Hon Steve Maharey CNZM
Chair of the Board of ACC
Justice Centre 19 Aitken Street
PO Box 242
Wellington 6140

27th of October 2021

Tēnā koe Steve,

Congratulations on your recent appointment as chair of the board of ACC. We look forward to seeing your leadership influence ACC to provide equitable support for everyone with work-impairing injuries.

Together, we write to you with significant concerns about how ACC is currently operating. We share the view that ACC is a treasure that we should work to protect and improve, but right now not everyone is getting the benefit as intended. We hope to highlight the many changes you can make in your new position that would improve the lives of many people in Aotearoa, and hope to demonstrate the overwhelming support you have to do this.

As you are no doubt aware, ACC was created over 50 years ago - a time when the workforce was predominantly male. It was proposed to support *all* injuries, on a no-fault basis, but unfortunately, this is far from what it delivers today.

Successive governments have undermined the intention of ACC. The recent focus on acting like a corporate insurance company has narrowed down who can get support and requires that people jump through unnecessary hoops to get it, often re-traumatising people in the process.

Women today receive almost $1 billion less than men in ACC compensation per year. This gap in compensation is thought to be even wider for Māori and Pasifika peoples, who are less likely to seek medical support and less likely to be referred for an ACC claim by healthcare professionals. This is simply unfair and contributes to the increasing inequity in Aotearoa today and must be urgently addressed.

We recently campaigned to have all birth injuries included in ACC in order to address some of the gender inequities present in the Corporation. We received widespread support and were very pleased that the Minister announced an expansion in cover. However, we are concerned that this is a limited list of birth injuries, rather than an approach that covers all birth injuries. We intend to use the Select Committee process to advocate for all birth injuries to be covered, including post-traumatic stress disorder following birth, and injuries to new-born babies.

While we acknowledge that many of these inequities in levels of support do require legislative changes, as the incoming chair of the board, we urge you to consider the operational decisions you can make that would have a positive influence on the wellbeing and health outcomes of thousands of people across Aotearoa.

One such area for change is the Sensitive Claims process. We are deeply concerned about the operation of the Integrated Services for Sensitive Claims, in particular the long waitlists for help, the rigid assessment process and the high threshold for mental injury and causation. Much of this can be reformed without new legislation, but it requires internal policy change and engagement with the Sexual Violence sector to ensure the process is victim-centred.

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More detail on issues with the Sensitive Claims process is detailed in the appendix attached to this letter. The appendix also includes an array of other suggested operational decisions for your consideration. ACC should be an organisation that is focused on creating positive health and wellbeing outcomes so injuries and disability don't perpetuate disadvantage in Aotearoa. One only has to look at the annual reports ACC produces to see that the focus of ACC's board has been very different to this.

We hope you will consider the contents of this letter and remember the many lives your decisions will influence.

Please do not hesitate to get in contact if you have any questions or wish to discuss this further.

Nāku iti noa, nā

Jan Logie
Green Spokesperson for ACC

Supported by:

Dr Naomi Simmonds (Tūānuku), Dr Michelle Wise (Deputy Head of the Department of Obstetrics and Gynaecology, University of Auckland), Dr Dawn Duncan (Lecturer, Otago University), Kate Hicks (Birth Trauma Aotearoa), Carla Sargent (Voice for Parents), Andrew Dickson (Senior Lecturer, Massey University), and the following organisations:

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Appendix I

The following are policy or operation changes that could be made without legislation with the aim of creating an ACC that works for all New Zealanders. I urge you to consider the following actions and the related issues below.

Birth injuries

While we anticipate seven new types of birth injuries being included in ACC, we have heard from many new parents, maternal healthcare professionals and stakeholders that these seven injuries are not inclusive of all injuries suffered during the birthing process and that a definitive list will result in some injuries being left out. Stand-alone birth trauma suffered by the person giving birth and injuries to babies during the birthing process are also not covered by these new changes. We remain concerned that there will be arbitrary gaps in ACC cover and would encourage ACC to also use the legislative process to make any new birth injury legislation as robust as possible.

As ACC will soon have a greater mandate to treat birth injuries, the Corporation might also consider providing 'pre-cover supports' where a person has a birth injury which is likely covered by the legislation, but for which making a full claim is not strictly necessary for the individual. For example, the majority of people who give birth experience tears or episiotomy, an injury which commonly leads to faecal or urinary incontinence. ACC funded community physio classes could provide effective rehabilitation for such injuries without the whānau having to make a full claim. This also reduces the administrative burden on ACC who might not be able to make a claim decision for some time.

We would also invite ACC to review how a 'policy change' in June 2020 on cover available for perineal tears resulted in the number of claims being accepted dramatically dropping. This should include consideration of how ACC's internal policy decisions, whether they be cost-motivated or not, lead to adverse wellbeing outcomes and inequities for women, Māori, Pasifika and the disabled.

As it stands now, the number of accepted claims for injuries to babies during birth is very small relative to the number of baby birth injuries which actually occur in Aotearoa. Internal policy changes could be sought to ensure ACC is working for all New Zealanders and that causation on 'balance of probabilities' is being applied in a way that is fair and consistent with case law. In cases of complicated birth injury claims where accepted experts fundamentally disagree over whether a treatment injury occurred, ACC's default position should provide cover for the claimant without requiring further expert opinion or recourse to the courts. ACC should err on the side of the claimant rather than defending its right to deny birth injury claims under the current wording of the Act.

For these reasons, we urge you to:

- **Investigate if a focus on driving down costs within ACC be adversely impacting wellbeing outcomes of people with particular attention to women, Māori, Pasifika and the disabled**. In particular, examine how ACC makes determinations about causation in baby birth injury entitlements and the subsequent guidance issued to clinicians and causation in relation to workplace injury.
- **Work with the maternal healthcare sector to develop 'pre-cover' birth injury treatments and supports,** including kaupapa Māori birth injury supports and possible injury prevention initiatives, which are accessible and community based. This could include community physio classes, pre or post-natal peer support groups, OB-GYN access or counselling supports. This should sit alongside and not act as a barrier to a successful claim.

Case Management

Indeed, reports we are hearing indicate that the whole of the New Generation Case Management system is disjointed and dysfunctional. You may have seen the recent ACC staff survey done by the PSA in which many staff reported that they are experiencing disengagement from their work, high-stress levels, overwhelming caseloads and chronic understaffing. We have heard from former staff that ACC has a culture of celebrating 'closing cases', rather than focusing on helping clients, driven in part by the ballooning caseloads staff must juggle.

This is not only impacting sensitive claims, but all other cases ACC deals with. Injured New Zealanders in need of care are reporting being transferred to assisted recovery without consent, not knowing the name of their recovery partner, being unable to get an email or phone call back when requested and feeling like they have to fight ACC for support that is focused on their rehabilitation. We are concerned about how high staff turnover and a reliance on temporary or casual staff may be impacting service.

ACC's Statement of Intent for the 2021-2025 period shows that 9 out of 14 of public performance measures are in decline from March 2019/20. According to data provided to the Education & Workforce Select Committee, Net Trust Scores (NTS) for Assisted Recovery have dropped to their lowest since the service began (+25). Satisfaction is at its lowest for Assisted Recovery and below the average.

These are operational issues that cannot be fixed through legislation and we implore you to examine what changes will be needed to the New Generation case management system to make it functional for staff and clients.

For these reasons, we urge you to:

- **Review progress made with the Next Generation Case Management scheme** to ensure it is delivering good service to claimants and a level of service and rehabilitation that meets the needs of the claimant. Ensure there is a positive and healthy working environment for staff**.**
- **Develop a culture which is focused on** actively supporting people to get the help they need and are entitled to.

Chronic Pain

Pain itself is not an injury under the Act and this has been confirmed through case law. Pain needs to be associated with a covered injury to receive cover and treatment. However, chronic pain is a mental injury under the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-5 guide.

The current ACC policy is that chronic pain as a mental injury will be decided by a psychiatrist or psychologist, yet many mental health professionals feel uncomfortable diagnosing patients with chronic pain as the symptoms are mostly physical and best attended to by a GP or medical professional. ACC's statute does not require a chronic pain diagnosis by a psychologist or similar, and this internal policy should be removed to allow for more flexibility and treatment for claimants who are suffering.

For these reasons, we urge you to:

- **Allow for chronic pain diagnosis by GPs and other medical professionals**, not just clinical mental health professionals.

Injuries women commonly suffer

There is very little current data on the types of injuries and accidents that commonly afflict women inside and outside of the workplace. What little data does exist is from ACC and pertains to the injuries women suffer that ACC covers, with no complimentary data on injuries ACC doesn't cover, including psychosocial harm. In order to update the legislation to be more inclusive of the types of injuries women suffer from, more research would be necessary to make ACC more equitable. The current lack of research into women's health and safety perpetuates assumptions that paid and unpaid work performed by women is safer, that women have less accidents and that no action is needed to correct this.

For these reasons, we urge you to:

- **Commission a study with Worksafe** looking at the types of injuries women commonly suffer in the workplace and in the unpaid work they do at home and caregiving.

Outcomes of claimants deemed vocationally independent

When someone is deemed vocationally independent it is generally seen as a successful outcome, however, the corporation does not collect data on the outcomes of these claimants so it is unknown whether rehabilitation was truly successful or if vocational independence is based on arbitrary factors.

Regularly collecting vocational independence outcomes is an area of improvement that could be sought internally. In 2007, a small study was commissioned by the then Ministry of Labour to look at some of the outcomes for people who are deemed vocationally independent. Many struggled later in life. No work has been done since then. A link to this study can be found here.

For these reasons, we urge you to:

- **Regularly collect data on the outcomes of those deemed vocational independent**, including how often and how long after injury claimants deemed vocationally independent return to employment, how their earnings are affected and how long they retain employment.

Procurement Model

Currently, ACC has contracts with individual treatment providers to provide specific and limited services, with little to no discretion for a treatment provider to go beyond what they are contracted for. This is resulting in one, specific manifestation of the injury being treated, rather than the whole of the person, even when sources of pain are related to the same injury event.

If someone has cover for a shoulder injury but is also experiencing significant back pain from the same accident, they are likely to only receive physio for the shoulder. Treatment providers won't treat the sore back while the person is at their physio appointment because ACC won't pay them for their time. This applies to treatment providers like physiotherapy, acupuncture, and specialist rehab providers.

The Corporation also provides limits on its treatment contracts. While this is required by legislation to some degree, providing a wider discretion on a treatment providers' ability to go beyond the initial estimated time of recovery is an internal change that could be sought. The one-size-fits-all approach is not appropriate when rehabilitation for the person is the goal.

For these reasons, we urge you to:

- **Review procurement processes for rehabilitative treatment so that they take a 'whole of person' approach to the injury** as much as is possible without legislative change. Provide a wider discretion on treatment provider's ability to go beyond the initial estimated time of recovery.

Sensitive claims

We have recently discovered that ACC has disbanded the dedicated Sensitive Claims Unit in Christchurch in favour of integrating sexual violence claims into the wider New Generation case management system, without fair consultation and without properly informing all survivors. We are now hearing that sensitive claims clients are finding it even harder to communicate with ACC. Some of the feedback we've heard from survivors going through the process suggests very clearly that not all staff handling sensitive claims have sexual violence informed training.

Despite numerous written questions and select committee questioning, we have been unable to determine exactly how ACC protects the privacy of sensitive claim's clients and what their privacy settings are. We were shocked to find out that an average of 20 Assisted Recovery staffers can access the sexual violence information of clients, and that many who have requested a digital footprint of their sensitive claim files are reporting having their private information accessed widely throughout the organisation. ACC purports to take privacy very seriously, doesn't seem able to explain to us or to their clients exactly who is taking care of their information and whom they can expect will be accessing it.

Of all injuries, women are most likely to be denied ACC cover for a sensitive claim. There seems to be an increasing focus on establishing a diagnosed mental health condition in the survivor, despite the legislation requiring the lesser standard of a 'mental injury' of any sort. A finding of causation between the mental injury and the sexual assault has also become problematic and we have heard of many people being denied cover because ACC thinks they have 'pre-existing trauma', which the mental injury *could* be attributed to. ACC appears to use this previous trauma to deny cover and layer on additional 'tests' for weekly income compensation, making it extremely hard to get this support. This is also true of Lake Alice psychiatric hospital survivors who have been denied treatment because of a fixation on causation and other potential causes of trauma and harm.

Furthermore, assessors are requiring vast amounts of information to 'prove' the claim. Pre-cover supports are largely used up preparing the client for the assessment, which requires last amounts of information to be divulged. This can be hugely re-traumatising, and the current process appears to offer very little therapeutic value to the client. ACC also requires assessments and treatment to be provided by a psychotherapist or psychologist despite extreme workforce shortages in these professions. This is leading to huge waitlists and poor outcomes for victims.

Because one in three women experiences sexual violence, this issue is also gendered. ACC has been entrusted with caring for Aotearoa's sexual violence survivors and we believe the current system is failing these people.

For these reasons, we urge you to take the following actions:

- **Review the Sensitive Claims Process** using an independent Sexual Violence expert group to assess the experience of going through this process for victims. This should include an inquiry into how the transition from the Sensitive Claims Unit to Integrated Service for Sensitive Claims occurred, the efficacy of the consultation process, and suitability of the Next Generation Case Management for sensitive claims.

- **Re-engage with the Sexual Violence sector to break down the assessment process so that it is victim-centred and waitlists for help are reduced.** This should include:
    - Reviewing how much information ACC actually requires for a successful claim
    - Developing processes which allow victims to make a sensitive claim with a support person of their choosing including GPs, counsellors, therapeutic social workers, professionals from the sexual violence sector including Women's Refuge staff or similar, or even with whānau members or alone through online submission forms.
- **Improve and expand the training** of recovery partners and recovery assistants to include a focus on combating gender and racial equity. Ensure all staff dealing with sensitive claims have up-to-date training on sexual violence and trauma.
- **Ensure there are robust privacy settings** for sensitive claims and communicate privacy settings to clients. Minimise the number of staff able to access the sensitive information of sexual violence survivors and actively monitor for potential privacy breaches.

Workplace chemical exposure and the Toxicology Panel

ACC's workplace chemical exposure clauses are generally extremely out of date and do not include long recognised dangerous chemicals as a cause of workplace poisoning or poor long term health outcomes. For example, some of the most dangerous chemicals used to treat timber include PCP, dioxins and furans and these are not included on the schedule, despite being found to cause serious and sometimes fatal intergenerational illnesses for sawmill workers and their families. These chemicals are persistent organic pollutants that have negative effects on the environment and health of humans, including skin toxicity, immunotoxicity, neurotoxicity, negative effects on reproduction, teratogenicity, endocrine disruption, and a predisposition to cancer.

Sawmill workers across the country working in the timber treatment were exposed to these chemicals in the workplace until PCP was banned in 1986. Without the specific chemicals being listed in ACC's Schedule, sawmill workers must demonstrate that the health effect suffered is both real and linked to PCP exposure during the course of employment, and is not substantially caused by other agents, or lifestyle choices.

In some instances, members of the sawmill workforce have been told by ACC that their specific "Māori lifestyle" has led to their serious medical conditions, as opposed to their workplace exposure. Communities of once fit, active timber workers with healthy whanau have been directly exposed to some of the most dangerous chemicals on the planet in their workplace. ACC should be their strongest ally in the management of these terrible consequences yet causation is routinely not found and racist stereotypes are perpetuated instead.

The toxicology panel generally advise ACC on whether cover is available for a work-related gradual process, disease or infection under s30 of the Act. It appears as if they apply the scientific standard when making a determination about causation, when the fairer standard would be a claimant-centred finding of causation on the balance of probabilities (more likely than not). As such, these injuries do not need to be proven to have been caused or contributed by a work-related gradual process, disease or infection, but rather that they likely were on the balance of probabilities.

For these reasons, we urge you to:

- **Ensure a claimant-centred finding of causation** on the balance of probabilities (more likely than not) is being used when determining workplace chemical exposure.

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