

Ella Haddad MP
Chair, Select Committee on Reproductive
Maternal and Paediatric Health Services

14 November 2024

By email

Dear Ms Haddad and Members of the Select Committee on Reproductive, Maternal and Paediatric Health Services in Tasmania,

RESPONSE TO QUESTION ON NOTICE

I am writing to you on behalf of the Australian Lawyers Alliance (ALA).

The ALA is grateful to have been invited to provide evidence to the Select Committee on Reproductive, Maternal and Paediatric Health Services in Tasmania ('Select Committee') as part of your ongoing inquiry into reproductive, maternal and paediatric health services.

Arising from my appearance before the Select Committee on 23 October 2024, please find **enclosed** a response to the question taken on notice regarding the newly implemented New Zealand model of care for birth trauma, as well as information about Victoria's model of open disclosure and some further reflections from the ALA regarding Tasmania's future legislative response to birth trauma.

Thank you for your attention on these matters, and please do let me know if the ALA and I can be of further assistance.

Yours sincerely,

Bernadette Davies
Tasmania Branch,
Australian Lawyers Alliance

The New Zealand model of care regarding birth trauma

The ALA's submission to this inquiry explored ways that addressing birth trauma could be enshrined in legislation.

We submit that any Tasmanian legislation could consider New Zealand's model of care regarding birth trauma, particularly regarding the numerous injuries listed as compensable – noting that there is a need for further inclusion of mental injuries and injuries prior to October 2022.

New Zealand's Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill received Royal Assent on 30 September 2022,¹ legislation which was aimed at rectifying the fact that maternal injuries were not eligible for compensation under the Accident Compensation Corporation (ACC), despite having similar characteristics to other injuries covered by the scheme (such as sprains or strains).

This legislation updated the definition of 'accident' to include "a force or resistance internal to the human body at any time from the onset of labour to the completion of delivery" and extended the cover of the ACC to a proscribed list of maternal birth injuries that occur on or after 1 October 2022.²

The list of injuries which are now eligible for cover are:³

- Anterior wall prolapse, posterior wall prolapse, or uterine prolapse;
- Coccyx fracture or dislocation;
- Levator avulsion;
- Obstetric anal sphincter injury tears or tears to the perineum, labia, vagina, vulva, clitoris, cervix, rectum, anus, or urethra;
- Obstetric fistula (including vesicovaginal, colovaginal, and ureterovaginal);

¹ 'Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill — First Reading Summary', *New Zealand Parliament* (Web page) <<https://www.parliament.nz/en/pb/hansard-debates/hansard-debate-summaries/accident-compensation-maternal-birth-injury-and-other-matters-amendment-bill-first-reading-summary>>.

² Ibid; 'Maternal Birth Injuries', *ACC* (Web page) <<https://www.acc.co.nz/for-providers/provider-contracts-and-services/maternal-birth-injuries>>.

³ Ibid.

- Obstetric haematoma of pelvis;
- Post-partum uterine inversion;
- Pubic ramus fracture;
- Pudendal neuropathy;
- Ruptured uterus during labour; and
- Symphysis pubis capsule or ligament tear.

A caesarean section is not a maternal birth injury covered by this legislation. If the client has one of the listed birth injuries, then ACC is able to provide cover and entitlement aligning to that injury.

Those who have given birth from 1 October 2022 onwards and who have a covered injury can access the appropriate support, treatment, and care through the Accident Compensation Scheme to help their recovery and return to independence. Birthing parents can be considered for further cover if they suffer a mental injury or any other physical injury caused by a covered maternal birth injury.⁴ However, maternal birth injury cover does not include injuries to babies.⁵

Once a claim is accepted, the relevant person can visit any local ACC-registered provider or practitioner to receive treatment and support – examples include a pelvic health physiotherapist, doctor, midwife, osteopath, chiropractor, rongoā Māori practitioner (traditional Māori healing system) or other specialised provider.⁶

However, a lack of awareness about the new legislation and misinformation surrounding the scheme has meant that many women who are eligible for compensation have not claimed it.⁷ Additional critiques of the legislation include that all birth injuries should be covered by the ACC (not just those specified in the legislation); that women injured before 1 October 2022 are not covered under this legislation; and that ACC funding may not cover the full cost of treatment for some care.⁸

⁴ Ibid.

⁵ Ibid.

⁶ 'Cover for Maternal Birth Injuries', ACC (Web Page) <<https://www.acc.co.nz/im-injured/what-we-cover/cover-for-maternal-birth-injuries>>.

⁷ Jessie Curan, 'Extremely low uptake of ACC cover for birthing injuries', *Radio New Zealand* (online, 20 August 2024) <www.rnz.co.nz/news/national/525693/extremely-low-uptake-of-acc-cover-for-birthing-injuries>.

⁸ 'Maternal Birth Injury', RANZCOG (Web Page, 26 February 2024) <<https://ranzcog.edu.au/news/maternal-birth-injury>>.

The Victorian model of open disclosure

The ALA submits that the Victorian model of open disclosure, which is contained within the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic), could be followed and implemented in Tasmanian legislation.

Under this regime it is a legal obligation for public health services to discuss an adverse event with the affected patient/s. Open disclosure discussions usually involve:⁹

- an apology or expression of regret;
- a factual explanation of what occurred, including actual consequences;
- an opportunity for the affected patient to relate their experience; and
- the steps taken to manage the event and prevent its recurrence.

We urge the Tasmanian Government to look at the Victorian open disclosure regime.¹⁰

There are numerous resources available which assist health providers and patients. Such a framework would enable women and their support persons to engage with providers after any adverse event.

The Australian Open Disclosure Framework could be implemented under legislation to enshrine the recommendations contained within that framework,¹¹ which is endorsed by numerous health bodies.¹² This would further enable Tasmanian legislation to enshrine the right for women, their support people and their babies to receive full and frank disclosure.

⁹ Department of Health, Victorian Government, *Open disclosure following adverse events in health services* (Web Page, May 2022) <www.health.vic.gov.au/quality-safety-service/open-disclosure-following-adverse-events-in-health-services>.

¹⁰ See: Ibid.

¹¹ Australian Commission on Safety and Quality in Health Care, *The Australian Open Disclosure Framework* (Web Page) <www.safetyandquality.gov.au/our-work/open-disclosure/the-open-disclosure-framework>.

¹² See, egs, Australian College of Nursing, Australian and New Zealand College of Anaesthetists, Royal Australian and New Zealand Colleges of Obstetricians and Gynaecologists, Royal Australasian College of Physicians, Royal Australasian College of Surgeons, and the Society of Hospital Pharmacists of Australia.

Tasmania's future legislative approach

The ALA submits that the vast majority of recommendations provided in our submission are able to be and should be implemented legislatively.

This includes legislation to enshrine the right of access to:

- a) educated health professionals in the area of reproductive, maternal and paediatric health;
- b) support for the development of a written birth plan;
- c) informed consent;
- d) cultural safety and accessibility in practice and treatment;
- e) trauma-informed practice and treatment;
- f) open disclosure; and
- g) continuity of care.

Further, there is opportunity for the Tasmanian Government to undertake legislative educational reform to include mandatory training for all health practitioners in the area of reproductive, maternal and paediatric health including in the areas of:

- a) informed consent;
- b) cultural safety and accessibility;
- c) trauma-informed practice;
- d) the development of written birth plans;
- e) open disclosure;
- f) birth trauma, medical trauma and the purpose of litigation; and
- g) continuity of care.