model cars. Levies should either rest with driver safety records, or in the true spirit of the original ACC no-fault ethos, all drivers should be levied at the same rate.

- Motorcycles emit far fewer pollutants than cars. As climate change accelerates and we grow more concerned with reducing carbon emissions, it seems a retrograde step to impose punitive levies on motorcyclists, forcing many off the road and into cars, when we should be striving for the opposite effect.
- As our cities and larger towns struggle with increasing traffic density, causing more accidents, delays and pollution, again it seems a retrograde step to push motorcyclists into cars.

Clause 45: Validation of disclosure of information for assessment of levies.

At first glance a better communication between government departments seems a good thing, saving money on information searches and ensuring that information is consistent. However, NCWNZ is concerned that the Privacy Act 1993 is applied in the sharing of an individual's information, and in the legalising of disclosures made previous to the Bill becoming law.

Clause 48: Sections 330 and 331 of principal Act do not apply to making of regulations for Work Account in 2010–11 tax year.

NCWNZ regards this clause as dangerous, high handed and contrary to the essential safeguards set out in the existing Act. Sections 330 and 331 require ACC to consult with stakeholders such as levy payers before regulations are made concerning those stakeholders. This could be regarded as a 'get out of jail free' clause, allowing ACC and the Minister to pass any regulations they like in the next tax year, whether fair or unfair to levy payers or other stakeholders.

General Concerns

NCWNZ welcomes efficiency changes to the internal accounting systems of ACC to cut unnecessary costs. Many other cost containment measures in this Bill, including more stringent calculations for entitlement, lack consultation with stakeholders and analysis of impact on claimants. But however inadequately researched, a significant proportion of this Bill may be out of date.

Along with other surviving funds, the recession-hit ACC investment fund has reportedly fully recovered. It now surpasses earnings that previously covered the shortfall in levies, and the crisis is all but over. The 'volatility of levies' that exacerbated the funding crisis was in fact real people losing their jobs and real businesses failing through no fault of their own. It seems unfair and indeed 'repugnant to justice' to raise levies for some sectors to exorbitant levels, and to reduce entitlements and rehabilitation avenues for a population still suffering the effects of the recession, in order to achieve cost containment that is seemingly no longer necessary.

One NCWNZ member organisation is of the opinion that the Reserve Bank has a clear responsibility to the ACC Scheme. Just as the RBNZ propped up the commercial banking sector during the credit crunch, even more so should it provide financial support through similar crises for an essential government agency.

The ACC Scheme was originally intended as a no-fault, pay as you go system. Expecting individuals and employers to pay for future liabilities, especially when the investment funding mechanism is again returning more than enough to cover current costs, is unreasonable. In a system intended to be no-fault, under this Bill employers will incur higher administration costs to qualify for lower levies or no-claims bonuses, thus implying employers who do not are at fault. It is also unreasonable for current levy payers to meet the full funding of ACC liabilities by a certain date, whether it be in five years or ten.

It is rumoured that the long term plan is to 'soften up' the population in order to sell off the ACC Scheme to commercial accident insurance providers. If so, the Government may need reminding of the mess that was left the last time such an attempt was made. Privatisation will surely open the door to higher premiums, to large segments of the population unable to afford accident insurance, and to crippling lawsuits – just the sort of scenario that the ACC Scheme was created to avoid.

NCWNZ has been a supporter of the ACC Scheme since its inception, and has made submissions on various positive aspects, including the ACC Code (2002) and the Injury Prevention Strategy (2003). We urge the Government to preserve the no-fault, pay as you go nature of the Scheme, and to make all effort at consultation with stakeholders before changing regulations and reducing essential entitlements to injured individuals.

Gender Analysis

It is of deep concern to NCWNZ that this Bill has made no mention of gender analysis or the likelihood of a discriminating impact on women. Although New Zealand is signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and makes periodic reports on progress toward complying with CEDAW guidelines, this has not translated into across the board gender analysis of new bills, discussion documents or reviews, except in the area of social development.

The lack of gender analysis is particularly evident in economic areas, including employment, income and ACC. As has been stated in this submission, women are more vulnerable to negative outcomes through a lack of social services, and the stringent reductions set out in this Bill will reduce those services further. In addition, many of the service providers – counsellors, physiotherapists, home care workers – are women who depend on ACC funding to deliver their services.

NCWNZ urges the Government to implement the recommendations of the CEDAW Monitoring Committee², made in response to the most recent progress report. Among other things, the recommendations call for nationwide human rights education that includes women's rights, better access for women to political and economic opportunities, and a recognition that as long as women continue to experience discrimination in a society, the society as a whole is the poorer.

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² Committee on the Elimination of Discrimination against Women. Thirty-ninth session, 23 July-10 August 2007. Concluding comments of the Committee on the Elimination of Discrimination against Women: New Zealand. Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/459/77/PDF/N0745977.pdf?OpenElement>