

Accident Compensation (Financial Responsibility and Transparency) Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Accident Compensation (Financial Responsibility and Transparency) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Accident Compensation (Financial Responsibility and Transparency) Amendment Bill seeks to amend the Accident Compensation Act 2001. The bill has the following two objectives:

- to improve the framework for funding ACC's levied Accounts so it is clearer and more transparent, has a longer-term focus, and supports more stable levies¹
- to ensure that residual levies are not over-collected.

To fulfil the first objective, Part 1 of the bill would introduce three principles of financial responsibility that would underlie ACC's levy setting. The three principles are

- collecting levies to meet the life-time cost of claims in a particular year
- reasonable stability in levy rates

¹ ACC maintains and operates five Accounts that fund entitlements and ACC's operations. The levied Accounts are the Work Account, the Earners' Account, and the Motor Vehicle Account. The Non-Earners' Account was previously funded by appropriation through Vote ACC. Since 2015, it has been funded by appropriation through Vote Labour Market. The Treatment and Injury Account is funded by transfers from the Non-Earners' Account and Earners' Account.

- long-term solvency of the levied Accounts.

Part 1 would also require the Minister for ACC to issue a funding policy statement that is consistent with the principles of financial responsibility. ACC would implement the funding policy statement with the aim of improving the governance of the levy-setting process. This would replace the current provision requiring ACC to develop the funding policy.

A key aim of this change would be to improve the continuity between levies consulted on by ACC and subsequently recommended by the Government. There would also be increased reporting requirements on ACC.

To achieve the second objective, Part 2 of the bill would repeal existing provisions about residual levies. ACC moved to a system of fully funding the lifetime costs of injury claims in 1999. Before this, levies covered only the current costs of a claim. Since then, residual levies have been collected to fund the ongoing costs of injuries incurred before 1999.

This bill would help to ensure that residual levies would continue to be paid only so long as there are outstanding liabilities for residual levies to offset. It would allow residual levies to be discontinued earlier, though not later, than the dates set under the Act (essentially the end of the 2018/19 levy year). This would help to ensure that residual levies are not over-collected.

This commentary covers the major amendments that we recommend; it does not discuss minor or technical amendments.

Principles of financial responsibility

As noted above, the bill would create three principles of financial responsibility to guide the levy-setting process. We recommend amending clause 5, new section 166A, to clarify the nature of the three principles and how they fit together.

This amendment would make it clear that the principles must be balanced against each other and that the Government could manage trade-offs if required. This would, for example, permit a large change in levies if required.

Most of us consider that the amendment would also help to avoid any implication that applying the principles overrides the Minister for ACC's existing duty to have regard to the public interest under section 300 of the Act, when exercising his or her powers and functions under the Act or the Crown Entities Act 2004. Some of us agree with the submission from BusinessNZ that the state of the Government's fiscal position should not be a consideration when setting ACC levies. The Labour Party has prepared amendments that will be moved in the House clarifying that the Minister's existing duty to have regard to the public interest refers to the reduction and treatment of accidents and injuries and has no wider application.

Funding policy statement

Consultation requirements

The bill does not require consultation on the Government's funding policy statement. We consider it would be appropriate to require targeted consultation before the funding policy statement is issued.

We therefore recommend that clause 5, new section 166C, be amended to require the Minister for ACC to consult on the funding policy statement with persons or organisations that he or she considers appropriate before it is issued. This requirement would be in addition to existing requirements for public consultation on ACC levy rates.

Time frame for issuing the first funding policy statement

We recommend amending clause 5, new section 166B(1), to require the Minister for ACC to issue a funding policy statement within 12 months of the passage of the bill. This amendment would provide enough time for proposed consultation by extending the time frame for introducing the first funding policy statement from three months to 12 months.

Commencement mechanism

Clause 2(2) of the bill provides for Part 2, clauses 7 to 9, to be brought into force by Order in Council. It is an established principle that provisions for the commencement of legislation by Order in Council should be used only in "rare and exceptional" circumstances.

We asked the Regulations Review Committee for advice on whether the circumstances of this bill were "rare and exceptional" enough to justify commencement by Order in Council. We were advised that, although the "rare and exceptional" test was not met, there was a need for flexibility to bring residual levy collection to an end earlier than the statutory dates set in the Act.

To minimise complexity, the Regulations Review Committee recommended amending the bill to provide for the Minister for ACC to set the date or dates for repealing the residual levy provisions, rather than the Governor-General by Order in Council. We support this and recommend amending clause 2 to provide for the bill to come into force on the day after it receives the Royal assent. The Regulations Review Committee also recommended redrafting clauses 7, 8, and 9. We discuss this below.

Repeal of provisions about residual levies

Clauses 7 to 9 would repeal provisions about residual levies for the Work Account, the Motor Vehicle Account, and the Earners' Account.

Recent revaluations of the outstanding residual claims liability for each Account suggest that the residual amounts are now estimated to be lower than the amounts specified under the Act. Therefore, residual liabilities will be offset at an earlier date than those set in the Act.

We recommend an amendment to provide scope to set new residual amounts to reflect the recent revaluations and discontinue collecting the residual levies when residual liabilities have been offset. This would provide flexibility to allow residual levies to be phased out over time, provided it is no later than the current dates set in legislation of 31 March and 30 June 2019.

The Regulations Review Committee also recommended removing clauses 7 to 9 and replacing them with a redrafted clause 7. This amendment would simplify the approach to repealing residual levy provisions for the Work Account, the Motor Vehicle Account, and the Earners' Account. We support this advice. The redrafted clause 7 would

- as stated above, empower the Minister for ACC to appoint the date the residual levy will cease to be collected on
- provide for the Minister for ACC to appoint the date by an instrument published under the Legislation Act 2012 (specifically, by way of notice) with the effect that the instrument would be drafted by the Parliamentary Counsel Office and published in the Legislative Instrument series, so the benefits of the Order in Council process are not lost
- put the changes to the residual levy into the Act so that they can be read in the Act, instead of having to be searched out in a stand-alone amendment.

We endorse the recommendation from the Regulations Review Committee to delete the Schedule, because it would no longer be required. This is because the provisions that were in the Schedule would now be incorporated in the redrafting of clause 7.

New Zealand First minority view

New Zealand First does not support this bill. Clearly there are benefits to businesses and individuals with the reduction of ACC levies. However, this Government should acknowledge the reason that levies are so high in the first place was due to this Government's unwillingness to rectify a higher than required levy problem which they knew existed, but instead increased those levies higher, and further, to offset the books.

Moreover, nowhere in the bill is there a clear reference to levy reductions.

New Zealand First supports open and transparent government at all times, and not just when the Government thinks that it is necessary. We support the setting of a funding policy that improves the transparency of the levy-setting process, which would ensure the public is better informed.

Appendix

Committee process

The Accident Compensation (Financial Responsibility and Transparency) Amendment Bill was referred to the Transport and Industrial Relations Committee on 2 June 2015. The closing date for submissions was 2 July 2015. We received and considered 11 submissions from interested groups and heard four oral submissions.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in clauses 2, 7, 8, and 9.

Committee membership

Jonathan Young (Chairperson)

Andrew Bayly

Sarah Dowie

Iain Lees-Galloway

Clayton Mitchell

Sue Moroney

Dr Parmjeet Parmar

Denise Roche

Alastair Scott

Phil Twyford

Hon Maurice Williamson

Kevin Hague replaced Denise Roche for this item of business.

**Accident Compensation (Financial Responsibility and
Transparency) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

~~text deleted unanimously~~

Hon Nikki Kaye

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7	Section 169AA repealed (Basis on which funds to be calculated)	5
8	Section 215 repealed (Basis on which funds to be calculated)	5

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<u>9</u>	Section 220A repealed (Basis on which funds to be calculated)	5
<u>7</u>	<u>New sections 336A to 336C and cross-heading inserted</u>	<u>5</u>
<i><u>Repeal of and amendments to provisions relating to residual levies</u></i>		
<u>336A</u>	<u>Repeal of and amendments to provisions relating to residual levies for Work Account</u>	<u>5</u>
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Accident Compensation (Financial Responsibility and Transparency) Amendment Act **2015**.

2 Commencement

~~(1) Except as provided in **subsection (2)**, this Act comes into force on the day after the date on which it receives the Royal assent.~~

~~(2) **Sections 7 to 9** come into force on a date to be appointed by the Governor-General by Order in Council, and one or more orders may be made bringing different provisions into force on different dates.~~

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

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

Part 1

**Amendments relating to principles of financial responsibility and
funding policy statement**

4 Section 6 amended (Interpretation)

In section 6, repeal the definition of **fully funded**.

5 New sections 166A to 166C inserted

After section 166, insert:

166A Principles of financial responsibility in relation to Accounts

- (1) The cost of all claims under the levied Accounts are to be fully funded by meeting the outstanding claims liability in respect of the claims by offsetting an adequate level of assets to fund the cost of those claims.
- (2) ~~Levies must be set in accordance with the following principles:~~ When making recommendations in respect of regulations made under section 329 setting levies, the Minister must have regard to the following principles:
 - (a) the levies derived for each Account ~~must~~ should meet the lifetime cost of claims in relation to injuries that occur in a particular year:
 - (b) if an Account has a deficit of funds to meet the costs described in ~~paragraph (a)~~ **subsection (1)**, or has accumulated surplus funds, that deficit or surplus ~~must~~ should be corrected by the setting of levies at an appropriate rate for a subsequent year or years:
 - (c) large changes in levies ~~must~~ should be avoided.

166B Funding policy statement

- (1) Within ~~3~~ 12 months after the commencement of this section, the Minister must issue a funding policy statement.
- (2) The funding policy statement must specify—
 - (a) a target level or band for the funding of each Account; and
 - (b) an approach to managing deviations from the target level or band for the funding of each Account over a period of time; and
 - (c) limits (if any) on any annual levy changes for all or any of the Accounts; and
 - (d) the circumstances (if any) in which levy changes are not required.
- (3) The funding policy statement must be consistent with, and explain how it is consistent with, the financial responsibility principles in **section 166A**.
- (4) The funding policy statement may prescribe specific actions for the Corporation to take to the extent that any such action is consistent with the Corporation's functions under section 262.
- (5) Sections 113 and 114 of the Crown Entities Act 2004 do not apply in respect of a funding policy statement.

166C Consultation, publication, and amendment of funding policy statement

- (1) Section 115(1) to (3A) of the Crown Entities Act 2004 applies to the making of a funding policy statement as if it were a ministerial direction.
- (2) The Minister must consult such persons or organisations as the Minister considers appropriate before issuing the funding policy statement.

- 6 Section 331 amended (Consultation requirements for regulations relating to levy setting)**
- (1) In the heading to section 331, after “**Consultation**”, insert “**and other**”.
- (2) Repeal section 331(2)(a)(iv).
- (3) Replace section 331(3) with: 5
- (3) The Corporation must, when recommending to the Minister the making of regulations under this Act prescribing the rates of levies, give effect to—
- (a) the funding policy statement issued under **section 166B**; and
- (b) any relevant policy direction given under section 103 of the Crown Entities Act 2004. 10
- (4) After section 331(5), insert:
- (5A) The Corporation must prepare a report in relation to the rates of levies prescribed.
- (5B) The report required by **subsection (5A)** must— 15
- (a) include, without limitation,—
- (i) the long-term projections for the relevant Account of solvency rates, levy rates, Account balances, and the lifetime costs of claims in relation to injuries that occur in the year for which the levies apply; and
- (ii) the key assumptions on which the projections are based, including the assumptions made about claims numbers, trends in underlying costs, growth of the units to which levy rates apply (for example, numbers of vehicles), investment returns, and assumptions about economic conditions and rehabilitation performance; and 20
- (b) be prepared in accordance with generally accepted practice within the insurance sector in New Zealand; and 25
- (c) be published at the time the regulations prescribing the rates of levies are made in the *Gazette* and on an Internet site maintained by or on behalf of the Corporation.

Part 2 30

~~Repeal of provisions~~ Amendments relating to residual levies

Amendments to enable residual amount to be adjusted

- 6A Section 169AA amended (Basis on which funds to be calculated)**
- Repeal section 169AA(3).
- 6B Section 215 amended (Basis on which funds to be calculated)** 35
- Repeal section 215(4).

6C	<u>Section 220A amended (Basis on which funds to be calculated)</u>	
	<u>Repeal section 220A(3).</u>	
7	Section 169AA repealed (Basis on which funds to be calculated)	
(1)	Repeal section 169AA.	
(2)	The provisions specified in Part 1 of the Schedule are amended in the manner specified in that Part of that Schedule.	5
8	Section 215 repealed (Basis on which funds to be calculated)	
(1)	Repeal section 215.	
(2)	The provisions specified in Part 2 of the Schedule are amended in the manner specified in that Part of that Schedule.	10
9	Section 220A repealed (Basis on which funds to be calculated)	
(1)	Repeal section 220A.	
(2)	The provisions specified in Part 3 of the Schedule are amended in the manner specified in that Part of that Schedule.	
7	<u>New sections 336A to 336C and cross-heading inserted</u>	15
	<u>After section 336, insert:</u>	
	<i><u>Repeal of and amendments to provisions relating to residual levies</u></i>	
336A	<u>Repeal of and amendments to provisions relating to residual levies for Work Account</u>	
(1)	<u>In this section, effective date means the earlier of—</u>	20
(a)	<u>1 April 2019; and</u>	
(b)	<u>a date appointed by the Minister by notice.</u>	
(2)	<u>On the effective date—</u>	
(a)	<u>in section 167(4)(b), delete “and the purpose specified in section 169AA(1)(a)”:</u>	25
(b)	<u>repeal section 169AA:</u>	
(c)	<u>repeal section 169(4):</u>	
(d)	<u>repeal section 329(1)(m)(i).</u>	
(3)	<u>On the effective date, replace section 170(1) with:</u>	
(1)	<u>For the purpose of setting levies payable under sections 168, 168B, and 211, the Corporation must classify an employer and a self-employed person in an industry or risk class that most accurately describes their activity, being an industry or risk class set out in regulations made under this Act.</u>	30

(4) A notice under **subsection (1)** is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

336B Repeal of and amendments to provisions relating to residual levies for Motor Vehicle Account

5

(1) In this section, **effective date** means the earlier of—

(a) 1 July 2019; and

(b) a date appointed by the Minister by notice.

(2) On the effective date—

(a) in section 213(7)(b), delete “and the purpose specified in section 215(1)(a)”:

10

(b) repeal section 215:

(c) repeal section 329(1)(m)(ii).

(3) A notice under **subsection (1)** is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

15

336C Repeal of and amendments to provisions relating to residual levies for Earners’ Account

(1) In this section, **effective date** means the earlier of—

(a) 1 April 2019; and

(b) a date appointed by the Minister by notice.

20

(2) On the effective date—

(a) in section 218(5)(b), delete “and the purpose specified in section 220A(1)(a)”:

(b) repeal section 220A:

(c) repeal section 329(1)(m)(iii).

25

(3) A notice under **subsection (1)** is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Schedule
Consequential amendments to principal Act

ss 7–9

Part 1
Amendments relating to repeal of section 169AA 5

Section 167

Section 167(4)(b): delete “and the purpose specified in section 169AA(1)(a)”.

Section 169

Section 169(4): repeal.

Section 170 10

Section 170(1): replace with:

- (1) For the purpose of setting levies payable under sections 168, 168B, and 211, the Corporation must classify an employer and a self-employed person in an industry or risk class that most accurately describes their activity, being an industry or risk class set out in regulations made under this Act. 15

Section 329

Section 329(1)(m)(i): repeal.

Part 2
Amendments relating to repeal of section 215

Section 213 20

Section 213(7)(b): delete “and the purpose specified in section 215(1)(a)”.

Section 329

Section 329(1)(m)(ii): repeal.

Part 3
Amendments relating to repeal of section 220A 25

Section 218

Section 218(5)(b): delete “and the purpose specified in section 220A(1)(a)”.

Section 329

Section 329(1)(m)(iii): repeal.

**Accident Compensation (Financial Responsibility and
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Legislative history

11 May 2015

2 June 2015

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First reading and referral to Transport and Industrial Relations
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