Summary of Chapter 12: Accident Compensation Corporation (ACC) Scheme

About the Hauwhaikaha report

The Waitangi Tribunal is a permanent commission of inquiry. It makes recommendations on claims brought by Maaori relating to legislation, policies, actions or omissions of the government (Crown) that are alleged to breach the promises made in te Tiriti o Waitangi/the Treaty of Waitangi.

The Health Services and Outcomes Inquiry (Wai 2575) (health inquiry) concerns claims relating to health services and outcomes that are important to Aotearoa New Zealand. In December 2017, the health inquiry was organised into three stages. This inquiry is the first part of the second stage and concerns claims relating to the State disability system.

The Hauwhaikaha report summarises what we heard during the disability inquiry and outlines our findings and recommendations.

Summaries of each chapter of the Hauwhaikaha report

People who want to read the full report, can find it here: www.waitangitribunal.govt.nz/en/publications/tribunal-reports/by-wai-number/wai2575hauwhaikaha or www.bit.ly/Hauwhaikaha

We have also produced summaries of each chapter of the report, for those who do not want to read the whole report.

This document is a summary of chapter 12 on the Accident Compensation Corporation (ACC) Scheme. Chapter 12 addresses taangata whaikaha Maaori access to ACC and its services.

What is the ACC scheme?

The ACC scheme provides compensation and funded recovery to people who are injured in an accident, including disabilities resulting from accidents. Support available through ACC includes specialist equipment, home help, child supervision, compensation, treatment costs and other associated costs, such as transport, accommodation and prescriptions. To receive support, a person must make a claim, which is then assessed by ACC.

How do Maaori access and utilise ACC?

Claimants submitted that ACC is difficult to access and use, and that Maaori underutilise ACC despite being at a higher risk of injury compared to non-Maaori. Underutilisation means that Maaori claim rates under ACC are lower than their proportion of the population. Claimants said this is because of barriers to accessing the scheme, for example, poorer access to healthcare.

The Crown and ACC accepted that Maaori underutilise ACC and that there is long-standing research and evidence of this. ACC also noted that the higher risk of injury for Maaori is because of poorer access to healthcare and safe work, among other factors. It outlined that the Crown and ACC have undertaken significant action, especially in recent years, to increase the number of Maaori using ACC. This includes new reporting requirements under the Accident Compensation Act 2001, which obliges ACC to identify and address disparities in access by Maaori and to develop programmes to help Maaori navigate how the scheme works.

Maaori face barriers when accessing ACC and it is critical for taangata whaikaha Maaori to be able to access ACC. We acknowledge the steps ACC has taken to improve this, but such action should have been taken earlier.

Is home support working for Maaori?

Claimants raised that home and community support services are difficult to access and that Maaori receive fewer care hours than non-Maaori. They also said ACC has failed to ensure Maaori can receive this support from a kaupapa Maaori provider (Maaori-owned and governed). ACC explained that Maaori clients are supported through contractual arrangements, noting that the contracts that apply to home and community support services require providers to support cultural need and to work in a culturally responsive partnership with the client and their whaanau.

We were not provided enough evidence to conclude that home and community support services provided by ACC are inadequate for Maaori. While we heard that care hours are difficult to maintain, we could not determine whether they were inequitable to those for non-Maaori disabled people. We also acknowledge that ACC amended contracts so providers were required to meet the cultural needs of their clients, but we note taangata whaikaha Maaori should be able to receive support from a kaupapa Maaori provider, if they so wish.

Is rongoaa adequately available through ACC?

ACC made rongoaa (traditional medicines) available as a service option from June 2020. It is classified as ‘other social rehabilitation’ under the Accident Compensation Act 2001, which means access must be approved by ACC staff. Claimants said that this classification means rongoaa is not guaranteed, makes it harder to access and prevents taangata whaikaha Maaori from accessing it. They also alleged that staff approving rongoaa do not have the cultural competency or understanding of rongoaa to make good decisions. ACC explained that it updated and upskilled staff when rongoaa became available. The Crown noted there has been a significant uptake in using rongoaa, and that this is still increasing.

We consider the classification as ‘other social rehabilitation’ does not prevent rongoaa being accessed and acknowledge that ACC has imposed safeguards to ensure access, including improving staff understanding of rongoaa.

Is ACC culturally competent for Maaori?

Claimants said that the ACC scheme is not culturally responsive to Maaori, is incompatible with tikanga and does not meet the needs of taangata whaikaha

Maaori. In support thereof, claimants and witnesses outlined poor experiences with ACC staff. In response, the Crown outlined initiatives established to improve the cultural competency of the scheme and its staff. For example, there is training available to staff, including on te Tiriti/the Treaty and Maaori perspectives. However, these programmes are not compulsory. ACC also established Haapai, a programme throughout the country to improve the cultural responsiveness of its case managers and the experiences of ACC clients and whaanau. The concerns about the cultural competency of ACC reflect concerns we heard about the wider disability system. Claimants' experiences show taangata whaikaha Maaori do not always receive culturally competent support under ACC. However, we consider that ACC has responded to these concerns and are said to be committed to improve the delivery of its services.

Do Maaori have fair access to weekly compensation?

People who were working before their injury can receive weekly payments from ACC up to 80 per cent of their income before they were injured. Claimants said that taangata whaikaha Maaori do not have equal access to this compensation, compared to non-Maaori, and there are barriers to receiving it, such as having to submit regular medical certificates. They also said payments are not enough to meet the cost of living.

ACC acknowledged that Maaori have lower employment rates so may not be eligible for weekly compensation. However, according to them, statistics show that weekly compensation rates for Maaori have improved overall. We noted the improvement in the proportion of Maaori receiving weekly compensation, but barriers remain, particularly in having to provide a medical certificate. Thus, we urge ACC to effectively address all barriers, including the requirement to provide a medical certificate.

Do Maaori experience equitable outcomes under ACC?

Claimants said that Maaori do not achieve the same outcomes compared to non-Maaori under the ACC scheme. For example, Maaori experience worse health outcomes and are more likely to experience death or disability after an injury. The Crown and ACC accepted that Maaori have poorer outcomes after injury, including

having inequitable outcomes for injury prevention, care and recovery. The Crown said that ACC has shown a genuine commitment to achieving equity in access, experiences and outcomes under ACC for Maaori. For example, ACC included goals for equity in its overarching strategy. The Crown suggested it is a long journey to improve outcomes for Maaori.

We confirm Maaori do not experience equitable health outcomes compared to non-Maaori. This includes being more likely to experience poorer long-term outcomes after injury. Thus, although we acknowledge the steps ACC has taken to improve outcomes for Maaori, we note that many are new, which means it is too early to determine whether they will improve outcomes.

Tribunal findings

The experiences of claimants and witnesses, along with research, show that there are wide-ranging inequities under the ACC scheme. Moreover, the Crown and ACC have accepted Maaori experience access barriers. Tiriti/Treaty principles relevant to the experiences of taangata whaikaha Maaori in accessing ACC are equity, active protection and options.

The principle of equity requires that the Crown treat all citizens fairly, to inform itself of any inequities and to proactively promote equity. The Crown accepted that there are inequities between Maaori and non-Maaori when accessing ACC. We noted that a long-term failure to reduce access barriers can be considered a breach of the principle of equity. While these inequities have been present since the 2000s, the Crown has taken significant steps to address them. However, it would be unacceptable for the inequities to continue. We were not provided enough information on home and community support services to make any conclusions on this point. Overall, the Crown has informed itself of inequity and has taken the required action, and so equity has not been breached.

The principle of active protection requires the Crown to ensure access to health services, including culturally appropriate services, and to address inequities experienced by Maaori. The Crown and ACC have established initiatives to address inequities and to help Maaori better access ACC, and improve the cultural competency of the scheme and its staff. In particular, it has made rongoaa available

through ACC. Because many of these initiatives were in their early stages, we could not determine whether a breach of active protection had occurred.

The principle of options requires the Crown to actively protect the availability of kaupapa Maaori options so that Maaori are not disadvantaged in their choice of service. This also requires that mainstream and kaupapa Maaori health services are equitably maintained and are available to Maaori. There is a lack of choice within ACC, such as the lack of cultural competency of ACC and its staff. While access barriers reduce ACC as an option for Maaori, we consider that ACC had taken significant actions to improve Maaori use of ACC and improve the competency of the scheme. Therefore, we found that the principle of options had not been breached.

Overall, while we consider there are areas of further improvement for ACC, we did not find any breaches of te Tiriti/the Treaty.