

# ACC's delivery to priority populations: Part 4 – Disabled people



<b>To</b>	Hon Carmel Sepuloni, Minister for ACC	<b>Priority</b>	Medium
<b>From</b>	Emma Powell, Chief Customer Officer, ACC	<b>Reference</b>	GOV-010519
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## Purpose

1. This aide memoire provides data and commentary on disabled people's access to ACC cover and entitlements. It is the fourth instalment in a series on how the accident compensation scheme is delivering to priority populations. The term 'disabled people' is used in this paper to talk about people with disabilities, in line with guidance from the Office for Disability Issues.
2. ACC currently does not routinely record the disability status of claimants, and 'disability' as a concept does not feature in accident compensation law. As a result, ACC's visibility of disabled people's access, experiences, and outcomes from the accident compensation scheme is limited. At least one in four ACC claimants is likely to be disabled, based on self-reported disability status in the general New Zealand population.
3. While ACC does not have a legal or operational concept of 'disability' which would allow disabled claimants to be easily identified, a number of related concepts can be used to identify some claimants who have become disabled as a result of their injuries. The data and commentary presented in this paper is based on these 'proxy' concepts, and the limited view they are able to provide of disability among ACC clients. Where possible, data has been broken down by sex<sup>1</sup> and prioritised ethnicity.<sup>2</sup>

## ACC does not record disability status, but related concepts provide a limited view of disability among claimants

4. One in four New Zealanders identify as disabled. This highly diverse group encompasses people with a wide range of physical, mental, intellectual or sensory differences which become 'disabling' as a result of societal barriers to participation and inclusion. People may experience disability from birth, or may develop disability due to illness, injury, or aging. ACC claimants will include people with disabilities which pre-date their injuries, people with disabilities arising from injury, and people who become disabled after an injury.
5. ACC does not routinely record the disability status of claimants. While individual claim files may include details of disabilities relevant for case management purposes, this information is not recorded in a way which is easily retrieved for statistical purposes. ACC does, however, use a number of disability-related concepts to determine eligibility for certain supports. Generally, these concepts reflect impairment, rather than self-identified disability status, and are medically assessed.
6. The table below sets out a range of disability-related concepts and proxies which are used in this paper to highlight various aspects of some disabled people's experiences with ACC. The concepts

<sup>1</sup> ACC records male or female sex, rather than gender.

<sup>2</sup> 'Prioritised ethnicity' means that only one ethnicity is reported per claimant, so that totals add to 100%. All claimants who identify Māori ethnicity are reported as Māori; all Pāsifika claimants who do not identify as Māori are reported as Pacific Peoples; all Asian claimants who do not identify as Māori or Pāsifika are reported as Asian; and European/Pākehā ethnicity is only reported for claimants who identify solely as Pākehā.

are not mutually exclusive, and a single disabled claimant may meet the criteria for all the concepts described.

Concept	Origin	What it means	How it's used by ACC	How it relates to disability
Incapacity	Defined in ACC legislation	Injury-related incapacity to engage in paid employment. This is defined slightly differently depending on whether the claimant was an earner or a 'potential earner' at the date of their injury.	Assessed to determine eligibility for weekly compensation.	Because incapacity is only assessed for weekly compensation purposes, it is not assessed for groups who are ineligible for weekly compensation (e.g., adult non-earners). Most people who develop incapacity as a result of injury would likely not consider themselves disabled, as most people are incapacitated for only a short time.
Loss of Potential Earnings (LOPE)	Defined in ACC legislation	Weekly compensation payable to people injured before the age of 18 who are incapacitated (cannot work) due to injury.	Paid instead of earnings-based weekly compensation to people injured as children, who don't have an earnings history.	For 'potential earners', incapacity must last for at least six months in order to access LOPE. LOPE recipients may therefore be more likely than other weekly compensation recipients to consider themselves disabled as a result of injury, but will nonetheless be a small subset of disabled claimants.
Permanent impairment	Defined in ACC legislation	The degree of stable, medically-assessed 'whole person impairment' resulting from injury.	Assessed to determine eligibility for lump sum compensation or independence allowance.	Although this concept relates to impairment rather than disability, it is likely that many people assessed by ACC as having 'permanent impairment' would consider themselves disabled. This group may capture the majority of those who become disabled as a result of injury.
Serious injury	Defined operationally	Clinically specified injuries including severe traumatic brain injury; moderate traumatic brain injury; incomplete spinal cord injury; paraplegia; low-level tetraplegia; high-level tetraplegia; and comparable diagnoses.	A profile assigned to certain claims for case management purposes.	Most, if not all, serious injury claimants would be likely to identify as disabled, but this group forms a very small sub-set of claimants disabled by injury.
Receipt of home and community support >6 months	Identified as a potentially useful disability proxy for this paper	Home and community support refers to support provided by carers in a claimant's home or community settings, which enables claimants to participate in everyday life. Claims with home and community support payments spanning six months or more can be identified in ACC's data.	Receipt of home and community support for six months or more suggests a degree of injury-related impairment lasting six months or more.	Claimants with injury-related impairment lasting six months or more may be likely to identify as disabled, but will form a relatively small sub-set of those disabled by injury.

## Disabled people face particular injury risks, but scheme settings may mean ACC provides less support to people who were disabled prior to injury

- As indicated in previous advice in this series, ACC makes cover decisions and provides entitlements based on tightly-prescribed legislative criteria. Societal and system factors (such as disabled people's access to employment, physical risks from inaccessible infrastructure, housing and

workplaces, ableist violence, and constrained access to healthcare to prevent injuries such as pressure sores), together with certain scheme settings, may result in disproportionate impacts on disabled people, including due to:

- **No legislative recognition of ‘disability’ as a concept.** As outlined above, ACC does not collect information on claimants’ disability status as such. This is partially attributable to the fact that disability as a concept is not provided for in the legislation setting out cover and entitlements. Instead, ACC relies on medically-assessed concepts such as incapacity and permanent impairment, which arguably drives a focus on individual characteristics as barriers to participation in society, rather than on disabling societal factors such as ableism, exclusionary hiring practices, and inaccessible environments and services.
  - **Treatments of ‘mixed-cause’ disability.** ACC is only able to provide entitlements which meet needs or compensate losses arising from injury. Where a person’s health or income needs arise from a combination of injury and pre-existing disability or health conditions, they may need to navigate two or more support systems in order to have their needs met.
  - **Eligibility for weekly compensation depends on earner status at date of injury, not date of incapacity.** With the exception of weekly compensation for Loss of Potential Earnings (LOPE) for people injured as children, only clients who were in paid work at their date of injury are eligible for weekly compensation. This is problematic for disabled people, who face significant barriers to workforce participation and are therefore much less likely than able-bodied people to be in work and eligible for weekly compensation if injured. In 2020, only 22.5% of working-age disabled people were employed, compared with 69.3% of working-age nondisabled.<sup>3</sup>
  - **Weekly compensation rules favour full-time workers.** Injured earners who worked an average of 30 hours or more per week prior to their incapacity are eligible for a ‘top-up’ to their weekly compensation, to ensure that they do not receive less than 80% of the minimum wage worked for 40 hours. Injured workers who do not meet this threshold are not eligible for a top-up, and instead receive 80% of their pre-incapacity earnings. This is likely to disproportionately impact disabled workers, who may be unable to work 30 hours a week due to impairments or discrimination. In 2019, disabled workers worked an average of 29.2 hours a week, compared with 34.5 hours a week for non-disabled people.<sup>4</sup>
  - **Legislative requirements for ACC’s communication and decision-making.** Accident compensation law sets highly prescriptive requirements for how ACC makes and communicates decisions. All decisions are required to be communicated to the claimant in writing. Operationally, this may drive a focus on written communication, rather than on communicating in ways which are meaningful and accessible to the claimant.
8. There are also inequities between the level of support provided via ACC to people who become disabled as a result of injury, and the level of support provided through other parts of the system to other disabled people. Rehabilitation provided by ACC (which comprises treatment, social rehabilitation and vocational rehabilitation) is available to ACC claimants on an entitlement basis, unlike Ministry of Health-funded services for disabled people, which are rationed. This can result in differences in the level and type of support – for example, the amount of treatment, or standard of assistive device – provided to ACC claimants compared to those whose disabilities arise from non-injury causes. Similarly, compensatory entitlements available to some ACC claimants are non-means-tested and often more generous than benefits and entitlements provided by the Ministry of Social Development.

## Indicators of injury-related impairment vary by sex and ethnicity

9. The following charts and commentary provide a limited view of the data ACC has on the proxies for injury-related disability described in paragraph 6 above, and how they are distributed based on sex and ethnicity.

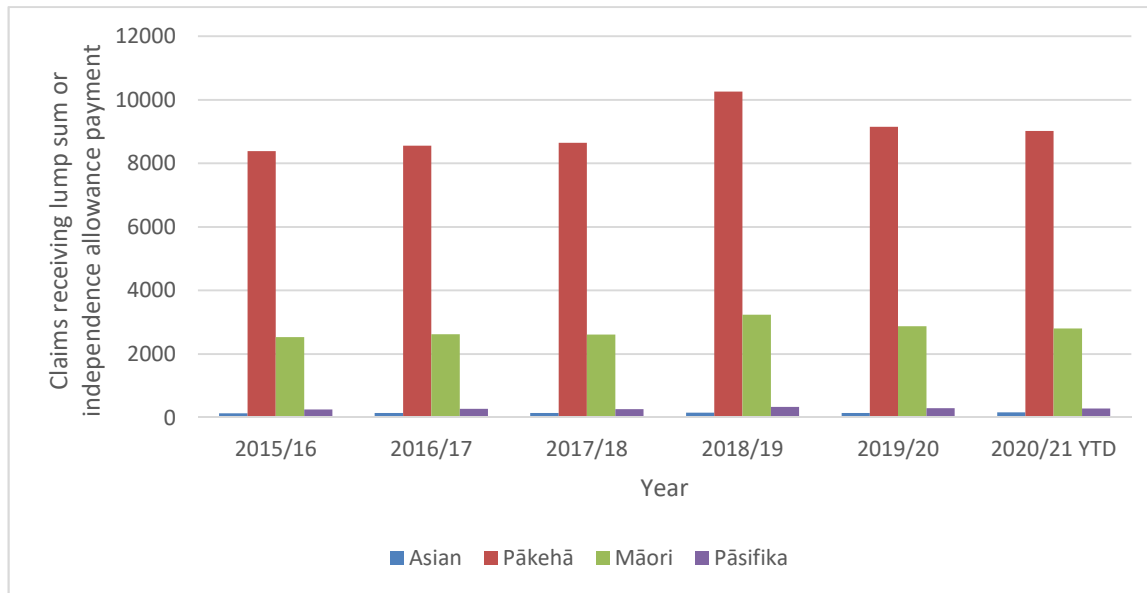
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<sup>3</sup> Statistics New Zealand (2020). Labour market statistics (disability): June 2020 quarter.

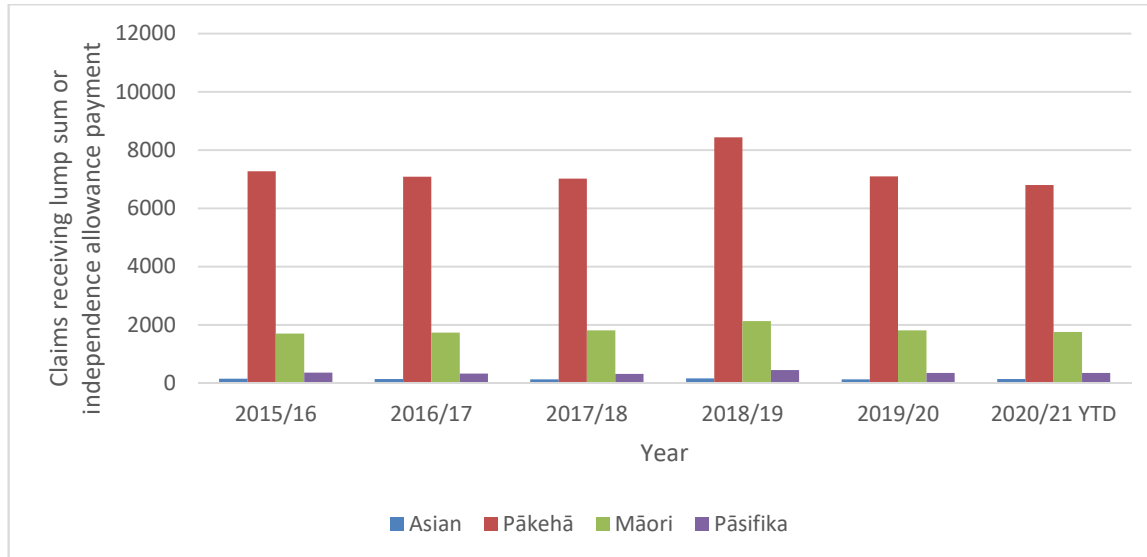
<sup>4</sup> Statistics New Zealand (28 August 2019). Employment gap for disabled people remains high [Media release].

10. As already stated, the concept of ‘permanent impairment’ – which is compensable via lump sums or independence allowance – is likely to be the broadest measure available to ACC of those living with impairments as a result of injury. Numbers of people receiving compensation for permanent impairment are shown in figures 1 and 2 below.

**Figure 1: Female claims receiving lump sum or independence allowance for permanent impairment between 1 July 2015 and 14 May 2021, by prioritised ethnicity**

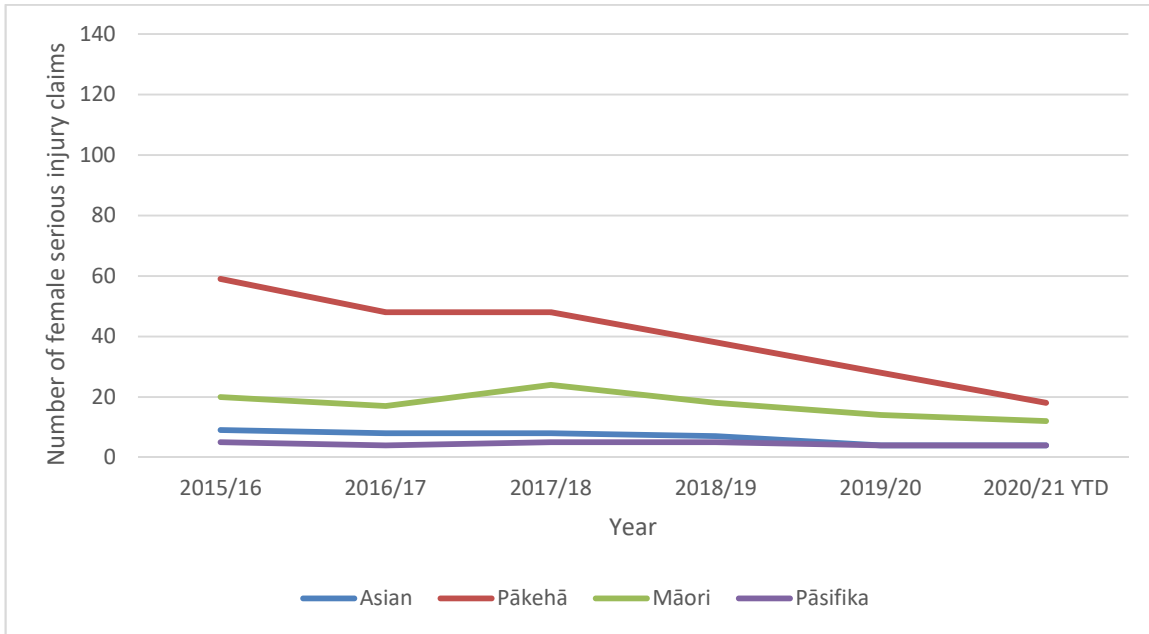


**Figure 2: Male claims receiving lump sum or independence allowance for permanent impairment between 1 July 2015 and 14 May 2021, by prioritised ethnicity**

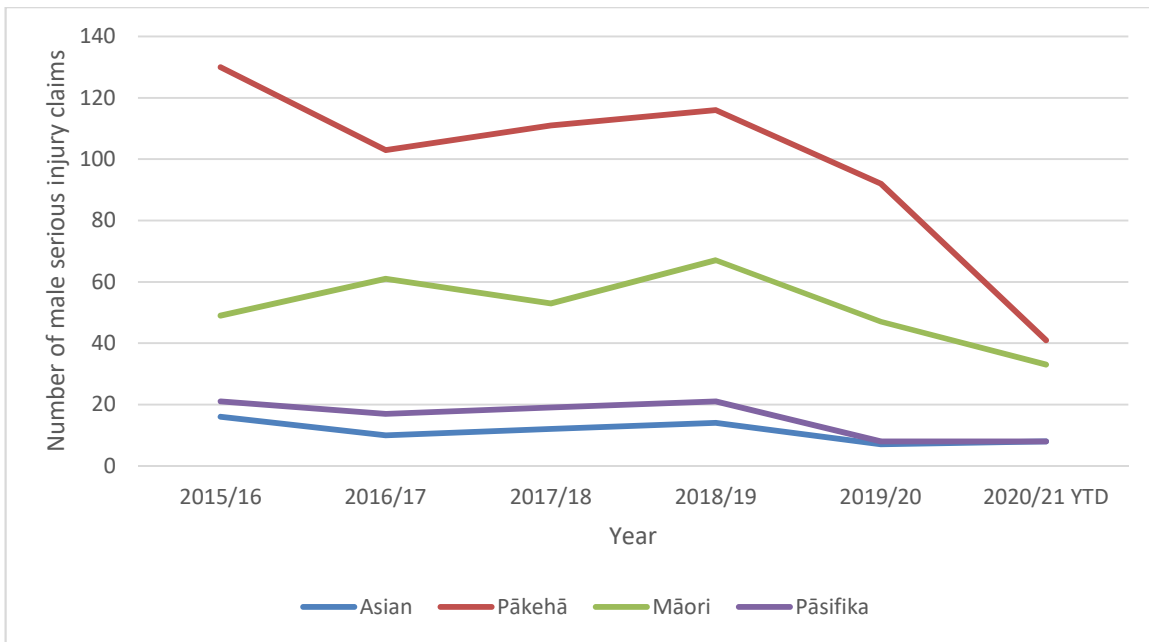


11. Claimants who receive lump sum compensation or independence allowance are likely to vary in whether they identify as disabled or not. This group is likely to be highly diverse, ranging from those assessed as having a ‘whole person impairment’ of 10%, to serious injury claimants who will be among the highest possible impairment ratings.
12. In considering its commitments under the New Zealand Disability Strategy and Action Plan, ACC tends to focus on the needs of serious injury clients. However, only a few serious injuries occur each year, while the number of injuries resulting in assessed permanent impairment is much greater. Although both serious injury and permanent impairment reflect a limited medical view of disability, the greater breadth of the permanent impairment concept means there is scope for ACC to consider the needs of this group in its work on cross-sector disability priorities.

**Figure 3: New female serious injury claims registered between 1 July 2015 and 14 May 2021, by prioritised ethnicity**

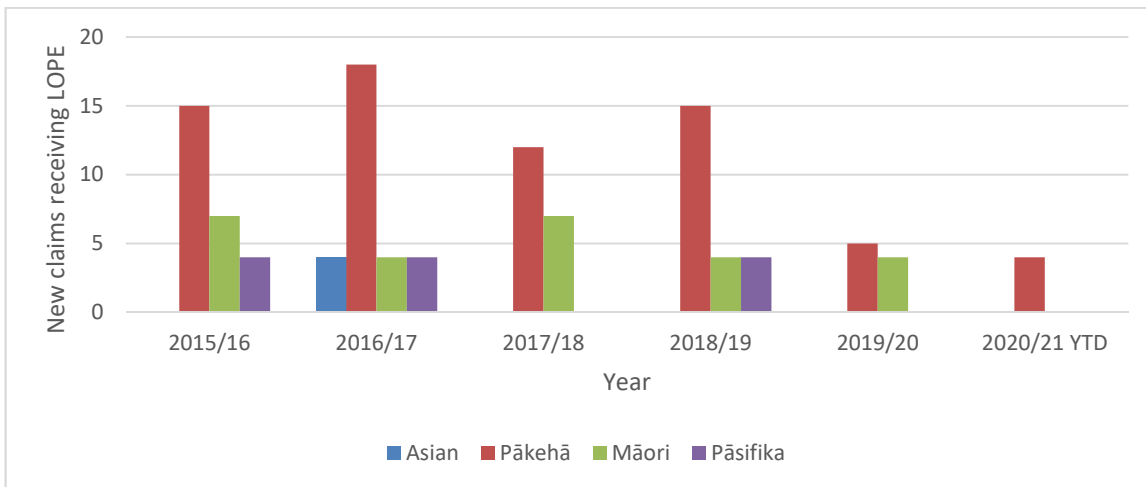


**Figure 4: New male serious injury claims registered between July 2015 and 14 May 2021, by prioritised ethnicity**



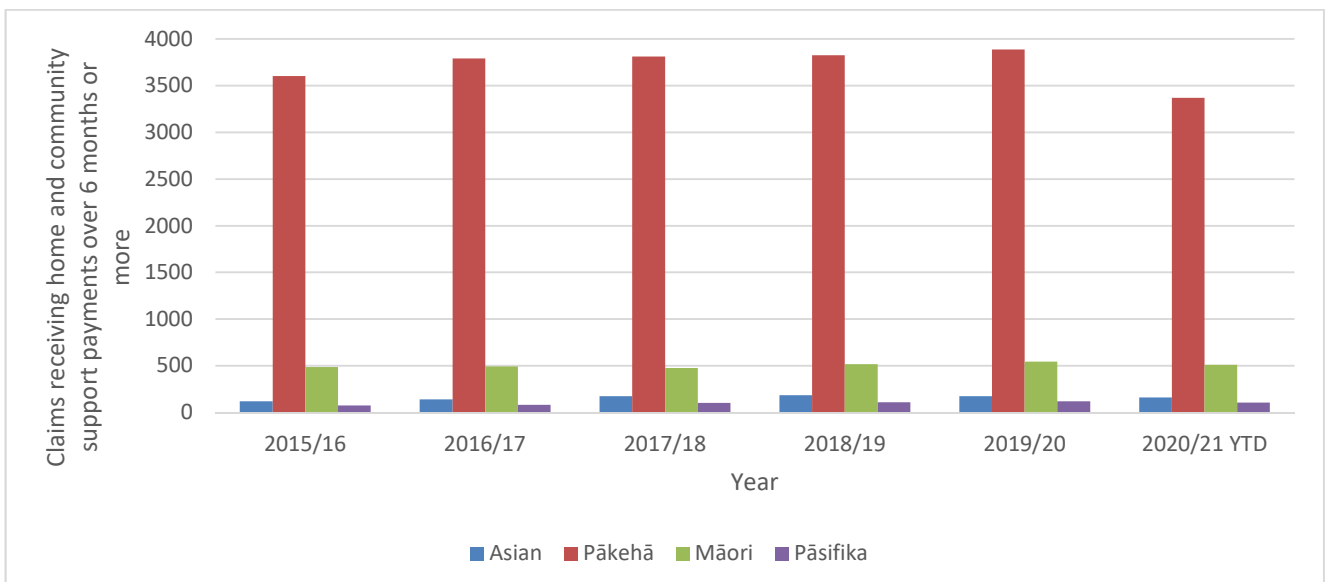
13. Figures 3 and 4 show the ethnic and sex distribution of the ‘serious injury’ claimant group, which is a small sub-group of the ‘permanent impairment’ group reported above. Note that the minimum number of claims reported in each category is four – actual claim counts may be lower, but have been suppressed to protect privacy.
14. The number of serious injuries lodged in 2020/21 YTD is notably lower than previous years, perhaps as a result of COVID-19 and associated lockdowns and travel restrictions alongside the impact of ACC’s injury prevention focus on serious injury. As reported in previous aides-memoire in this series, rates of serious injury are higher relative to population among Māori and Pāsifika peoples.
15. Figure 5 shows show the ethnic distribution of new LOPE claims, again with claim numbers below 4 suppressed.

**Figure 5: New claims receiving LOPE registered between 1 July 2015 and 14 May 2021, by prioritised ethnicity**

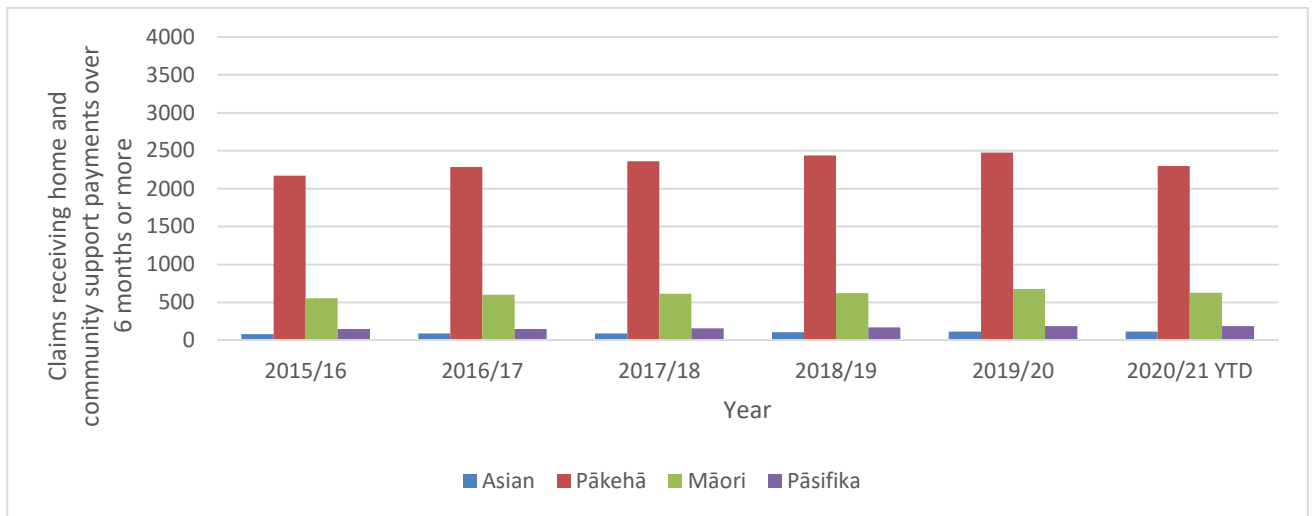


16. Because LOPE claimants are those injured before 18, most will never have worked before being incapacitated as a result of injury. However, they are able to receive weekly compensation at a more generous rate than the Supported Living Payment available to disabled people who are supported by the Ministry of Social Development (MSD). LOPE is equivalent to 80% of 40 hours worked on minimum wage, so is currently \$604.80 per week, increasing to \$640 per week from 1 July 2021. Those supported by MSD include ACC claimants who were injured as adult non-earners, and people with disabilities arising from non-injury causes.
17. Figures 6 and 7 show the sex and ethnic breakdown of claimants receiving home and community support payments over six months or more. This measure was identified as a useful potential proxy for disability, as it shows claimants who have been assessed as needing home care to support their participation in everyday life. Unlike the other proxies presented in this paper, home and community support assessments take into account a person’s household context, and may therefore reflect a view of disability which is less purely medical, and more closely aligned with the social model of disability. However, more work would need to be undertaken to further explore these contextual factors to understand barriers or limitations for accessing the scheme, including how those may be impacted by differing family structures and gender roles across different cultures.

**Figure 6: Active female claims receiving home and community support payments over a six month period or more, by prioritised ethnicity**



**Figure 7: Active male claims receiving home and community support payments over a six month period or more, by prioritised ethnicity**



## WAI 2575 will provide opportunities for the Crown to improve its response to disabled Māori – and others

18. ACC’s limited view of disability reflects the fact that it is one small element of a wider Crown system for supporting people with disabilities. This Crown system is currently being inquired into by the Waitangi Tribunal as part of the Health Services and Outcomes Kaupapa Inquiry (WAI 2575).
19. Stage One of WAI 2575 inquired into the primary health care system, and had significant impacts on the Health and Disability System Review and subsequent system reforms agreed by Government. Stage Two, Part One of WAI 2575 will look at the experiences of Māori with disabilities, spanning multiple agencies across the Crown-funded disability support system. While the conclusions of this part of WAI 2575 will not be known for some years yet, it is anticipated that its findings may have similarly far-reaching impacts to Stage One.
20. The Inquiry is expected to highlight significant areas for system-wide improvement in the Crown’s response to Māori with disabilities. It is likely that findings on how the system can be improved for disabled Māori will also have relevance for disabled non-Māori.
21. To the extent that ACC’s service provision reflects Crown policy choices, ACC will be in scope for Stage Two, Part One of WAI 2575. ACC is working with MBIE and Crown Law to engage constructively in the Inquiry process. This includes understanding whether and how ACC data can support and inform the work of the Tribunal and claimants, and the role of ACC’s knowledge and perspectives on Crown policy choices.

## Officials can provide further advice on the issues outlined in this aide-memoire

22. This advice provides a brief overview of what is known about ACC claimants who may consider themselves disabled as a result of injury. Should you wish to seek further advice on any of the issues outlined here, in-depth briefings can be commissioned from ACC and/or MBIE officials as relevant.