Organisation:	Foetal Anti-Convulsant Syndrome New Zealand
Submission to:	Health Select Committee
Subject:	Therapeutic Products Bill
Date:	16 February 2023

Your imagination is our reality:

Imagine being a woman, a woman who was born only just a few generations ago, who would get institutionalised, for having "funny turns". Never having a future or the opportunity to live a fulfilling life. Imagine finding out if these "funny turns" were actually epilepsy. Imagine living in this world where the clinical trials for the medicine you needed for your epilepsy was only clinically trialled on men. Imagine if that medicine was tested on pregnant animals and known to be teratogenic, the Department of Health was advised, but you as a disabled woman were never told. Imagine if you got pregnant and your baby died, or was permanently harmed because of this medicine, but you were never told. Imagine you as a disabled woman, taking your disabled child to the doctor's or specialists, and told nothing was wrong, or it was down to your parenting style. Now imagine as a woman trying to have faith in the health system or the health care professionals who you are meant to trust with your life. Our disabled women come into the health system with a heavy weight on them, and for our Fetal Anticonvulsant Syndrome (FACS) community we do not need to imagine, this is our reality!

There have been systemic failures that our community has experienced and is continuing to experience. These systemic failures, which include previous medicine acts, are literally causing death or permanent disability to our community. Would you allow thalidomide to continue?

In our FACS community there is a silo system where our women, and people of childbearing potential who are on medicines are falling out of everyone's jurisdiction. This includes the previous Medicines Act, where the Regulator would always say that is not our responsibility, go and see x or y.

As this Therapeutic Product Bill stands whilst parts of it are good, it will continue to systemically fail our community, by the pure nature of the medicines being "Grandfather medicines" or already being in the market therefore this Bill is not applicable for the changes necessary.

What is Fetal Anticonvulsant Syndrome

Fetal Anticonvulsant Syndrome (FACS) is an umbrella term relating to a range of conditions whereby an unborn foetus is negatively impacted by the childbearing person taking anti-seizure medicines while pregnant.

While mainly taken to prevent seizure disorders, anti-seizure medicines are also prescribed for mental health conditions, migraines and pain management.

Currently in New Zealand a lot of childbearing people who are pregnant are prescribed anti-seizure medicines without informed consent and there is no requirement for pharmaceutical companies to put warning labels on, or in their medicine boxes.

Some of the ways the person exposed to the medicine could be affected include: dysmorphic facial features, congenital malformations, developmental delay, attention and memory difficulties, lower IQ, Autism Spectrum Disorder, speech and language difficulties, gross and fine motor difficulties, low muscle tone, or even death.

Some key facts regarding FACS

- 3,373 people in childbearing age were dispensed sodium valproate in 2020.
- Up to 40% of babies exposed to more than 800mg of sodium valproate per day during pregnancy will have developmental delays.
- Approximately 338 babies would have been harmed due to sodium valproate exposure during pregnancy between 2007-2019. Of this approximate, 123 babies would be Māori, and 215 non-Māori.
- As of 17 June 2022 ACC had spent over $17.5m supporting babies, children, and adults affected by exposure to sodium valproate or carbamazepine during pregnancy. Of the 42 claims accepted only 4 were Māori, and 6 were of Pacific, Asian, or other ethnicity.
- There are approximately 19 different anti-seizure medicines prescribed (on or off label) in New Zealand and each of these has different impacts on a developing foetus. Of particular concern for New Zealand is the anti-seizure medicine sodium valproate (brand name Epilim).

#	Clause/section	Discussion area	Recommendation/suggestion

1.	Clause 36	We are raising a question surrounding transparency within the constraints of commercial sensitivity, as it is important to be transparent, particularly in clinical trials.	
2.	Clause 49	Off-label use Previous discussions with Medsafe around off-label use has resulted in Medsafe saying they don't condone it. Whilst Medsafe doesn't condone it, it does occur, and needs to be addressed.	The Regulator needs to have dialogue and fuller regulations around off-label use.
3.	Downstream activities	"…it may pass through several pairs of hands before reaching the patient…" How can we be ensured that the patient is receiving the information they require e.g. if there is advice around taking their medicine while pregnant.	Addition of a statement saying that when the consumer is not present a written copy of information regarding their therapeutic product must be given.
4.	Clause 75	When someone is in hospital and a vending machine is being used how do you know that they are getting informed consent and informed choice around their medicine(s).	Ensure that when vending machines are being used the Code of Rights is being adhered to.
5.	Clause 119 (1) & (2)	There needs to be consideration given to: • Ensuring that the Code of Consumer Rights are being adhered to, • What the outcomes will be if a person of childbearing potential becomes pregnant, and how will it affect the pregnancy and foetus, • Long term effects of a person if they are on this particular medicine.	Before any therapeutic product is brought onto market, and those already on the market the following needs to be in place: • Post-marketing surveillance by an independent party that the Regulator provides funding for by the fees paid by the sponsors. The post-marketing surveillance must include but not limited to: A pregnancy register for any medicine, a register for adverse reactions • Consumer representation, and co-design when deciding the rules/regulations etc. in accordance

			to the World Health Organization's "Global Patient Safety Action Plan 2021-2030", and the Code of expectations for health entities' engagement with consumers and whānau.
	(3)	Therapeutic products should have a new rating system, which puts different restrictions on them, depending on their risk level. If for example a medicine is a red zone medicine, such as valproate, if a person of childbearing potential is to be prescribed this there is compulsory restrictions that need to be done beforehand. In the United Kingdom they are about to bring into practice that if sodium valproate is to be prescribed to a person of childbearing potential then two healthcare professionals need to sign off on it. This is on top of the Pregnancy Prevention Programme that is already being implemented.	See Appendix 1 for the example of a colour coded system, Antiepileptics during pregnancy: Current state of knowledge on the risk of malformations and of neurodevelopmental disorder, page 16-17, by ansm, Agence nationale de sécurité du medicament et des santé
6.	Clause 129	FACSNZ have seen that when a medicine has been contra-indicated in pregnancy in another country the sponsor has not advised the New Zealand Regulator of this.	There needs to be the addition of when a therapeutic product is contra-indicated or banned in another country that the sponsor must advise the Regulator.
7.	Clause 142	Whilst we agree that there needs to be a post-marketing "…surveillance and response system to provide surveillance of the product's safety and quality, and efficacy (for a medicine) or performance (for a medical device)…" we believe that there needs to be a level of ownership taken by our Regulator, and also independence from the sponsor. There has certainly been instances where sponsors are slow to advise that there are safety issues, particularly around pregnancy	The sponsor should pay the Regulator to provide post-marketing surveillance with a third party agency. This allows more distance from the third party agency and the sponsor.

		and the neurodevelopmental affects. We have seen this for ourselves with sodium valproate, where the sponsor knew, but was not providing information on the Consumer Medicine Information sheet, or the Data Sheet.	
8.	Clause 149	This clause talks about new medicines, however what about the "Grandfather" or older medicines. Previously FACSNZ was able to access information about some anti-seizure medicines from the archives. When we went to access it again the documents have now been closed for 50 years. The information that is pertained in those closed archive documents is part of <u>our</u> FACS history, yet for many of us we will never have access to them in our lifetime. This yet again feels like the system is trying to eradicate our history, or as one retired pharmacist said to us once when talking about sodium valproate and the harm it was causing to babies, "That was swept under the carpet."	That the Grandfather medicines or older medicines have the same protection to them as new medicines, which would mean that closed archive documents could be re-opened to the public.
9.	Clause 187	There are pregnancy warnings on Epilim, both on the box and the foil, however when Epilim is put into a white box the warnings are not being carried over.	All warnings around pregnancy that is on a branded box <u>must</u> be carried over to a white box.
10.	Clause 203	Post-marketing surveillance is something that hasn't been done well in New Zealand for babies exposed in utero to medicine(s). It has previously been expressed that there is post-marketing surveillance and one example was Centre for Adverse Reaction Monitoring. CARM was never designed as a surveillance tool or post-marketing tool for babies exposed to medicines in utero. An example is that we have more FACS accepted claims through ACC, than we have CARM reports for.	Before any therapeutic product is brought onto market, and those already on market the following need to be in place: • Post-marketing surveillance by an independent party that the Regulator provides funding for by the fees paid by the sponsors. The post-marketing surveillance must include but not limited to:

		How does the Regulator become accountable for the lack of post-marketing surveillance and response?	A pregnancy register for any medicine, a register for adverse reactions • Consumer representation, and co-design when deciding the rules/regulations etc. in accordance to the World Health Organization "Global Patient Safety Action Plan 2021-2030", and the Code of expectations for health entities' engagement with consumers and whānau.
11.	Clause 332	It is always important to engage with people with lived experience or experts by experience as they bring a totally different world view and knowledge to the table.	Add an addition to (1) Co-design with consumers with lived experts or who are experts by experience. Under (i) there needs to be an addition for data. Under *Engagement and co-design with Māori and other population groups* (please note the red is new words that need adding) (l) "to engage with Māori and other population groups, including women, and disabled, in a manner that reflects their needs and aspirations in relation to therapeutic products:"
12.	Clause 333	Who can people make a complaint to about the Regulator?	There needs to be an independent agency where people can lodge a complaint about the Regulator and this needs to be written into the Bill.
13.	Clause 334 & Clause 382	People with lived experience or experts by experience bring a totally different world view and knowledge to the table. To have the best strategy, and reviews, would include a co-design with consumers.	Consumer representation and co-design for people with lived experience or experts by experience, particularly for Māori, women, and disabled, should occur at every review, not just the Regulator, or Minister of Health. This would be in accordance to the World Health Organization's "Global Patient Safety Action Plan 2021-

			2030", the Code of expectations for health entities' engagement with consumers and whānau, and Pae Ora legislation.
14.	Clause 347	The Medicines Adverse Reactions Committee (MARC) in the past did a literature review of sodium valproate in pregnancy. The only consumer representation was the person who is already on there. FACSNZ did not find out about the review until afterwards, and the consumer of the committee never reached out to us. When FACSNZ approached Medsafe (after we found out about the completed review), to have 15 minutes to speak to MARC to provide them with our knowledge and what is actually happening on the ground, we were declined.	Consumer representation for people with lived experience or experts by experience, particularly for Māori, women, and disabled need to be part of <u>any</u> advisory committee that the Regulator has established, or will establish. This would be in accordance to the World Health Organization's "Global Patient Safety Action Plan 2021-2030", the Code of expectations for health entities' engagement with consumers and whānau, and Pae Ora legislation for the population groups that needs to have extra attention. This needs to be included in the Bill.
15.	Clause 380	People with lived experience or experts by experience bring a totally different world view and knowledge to the table. To have the best strategy, and reviews, would include a co-design with consumers.	Under (3) there needs to be the addition of (iii) consumers, including Māori, women, and disabled.
16.	Subpart 2 – Health Practitioners Competence Assurance Act (2003)	This raised a question of where does safe prescribing come in?	

FACSNZ would like to request the opportunity to make an oral submission to the Committee, and leave you with a parting story.

Before Denise Astill, founded Foetal Anti-Convulsant Syndrome New Zealand she approached Medsafe to say about Epilim causing congenital malformations, and many other things to babies who were exposed during pregnancy. The response to Denise was if there was dirt in your medicine we could help you, but with this we can't.

Appendix 1: https://archiveansm.integra.fr/var/ansm_site/storage/original/application/1271b0af11c4edd15aad618983926478.pdf