

Accident Compensation Amendment Bill

(Divided from the Health and Safety Reform Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Health and Safety Reform Bill as reported from the Transport and Industrial Relations Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Health and Safety at Work Bill comprising clauses 1 and 2, Parts 1 to 5, and Schedules 1 to 3
- this Bill comprising subpart 1 of Part 6 and Schedule 4
- Hazardous Substances and New Organisms Amendment Bill comprising subpart 2 of Part 6 and Schedules 5 to 7
- Employment Relations Amendment Bill (No 2) comprising subpart 3 of Part 6
- WorkSafe New Zealand Amendment Bill comprising subpart 4 of Part 6 and Schedule 8.

Accident Compensation Amendment Bill

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

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Hon Michael Woodhouse

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Accident Compensation Amendment Act **2015**.

2 Commencement

(1) This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates and appointing different dates for different purposes. 5

(2) Any provision that has not earlier been brought into force comes into force on **1 January 2018**. 10

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240 Principal Act

This **Act** amends the Accident Compensation Act 2001 (the **principal Act**).

241 New section 5A inserted (Provisions affecting application of amendments to this Act) 15

After section 5, insert:

5A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

241A Section 6 amended (Interpretation) 20

In section 6, insert in its appropriate alphabetical order:

health and safety regulator has the same meaning as regulator in **section 12 of the Health and Safety Reform Act 2014**.

242 Section 167 amended (Application and source of funds)

Replace section 167(3)(g) with:

(g) audits and assessments referred to in sections **174D** and 175; and 5

243 Section 169 amended (Rates of levies)

After section 169(4)(a), insert:

(ab) **section 174A(2)**:

244 New sections 174A to 174F inserted

After section 174, insert: 10

174A Corporation may develop and establish workplace incentive programmes

(1) The Corporation may develop and establish 1 or more workplace incentive programmes to provide incentives for employers and self-employed persons to reduce the incidence, severity, and impact of work-related personal injuries. 15

(2) A Work Account levy determined for the purposes of section 168, 168B, or 211 may be adjusted up or down for a particular employer or a particular self-employed person in accordance with the terms and conditions of a workplace incentive programme. 20

(3) Regulations made under section 333 may prescribe fees and charges payable by employers and self-employed persons who participate in a workplace incentive programme, including:— 25

(a) administration fees to meet the costs, or part of the costs, incurred in administering the programme; and

(b) fees or charges for audits and assessments provided for under **section 174D(3)**. 25

174B Process to develop workplace incentive programme

(1) In developing a workplace incentive programme, the Corporation must—

(a) have regard to the following matters:

(i) the extent to which the programme is likely to lead to reductions in the incidence, severity, and impact of work-related personal injuries and to improvements in rehabilitation and durable return to work; and 30

(ii) the extent to which the programme may affect the Work Account levies payable by levy payers who are not participating in the programme; and 35

(iii) the expected administration costs of the programme; and

- (iv) the impact of the programme on the administration of the accident compensation scheme as a whole and on claims management processes; and
- (b) endeavour to ensure that programmes are available for a variety of types of employers and self-employed persons, including small and large businesses; and 5
- (c) endeavour to ensure that the rates of adjustment to Work Account levies that will be available under the programme are proportionate to the expected increases or decreases in costs to the Corporation as a result of employers and self-employed persons participating in the programme. 10
- (2) In developing a workplace incentive programme, the Corporation must consult the persons or organisations it considers appropriate, having regard to—
- (a) the potential participants in the programme; and
- (b) the potential impact of the programme on the Work Account levies of non-participating levy payers. 15
- (3) **Subsection (2)** does not apply if the Minister determines under **section 174C** that the workplace incentive programme must be approved by the Minister.
- 174C Minister’s approval of certain workplace incentive programmes**
- (1) The Minister may determine, in relation to any proposed workplace incentive programme, that the programme must be approved by the Minister before it is established under **section 174D**. 20
- (2) In deciding whether to make a determination under **subsection (1)**, the Minister may consider any relevant factors, including—
- (a) the public interest; and 25
- (b) how the proposed workplace incentive programme aligns with the Government’s broader objectives; and
- (c) the impact of the proposed workplace incentive programme on levy payers generally or on particular groups of levy payers; and
- (d) the impact of the proposed workplace incentive programme on levy payers who, despite being eligible to participate in the proposed programme, may choose not to participate. 30
- (3) If the Minister makes a determination under **subsection (1)**, before the Minister approves the establishment of the workplace incentive programme, the Minister must consult any persons or organisations that the Minister considers appropriate, having regard to— 35
- (a) the potential participants in the programme; and
- (b) the potential impact of the programme on the Work Account levies of non-participating levy payers.

174D Establishment of workplace incentive programmes

- (1) The Corporation may, by notice in the *Gazette*, establish a workplace incentive programme.
- (2) A notice in the *Gazette* under **subsection (1)** must set out the terms and conditions of the workplace incentive programme, including— 5
- (a) any criteria that must be met before an employer or a self-employed person may participate in the programme; and
 - (b) the basis and conditions on which, and periods for which, Work Account levies may be adjusted for participants in the programme; and
 - (c) the level or levels of levy adjustment that may apply to participants in the programme. 10
- (3) Without limiting **subsection (2)**, a notice in the *Gazette* under **subsection (1)** may provide for audits or assessments of participants in the workplace incentive programme, including—
- (a) the order in which applications for audits or assessments are to be dealt with: 15
 - (b) the approval of auditors and assessors:
 - (c) requirements that audits or assessments be conducted in accordance with an audit tool or audit tools developed or approved by the Corporation:
 - (d) the frequency of audits or assessments and the circumstances under which additional audits or assessments may be required. 20
- (4) A notice in the *Gazette* under **subsection (1)**, and an audit tool developed for the purposes of **subsection (3)(c)**, may incorporate by reference any material referred to in section 176, and that section and section 177 apply as if the notice were a regulation made for the purposes of section 175, the audit tool were an audit tool referred to in section 175(4), and the reference to the Minister in section 176(3) were a reference to the Corporation. 25
- (5) A notice in the *Gazette* under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 30

174E Amendments to workplace incentive programme

- (1) A workplace incentive programme may be amended in the same manner as a workplace incentive programme is developed and established.
- (2) **Sections 174B to 174D** apply, with all necessary modifications, in relation to an amendment to a workplace incentive programme. 35
- (3) Despite **subsection (2)**, **sections 174B(2) and 174C(3)** do not apply if the amendment is a minor or technical amendment.

- (4) A notice in the *Gazette* under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- 174F Corporation must report on effectiveness of workplace incentive programmes** 5
- The Corporation must include in its annual report under section 150 of the Crown Entities Act 2004 a report on the effectiveness of workplace incentive programmes in reducing the incidence and impact of work-related personal injuries.
- 245 Section 175 amended (Risk adjustment of Work Account levies)** 10
- (1) Repeal section 175(1) and (2).
- (2) In section 175(4), replace “An audit of an employer’s or a self-employed person’s safety management practices must, and an assessment of a self-employed person’s safety management capabilities may,” with “An audit of an employer’s safety management practices must”.
- (3) In section 175(7), replace “subsection (1)(a) or (3) must, and regulations made for the purposes of subsection (1)(b) may,” with “subsection (3) must”.
- (4) Replace section 175(7)(c) with:
- (c) the frequency of audits of an employer’s safety management practices and the circumstances under which additional audits may be required: 20
- 246 Section 176 amended (Incorporation by reference)**
- Replace section 176(1)(a) with:
- (a) New Zealand standard, or any requirement or recommended practice of any New Zealand organisation; or
- 247 Section 190 amended (Purchase of weekly compensation by shareholder-employees)** 25
- In section 190(2), replace “sections 175,” with “sections **174D**, 175,”.
- 248 Section 263 amended (Prevention of personal injury)**
- Replace section 263(5) with:
- (5) The Corporation must ensure that any measures undertaken or funded in accordance with this section— 30
- (a) are co-ordinated with similar activities of other government agencies to contribute to the overall injury prevention objectives in an efficient and effective way; and
- (b) to the extent that the measures will be funded from the Work Account, take account of the Health and Safety at Work Strategy published under **section 211** of the **Health and Safety Reform Act 2014**. 35

249 New sections 264A and 264B inserted

After section 264, insert:

264A Workplace injury prevention action plan

- (1) The Corporation and WorkSafe must at all times have a workplace injury prevention action plan. 5
- (2) The Corporation and WorkSafe—
 - (a) may amend the workplace injury prevention action plan at any time; and
 - (b) must review the workplace injury prevention action plan at least once every 3 years.
- (3) The workplace injury prevention action plan must— 10
 - (a) outline all workplace injury prevention programmes that will be undertaken by WorkSafe and the Corporation (jointly or separately) in the period to which the plan relates; and
 - (b) state how those programmes are to be funded; and
 - (c) if funding from one agency is to be used to fund programmes undertaken by the other agency, state the amount of that funding; and 15
 - (d) in relation to programmes, or aspects of programmes, to be undertaken by WorkSafe, be consistent with the Health and Safety at Work Strategy published under **section 211** of the **Health and Safety Reform Act 2014**; and 20
 - (e) in relation to programmes, or aspects of programmes, to be undertaken by the Corporation, be consistent with the Corporation’s priorities for injury prevention measures relating to the Work Account.
- (4) The Corporation and WorkSafe must, to the extent practicable, ensure that—
 - (a) the workplace injury prevention action plan outlines a coherent scheme of workplace injury prevention programmes that do not involve the duplication of activities carried out by the Corporation and WorkSafe; and 25
 - (b) workplace injury prevention programmes are undertaken by the agency that is best suited to undertake them; and
 - (c) programmes outlined in the workplace injury prevention action plan complement the agencies’ other activities, such as enforcement and education activities. 30

264B Injury prevention measures undertaken by WorkSafe and funded by Corporation or jointly undertaken

- (1) This section applies to injury prevention measures that are— 35
 - (a) jointly undertaken by the Corporation and WorkSafe; or
 - (b) undertaken by WorkSafe and partly or wholly funded by the Corporation.

- (2) Before measures to which this section applies commence, the Corporation and WorkSafe must enter into 1 or more written agreements that specify—
- (a) how the measures—
 - (i) are likely to result in a cost-effective reduction in actual or projected levy rates in the Work Account; and 5
 - (ii) are consistent with the Health and Safety at Work Strategy published under **section 211** of the **Health and Safety Reform Act 2014**; and
 - (iii) are consistent with the Corporation’s priorities for injury prevention measures relating to the Work Account; and 10
 - (b) the amount of funding to be provided by the Corporation and by WorkSafe; and
 - (c) how and when that funding will be provided; and
 - (d) how the measures will be evaluated, including the key performance indicators to be used and the expected outcomes; and 15
 - (e) any requirements for reporting between the agencies.
- (3) If funding for injury prevention measures undertaken by WorkSafe is to be provided by the Corporation, the agreement may also provide that the Corporation may cease providing funding if it is satisfied that—
- (a) key performance indicators are not being met; or 20
 - (b) expected outcomes are not being achieved.

249A Section 280 amended (Disclosure of information to Corporation)

In section 280(2), replace “Worksafe” with “health and safety regulators”.

249B Section 286 amended (Corporation to provide information to Ministry of Business, Innovation, and Employment and to WorkSafe) 25

- (1) In the heading to section 286, replace “**Worksafe**” with “**health and safety regulators**”.
- (2) In section 286(1), replace “Worksafe” with “a health and safety regulator”.
- (3) In section 286(1)(b), replace “Worksafe” with “the health and safety regulator”.
- (4) In section 286(2), replace “Worksafe” with “the health and safety regulator” in 30 each place.
- (5) In section 286(3), replace “Worksafe” with “health and safety regulators”.
- (6) In section 286(5)(e), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

251 New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 4** of this Act.

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Schedule 4
New Schedule 1AA inserted in Accident Compensation Act 2001

s 251

Schedule 1AA

Transitional and savings provisions relating to amendments to this Act made by subpart 1 of Part 6 of the Health and Safety Reform Act 2014

ss 5A, 402 s 5A

- 1 Transitional provision relating to risk adjustment of Work Account levies**
- (1) This clause applies to any employer or self-employed person if the Work Account levy payable by that person immediately before the commencement of this schedule has been adjusted down in accordance with regulations made for the purposes of section 175(1). 10
- (2) A person to whom this clause applies continues to be eligible to pay a Work Account levy at an adjusted rate until— 15
- (a) the person gives notice in writing to the Corporation that the person no longer wishes to pay the levy at the adjusted rate; or
- (b) the person's adjusted levy is cancelled or discontinued in accordance with the regulations; or
- (c) the period to which the adjustment relates expires. 20
- (3) For the purposes of **subclause (2)**,—
- (a) section 175, including the power to make regulations, continues to apply as if it had not been amended by **subpart 1 of Part 6 of the Health and Safety Reform Act 2014**; and
- (b) the regulations in force immediately before the commencement of this schedule in accordance with which the person's rate was adjusted, or the person's adjusted rate was continued, continue to apply until— 25
- (i) they are replaced by regulations made under **paragraph (a)**; or
- (ii) this clause is repealed.
- (4) This clause is repealed on 30 June 2019. 30
- 2 Transitional provision relating to Accredited Employers Programme**
- (1) This clause applies to any employer who—
- (a) is an accredited employer under the accredited employers programme framework established by the Minister under section 183; and
- (b) is entitled to a safety management practices discount set out in regulations made under section 175. 35

- (2) For the purposes of calculating the premium payable by a person to whom this clause applies, the regulations made under section 175 that were in force immediately before the commencement of this schedule, and any replacement regulations made under **clause 1(3)(a)**, continue to apply until—
- (a) the accredited employers programme framework is amended or revoked; or
 - (b) this clause is repealed.
- (3) This clause is repealed on 30 June 2019.

Legislative history

25 August 2015

Divided from Health and Safety Reform Bill (Bill 192–2) as Bill 192–3B