Parliament House
WELLINGTON 1.

20073-2142-006 *Telephone (04) 471 9999*

17 January 1992

L McKay
Auckland Home Birth Association Inc
PO Box 7093
Wellesley St.
AUCKLAND

Dear L McKay

ACCIDENT REHABILITATION AND COMPENSATION INSURANCE BILL

Thank you for your letter regarding submissions on the above bill.

Please be advised that we will accept submissions up to 30 January 1992.

Yours sincerely

Cathy Swanson
Clerk of the Committee
Labour Committee

ACCIDENT COMPENSATION

A WOMEN'S ISSUE

A REPORT PREPARED FOR
THE FEDERATION OF WOMEN'S HEALTH COUNCILS
AOTEAROA-NEW ZEALAND

BY SANDRA CONEY

JANUARY 1992

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ACCIDENT COMPENSATION

A WOMEN'S ISSUE

The recently introduced Accident Rehabilitation and Compensation Insurance Bill replaces the Accident Compensation Act which has been in force since 1974. The previous act, while not perfect, contained provisions which enabled women in the paid workforce and women in the home to receive compensation for injuries from accidents. The most recent statistics for the sex of claimants in and out of the workforce are set out in Appendix 1. The new bill abolishes many of the entitlements women have received for the past 17 years.

Submissions on the bill close on 15 January 1992 but this can be extended. It is important that women make their views known on the proposed legislation. This brief report summarises the major points which will be contained in a longer report being prepared by the Federation.

The Accident Compensation Act

The previous legislation was founded on the principle that all New Zealanders, in and out of the workforce, were entitled to compensation when they suffered an accident.

The scheme is recognised as one of the best in the world - in most other countries, compensation is usually limited to workplace and traffic accidents. New Zealanders were covered 24 hours of the day and were able to receive free medical treatment for injuries as well as various forms of compensation.

Compensation could take the form of regular earnings-related payments as a replacement for lost wages, or lump sum payments for pain and suffering and loss of enjoyment of life (max $10,000) and "loss of faculty" or physical ability (max $17,000). Although the maximum lump sum payments had not kept pace with inflation, they were the only forms of compensation available for women in the home. In cases where the injury did not affect a person's ability to work and earnings-related compensation could not be claimed for, such as sexual abuse or infertility, the lump sum payment was still available.

Why does the government want to change the scheme?

The government argues that the present scheme is too costly. However, it has been pointed out that the increased cost of the accident compensation scheme is partially the result of the scheme "maturing", that is, accumulating liability as time goes on. Inflation is also a factor. There has been little analysis of the reasons for increased expenditure.

The Minister of Labour, Bill Birch, has argued that the boundaries of the scheme have "extended" so that some people who were not formerly covered, now receive compensation. However, the chairman of the Accident Compensation Corporation (ACC) said in his 1991 report that the range of coverage had not changed over the 17 years, except for an increase in claims for sexual abuse.

Employers have also complained that their contributions make up the bulk of the funding for the scheme but accidents outside the workplace are also funded from this money. In answer to this, it has been pointed out that in New Zealand, employers' contributions are lower than other countries, despite the much wider cover provided. This is because the New Zealand scheme is administratively efficient. Only 6% of the corporation's budget goes on administration (including injury prevention services and educational programmes). It is predicted that the new bill, if enacted, will result in greatly increased administrative costs and probably higher contributions from employers.

The National government has rejected the option of widening the funding base which it could have done by levying groups such as sports organisations, manufacturers and health professionals who benefit from the scheme. Instead, the new bill severely curtails entitlements to non-earners and will also directly levy (tax) workers.

The bill is consistent with the government philosophy of making individuals, rather than the state, responsible for their needs.

Main features of the Accident Rehabilitation and Compensation Insurance Bill are:

- The bill introduces the concept of the individual "insuring" against accident rather than the community taking responsibility for its members. "Uninsured" individuals - housewives, unemployed, elderly - therefore have far fewer entitlements.
- Employers' levies will only cover workplace accidents.
- Paid workers will be levied up to 70 cents per $100 of income.
- There will be additional levies on petrol and car registration.
- All lump sum payments are to be abolished.
- Compensation for paid workers will continue to be 80% of earnings, however, after a maximum of 12 months, people assessed as having over a 85% capacity for work will cease to receive earnings-related compensation whether they have work or not.

- A meagre "independence allowance" (maximum $40 week for 100% disability) is available where the injury results in a degree of disability more than 15%.

- A "contribution" will be made to medical costs incurred because of an accident. The level of these payments has yet to be set.

- Private hospital costs will not be paid by the corporation.

- Every person who has cover under the act is responsible for his or her own rehabilitation. A person can be obliged to take part in an individual rehabilitation programme which must be approved by the corporation.

- Death benefits have been reduced and the criteria for entitlement have been narrowed.

- Claimants will not be informed their claim has been rejected and may not be told a negative outcome of a review hearing. Appeals are heard in the District Court.

- Many details of the new scheme will be contained in "regulations" which are not yet available to the public.

How the bill affects women

Women in the home

In the year 1990/1991, over 6,000 non-earning women aged between 20 and 60 years of age made claims to ACC. With the abolition of lump sum payments, housewives have lost virtually their entire entitlements. The most severely injured housewife will only be entitled to subsidised medical care and the small "independence allowance" which is meant to cover extra costs (transport, heating, laundry, lawnmowing etc) caused by the disability (Clause 50).

Under the old act, other members of a household could receive weekly compensation for the loss of domestic services performed by an injured woman. This provision has been abolished.

Women who take temporary leave from their employment, such as maternity leave, will have to "prepay" the entire earner levy for the time they are out of the workforce to be entitled to earnings-related compensation (Clause 41). The maximum period they can be on leave is three months, a lesser time than most women take for maternity leave. Compensation for loss of potential earnings has been restricted to children and young people studying (Clause 42).

Victims of rape and sexual abuse

Rape victims will be able to receive subsidised medical treatment and counselling, but only if they lodge a claim within one year of an assault. This will disqualify women who now receive support for assaults which occurred when they were children.

The abolition of lump sum payments also penalises women injured through male violence. Although the psychological injury to the woman can be long-lasting, the physical injuries may only prevent her working for a short period, so she may be ineligible for earnings-related compensation. Sexual assault victims have often used the lump sum payment to improve security or move house, and counselling services say that the receipt of compensation can be an important part of the healing process, as a recognition by society that the woman has suffered a wrong.

Medical misadventure

Medical misadventure is a small part of the business of the Accident Compensation Corporation with only $5 million of a total budget of $1.2 billion being expended in this area in 1990/1991. Despite this, medical misadventure (Clause 4) has been defined so tightly in the new bill, that very few cases will succeed. To qualify, the injury suffered must be rare (less than one chance in 2,000) and severe, while many situations are specifically excluded. These include: failure to diagnose correctly or provide treatment, failure to obtain informed consent, and injury suffered through participation in a research programme.

The majority of cases taken to ACC for medical misadventure are taken by women. Many arise from treatment in the obstetrics and gynaecology areas. The concept of "misadventure" covers negligence on the part of a health professional, but also includes injuries suffered simply from "bad fortune", where no one was at fault.

It is predicted that tightening the definition of medical misadventure will lead to civil legal actions, such as occurs in the American system. This system can lead to large settlements for a few claimants, but nothing for those who cannot afford legal fees or who cannot sufficiently prove negligence or that someone was "at fault". The New Zealand medical disciplinary system does not include the ability to award compensation to complainants.

Widows' benefits

The Survivors' Grant paid to a surviving dependent spouse when a person has died in an accident has been reduced from $4,000 to $3,000 and for other dependants from $2,000 to $1,000 (Clause 51). The funeral grant of $1,500 is now only payable if the Survivors' Grant is not payable (Clause 52).

Weekly compensation has been severely curtailed. It is now only payable to surviving spouses if they are earning less than 80% of the minimum wage (Clause 53) and are caring for a child under seven years, or are over 45 years themselves. Compensation ceases once a dependent child reaches seven years of age, or the spouse begins to earn 80% of the minimum wage ($196) or marries (Clause 54). A transition to work allowance is available for up to two years when compensation is withdrawn (Clauses 54 and 57).

Ageing

Injuries caused wholly or substantially by the ageing process are not covered by the act (Clause 10). This excludes elderly women who suffer fractures caused by osteoporosis. Women are twice as likely to suffer hip fractures in old age as men.

Making submissions on the bill

The deadline for submissions on the Accident Rehabilitation and Compensation Bill is 15 January 1992, but this deadline will be automatically extended to 30 January if an extension is sought.

Write to: The Secretary, Labour Select Committee, Parliament House, Wellington.

The committee asks for twenty copies. Specify if you wish to make the submission in person.

For further information contact:

Federation of Women's Health Councils Aotearoa-New Zealand
PO Box 853 Auckland
Convenors: Judi Strid (09) 358 3603 Fax (09) 303 4528
Cheryl Hamilton (09) 418-0659 (evenings)

Hontract
Honour the ACC Social Contract
PO Box 68-902 Newton Auckland
Convenor Anne Fenn (09) 780 220

Hontract
PO Box 1103 Wellington
Co-ordinator Susan Iversen (04) 473 5478 Fax (04) 499 3969

National Collective of Rape Crisis and Related Groups of Aotearoa
PO Box 8181 Te Aro Wellington
National Administrator Alexia Harvey
Phone and fax (04) 384 7028

Other resources:

Accident Compensation Act
Available at Public Libraries

Accident Rehabilitation and Compensation Insurance Bill
$ 6.80 at Government Printing Office Bookshops or libraries

Accident Compensation Corporation, Annual Report 1991
Available from ACC or libraries

Hon WF Birch, Accident Compensation: A Fairer Scheme (Budget document), 30 July 1991.
$ 12.95 at Government Printing Office Bookshops or libraries

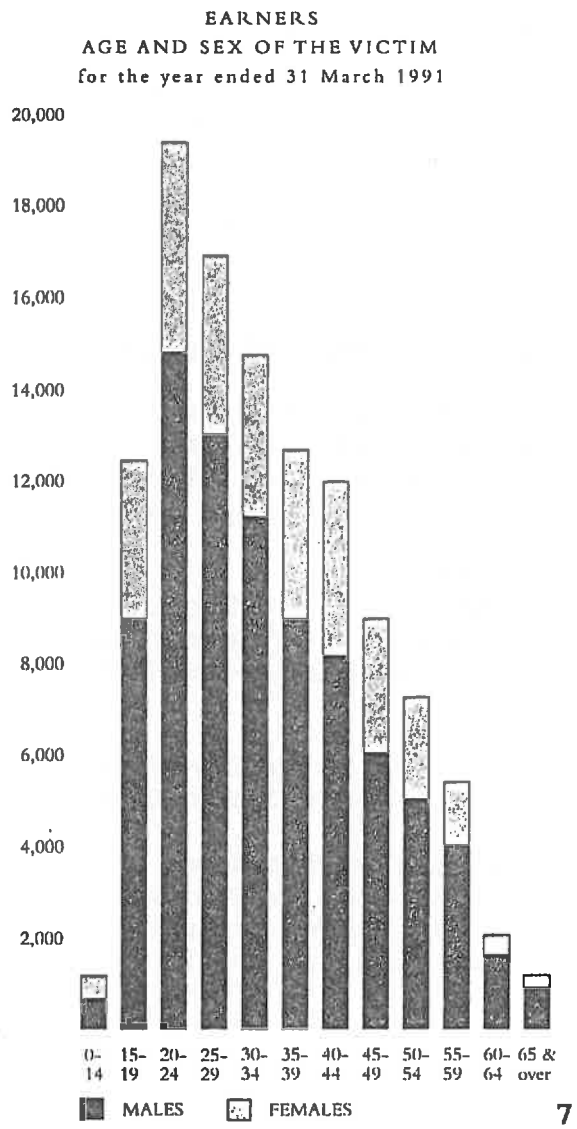
Institute for Human Safety and Accident Research, Papers from Accident Compensation Reform Conference, 11 October 1991.
Available from IPSO, Po Box 2332, Wellington, Phone (04) 4735-478, Fax (04) 4993-969
Includes papers by WF Birch, Geoffrey Palmer, Law Commission, Employers' Federation, unions and overseas speakers.

Appendix 1

AGE AND SEX OF THE VICTIM
for the year ended 31 March 1991

	Earners		
Age	Males	Females	Total
0-14	658	509	1,167
15-19	9,089	3,464	12,553
20-24	14,866	4,579	19,445
25-29	13,065	3,894	16,959
30-34	11,247	3,574	14,821
35-39	9,010	3,713	12,723
40-44	8,179	3,851	12,030
45-49	6,057	2,958	9,015
50-54	5,045	2,247	7,292
55-59	4,047	1,396	5,443
60-64	1,627	436	2,063
65 and over	914	277	1,191
TOTAL	83,804	30,898	114,702

Different age groupings are chosen for earners and non-earners in order to highlight the especially vulnerable ages.



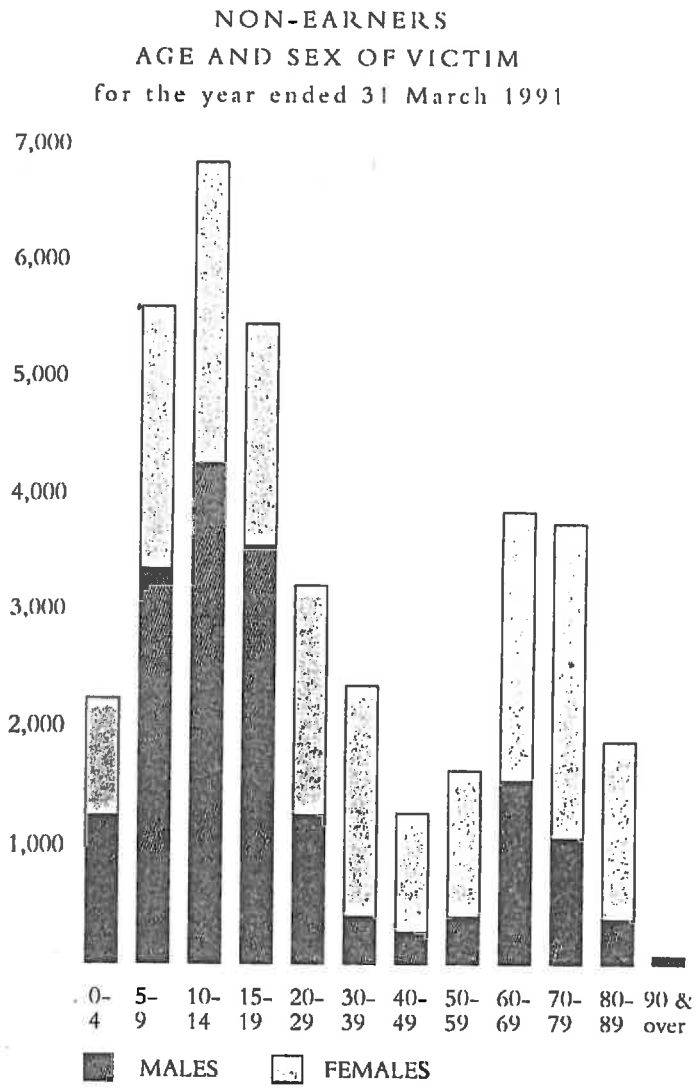
AGE AND SEX OF THE VICTIM

for the year ended 31 March 1991

Non-Earners

Age	Males	Females	Total
0-4	1,244	985	2,229
5-9	3,342	2,250	5,592
10-14	4,254	2,598	6,852
15-19	3,545	1,907	5,452
20-29	1,253	1,951	3,204
30-39	398	1,949	2,347
40-49	268	1,003	1,271
50-59	400	1,229	1,629
60-69	1,542	2,295	3,837
70-79	1,064	2,665	3,729
80-89	379	1,492	1,871
90 and over	33	180	213
TOTAL	17,722	20,504	38,226

Different age groupings are chosen for earners and non-earners in order to highlight the especially vulnerable ages.



Ref: Accident Compensation Corporation Annual Report 1991 (page 60 & 61)

CASE HISTORIES

Case 1: Clare C.

Clare C was widowed when her senior firefighter husband was killed in a traffic accident. She was thirty-three years old with three children, aged nine to 13 years. She had been out of the full-time workforce since 1978.

Under the old....

Clare received a payment of $4,000 for herself and $6,000 for the children and the ACC paid for her husband's funeral. At the time of his death, her husband had been earning $45,000 annually. Clare received ongoing weekly compensation of $415.38 for herself and $92.30 for each of her children ($276.92 for the three). The total was ($692.30 weekly).

Under the new....

Clare received $3,000 for herself and $3,000 for the children but no grant towards the funeral. She was not entitled to any weekly compensation as all her children were over seven years of age. Instead, she was forced to go on a Social Welfare Widows Benefit of $288 a week (this amount includes Family Support).

Case 2 - Ruth K.

Ruth K, a 30-year-old housewife with three children aged three to seven years, was severely injured in a car accident. Both knees were smashed, and despite extensive surgery, she could only stand and walk with the aid of crutches. The doctors said she would need extensive rehabilitation to regain better movement in her legs, although she would never reach her former mobility. Ruth had been a regular tennis player, and had intended to return to her old employment as a nurse when her youngest child reached school age.

Under the old....

Ruth was entitled to lump sum payments for pain and suffering, loss of enjoyment of life, and disability. She used these to attend university and to enrol in writing courses to retrain as a writer. The ACC also made alterations to her home to enable her to move around and paid for household help twice a week. All Ruth's medical costs were paid and she undertook an extensive course of rehabilitation to help regain more use in her legs.

Under the new....

Ruth received no lump sum payments, nor any paid household help, but the ACC did pay for household alterations. Her injury was assessed at 50% so she received $20 weekly to cover the additional costs caused by her injuries. Ruth and her husband found that this did not go very far towards paying for the costs of taxis, additional medical costs (her medical care was only subsidised), and to pay for household help to perform some of the tasks Ruth used to carry out. The youngest child needed to be put in day care as Ruth was unable to adequately supervise him, at a cost of $150 weekly. The medical costs of her rehabilitation were subsidised by the corporation. She was not entitled to any vocational rehabilitation as she had not been in the workforce at the time of the accident.

Case 3 - Wikitoria M.

Wikitoria M was a 45-year-old receptionist for a large contracting firm. In the mid-1980s, she noticed she was bleeding vaginally between periods, and also sometimes after sexual intercourse. Her doctor told her this was the approach of menopause, but did not examine her. She mentioned the problem to him three times over two years, but was always reassured that nothing was wrong. In 1988, Wikitoria was diagnosed by another doctor as having invasive cancer and underwent radiation treatment and extensive surgery. She has radiation colitis and is unable to work or enjoy a sexual relationship with her husband.

Under the old....

Wikitoria was entitled to lump sum payments for loss of enjoyment of life, pain and suffering and loss of faculty. She also received earnings-related compensation of 80% of her salary and all her medical costs were paid.

Under the new....

Wikitoria was not covered by the act as a doctor's failure to diagnose a condition is excluded under the new definition of medical misadventure. She and her husband discussed suing the doctor concerned, but felt they could not afford the cost of a lawyer to take the case. They also felt the stress of a protracted legal battle would be too traumatic.

Because the household was not eligible for free medical care, Wikitoria has had to pay part of her medical and hospital costs. This is an ongoing drain on the household. With only one income now coming into the household, the living standard of the family has seriously declined.

Case 4 - Mary B.

Mary B, a 50-year-old single woman, was raped and beaten in her own home. She suffered severe bruising and was emotionally shattered by the assault. Mary lived alone, but after the rape she was too frightened to continue in the house by herself.

Under the old....

Under the Accident Compensation Act, Mary was entitled to free medical care for her injuries and to extensive counselling to cope with the emotional trauma. The lump sum payments for pain and suffering and loss of enjoyment of life, enabled her to shift house to live with her sister and to install adequate security. She went overseas for a time and stayed with a friend which helped in putting the experience behind her.

Under the new....

Under the Accident Rehabilitation and Compensation Insurance Bill, Mary's crisis medical care was subsidised, but she received a bill for the amount not covered by the new scheme.

Mary received no lump sum for pain or suffering or loss of enjoyment of life. She took out a loan at the bank to cover the cost of modifications to her house to improve security.

Case 5 - Sharleen J

Sharleen J, a 20-year-old, was sexually abused by her father between the ages of five and 11 years. Sharleen did not tell anyone about the abuse at the time but suffered from feelings of inadequacy and loss of confidence which affected her ability to lead a normal life.

Under the old....

Sharleen was entitled to counselling and support to help deal with her childhood abuse. She received a lump sum payment for loss of enjoyment of life and pain and suffering and with this was able to enrol in a polytechnic course to become a nurse, something she had always wanted to do. As a qualified nurse, Sharleen was able to build the self-esteem which had been so damaged by her childhood abuse.

Under the new....

Sharleen had no entitlement to cover under the act as she had sought help more than a year after the assaults occurred.

FEDERATION OF WOMEN'S HEALTH COUNCILS
AOTEAROA - NEW ZEALAND

9 January 1992

Dear Women

Please find enclosed a copy of the report on **Accident Compensation: A Women's Issue**, compiled by Sandra Coney for the Federation of Women's Health Councils.

Submissions on the recently introduced **Accident Rehabilitation and Compensation Insurance Bill** are being called for. The closing date for submissions is 15 January 1992. It is important that your organisation and members make a response as the potential impact on women is significant. We have enclosed a letter for you to send to the Labour Select Committee requesting an extension to allow more time to prepare your submission if you have not sent one in already.

To make sure women's views are adequately represented to the select committee, it is important that as many women and women's groups as possible appear in person before the committee to speak to written submissions.

We encourage you to pass this information on to your members and feel free to photocopy it.

We also have a document available that compares the old legislation with the new. This is available to women's groups upon request.

In sisterhood

Judi Strid
Convenor

CPO Box 853, Auckland. Floor 2, 52 Customs St.Auck. Ph (09)358-3603 Fax (09)303-4528

FEDERATION OF WOMEN'S HEALTH COUNCILS AOTEAROA - NEW ZEALAND

In addition to the issues outlined in the Federation of Women's Health Councils' paper "Accident Compensation - A Women's Issue", the Federation's submission to the select committee on the Accident Rehabilitation and Compensation Insurance Bill will include a number of other points. Some of these are included below as points that you might also like to consider.

• The Federation's submission will be based on support for the existing Accident Compensation Act with improvements being made to remove the areas which discriminate against women.

• Women are paying more than their fair share of the ACC scheme but getting less out. Women have less accidents than men and receive less earnings related compensation because they earn less than men. Under the proposed Bill the new worker levy is about to increase the "take" from women for no extra coverage. The increased motor vehicle levy and the new petrol levy will also be paid by women at the same rate as men but women will benefit less because of their lower accident rate.

• The Federation will be seeking a levy on activities which contribute disproportionately to use of the scheme, eg taxes on motorcycles and alcohol.

• The Federation will be arguing for the inclusion of women in the home as being eligible for loss of earnings potential compensation and for the running of a household to be recognised as an "occupation". This would have the additional advantage of giving women in the home access to vocational rehabilitation.

• In supporting the existing Act the Federation will be opposing the move from a comprehensive, "no fault" system to a discriminatory, "who deserves it", welfare type scheme with means testing and inconsistent cover.

• The Federation will be arguing for the continuation of lump sum payments for pain and suffering and loss of enjoyment of life.

• The Federation will be seeking the removal of the clause which will see women injured through sexual abuse losing their entitlement if their claim is not lodged within 1 year of the assault.

• The Federation will be seeking to maintain the present provisions as they relate to medical misadventure and wants no part of any changes which will leave many women without entitlement and lead to a return to the need to sue.

• The Federation will be recommending that ACC be provided with the ability to sue to recover funds in certain circumstances.

• In supporting the existing Act the Federation will be arguing for the restitution of the importance placed on rehabilitation, injury prevention and promotion of safety. The Federation will also seek the implementation of preventive strategies to address the problems of male risk taking and violence.

• The Federation will be supporting the continuation of a uniformly and publicly funded compensation scheme and opposing changes which will allow employers to become exempt from the overall scheme and provide their own insurance cover for their employees, in the process removing from those employees the right to pursue any complaints or appeals through either the Ombudsman or judicial review.

• In supporting the existing Act the Federation will be supporting the retention of the existing Accident Compensation Appeal Authority and opposing the transference of the appeal process to the District Court system.