Injury Prevention, Rehabilitation, and Compensation Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Injury Prevention, Rehabilitation, and Compensation Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Injury Prevention, Rehabilitation, and Compensation Amendment Bill proposes amendments to the Injury Prevention, Rehabilitation, and Compensation Act 2001. The bill seeks to improve the flexibility of the Accident Compensation Scheme, facilitate cost containment, facilitate cooperation between Government agencies and the Accident Compensation Corporation (ACC), and improve its financial reporting and accountability. The primary amendment would extend the date to which residual claims liabilities are fully funded

from 2014 to 2019, set a final valuation for residual claims liabilities, and incorporate the residual accounts into the main accounts.

Operational and technical changes are not covered in this commentary.

The majority of us are concerned that ACC's financial position has deteriorated significantly in recent years. The last two years have seen ACC report deficits of $2.4 billion in 2007/8 and $4.8 billion in 2008/9. ACC has also had significant increases in claim costs. Claim costs have risen 57 percent from 2004/5 ($2,268 million) to 2008/9 ($3,558 million) or at an annual rate five times that of inflation. The majority of us believe that the bill is required to maintain a comprehensive ACC system.

Full funding of Residual Claims Liabilities

According to the explanatory note of the bill, the Act requires levies to be calculated to achieve full funding of residual liabilities by 30 June 2014 in the Residual Claims, Motor Vehicle, and Earners' Accounts, but not the Non-Earners' Account. The 2014 date was originally set in 1998, but the residual accounts are still some way from being fully funded. Volatility in levy rates is likely to increase as 2014 approaches. There is also a need to deal with over- or under-funding of the residual claims liability that would occur after 2014. The bill will set a final date for fully funding the residual claims liabilities of 31 March 2019 for the Work and Earners' Accounts and 30 June 2019 for the Motor Vehicle Account. The residual claims liabilities will be set as at 30 June 2009 in order to reduce volatility, as the fully funded date approaches. The residual claims liabilities will be merged into the main accounts.

Most submitters expressed opposition to the principle of fully funding but some of those opposed accepted that if full funding were to remain, an extension of time to achieve this goal would be appropriate.

We support the extension of time as without it the scale of levy increases required to meet the 2014 deadline would impose an unreasonable burden, particularly on motorists and employers.

Changes to the full funding regime for the ACC residual claims' liabilities

The majority of us recommend amending clause 48 to extend the waiver for the 2010/11 levy consultation requirements for the Earners' and Motor Vehicle Accounts to reduce the risk of challenge to the validity of the consultation.

Clause 48 is a transitional provision, which would allow the consultation requirements for the Work Account levies under the 2001 Act to be waived for the 2010/11 year.

The changes in the bill would affect the 2010/11 levies, most notably by removing the Residual Claims Account. There is a legal risk that the Earners', Motor Vehicle, and Work Account levies that were consulted on for the 2010/11 year could be regarded as different from those that will be set in regulations should the bill be enacted; as a result the validity of the consultation process and the levies themselves might be challenged in court.

Allowing risk sharing and experience rating in the Work Account

The majority of us support the re-introduction in the bill of the provision for experience rating, and note that experience rating was possible under the legislation that existed from 1974 until 2001.

We note the objection of some submitters that such provisions may provide incentives for under reporting or false reporting of accidents. The majority of us believe the experience in the 1990s with such provisions did not result in such abuse.

The majority of us recommend that the bill be amended to ensure that risk adjustments, risk sharing, and experience rating are not applied to the portion of the levies that is necessary to fund the residual amount.

The Act allows risk adjustment to the levies under the Workplace Safety Management, the Workplace Safety Discount, and the Workplace Safety Evaluation programmes, so that an individual employer's levy can be reduced in response to satisfactory safety audits, or vice versa. The bill would allow regulations to be made for experience rating of levy payers and risk sharing in relation to Work Account levy rates. This could take the form of no-claim bonuses, higher or lower levies, or claim thresholds. All of the current ACC

workplace programmes could be retained (with some modifications) alongside any new processes for experience rating and risk sharing.

At present, risk adjustment applies only to the Work Account levy and not to the Residual Claims levy. Under the bill, once the Residual Claims Account was amalgamated into the Work Account, the discount would apply to the entire levy including the portion of the levy that is necessary to fund residual claims.

It would be unfair to allow the portion of the levy used to fund historic claims to be experience-rated, risk-adjusted, or subject to risk sharing, because employers can have no influence on historic claims.

Cost-containment provisions

Cover and entitlements in the ACC Scheme have been expanded in recent years. The bill includes amendments that will assist with cost savings in the ACC Scheme. These amendments include reversing changes made in 2008 to cover for work-related gradual process, disease, or infection, and changes to weekly compensation entitlements, vocational independence requirements, and disentitlement provisions. New proposals are also included, such as a threshold for cover for hearing loss.

The majority of us consider that reversing many of these scheme extensions is necessary for the long-term viability of ACC's finances.

The majority of us consider that disentitlement provisions for suicide and self-inflicted injuries, except where cover for mental injury already exists, are consistent with the conclusions of the Woodhouse Report.

The majority of us consider that changes made in 2008 to the seasonal and temporary worker compensation payments give rise to the situation where an employee could be paid more in compensation entitlements than earnings from their normal pattern of seasonal or temporary employment.

The majority of us do not support claimants simultaneously receiving both holiday pay and ACC entitlements. A person's holiday pay entitlements are not affected when they are able to return to work, but if not, they should not receive both.

The majority of us support the return to the principle of ACC providing 80 percent of earnings and not 100 percent in respect of those persons entitled to compensation for loss of potential earnings.

The majority of us support the reversal of the ready for work status from 35 to 30 hours, as it was prior to change in 2001.

Changes to cover for injury-related hearing loss

The bill sets a 6 percent threshold for injury-related hearing loss to be considered for cover by ACC. This provision would apply only to hearing loss with a covered cause, specifically occupational noise-induced hearing loss or hearing loss as the result of an injury or treatment injury.

The majority of us recommend amending clauses 6 and 52 of the bill to clarify that the 6 percent threshold relates to hearing loss from a covered cause, rather than hearing loss per se.

There were many submissions on the provisions to introduce scheme limits on entitlement to hearing aids. We were advised that the number of accepted entitlements for occupational noise induced hearing loss has increased from 1,188 in 1994 to 1,635 in 2000, to 4,251 in 2008 and a rise in costs from $44 million in 2004/5 to $61 million in 2008/9.

The majority of us consider that setting a threshold would not result in people taking legal action against previous employers for low levels of hearing loss. The legal tests would be difficult to meet to bring a successful case, and there are other thresholds in the ACC system that have not raised problems with legal actions.

Disentitlement of dependants

Clause 11 would strengthen the disentitlement provision for claimants for whom it would be repugnant to justice to provide entitlements.

There is currently some ambiguity as to whether the provision applies to the dependants of an offender, particularly regarding entitlements for fatal injuries.

We were advised that the intent was that the provision should apply to dependants, and recommend amending clause 11 accordingly.

Requirement for ACC to prepare a financial report for tabling in the House

Clause 41 would require ACC to produce an Annual Financial Condition report discussing the implications of any material risks and providing operational and management responses to such risks. The report would be required to be released publicly. Operational and management responses of a business would not normally be released publicly, and this might put some ACC operations, such as its investment operations, at risk.

The present wording of the bill also requires ACC to provide impartial advice in the report. ACC cannot provide impartial advice in relation to its own operations, financial conditions, and liabilities.

We do not consider that ACC should be required to set out its operational and management responses to any identified material risks, and the majority of us recommend changes to clause 41 to reflect this. The majority of us also consider that the clause should be amended to remove the requirement for the advice in the report to be "impartial".

What constitutes "treatment"

Clause 11, which would insert new section 122(2) into the Act, would require ACC to "provide the claimant with entitlements for treatment". It is not clear whether this requirement relates solely to physical rehabilitation, or includes social and occupational rehabilitation.

The majority of us recommend that clause 11 be amended to clarify that ACC is liable for providing ancillary services as well as treatment in the narrower sense. We consider that treatment should include not only physical treatment but also any ancillary services necessary to ensure treatment is completed (including transport to treatment, necessary medication, and accommodation).

Clause 10, which would insert new section 119(2), also refers to treatment in a similar way to clause 11, new section 122(2). The majority of us recommend that clause 10 be amended for consistency with the recommended amendment to clause 11.

Home detention

As stated previously, clause 11 would strengthen the disentitlement provisions for claimants.

The Minister responsible for ACC could exempt a claimant from the disentitlement provisions of proposed section 122(1) if the Minister was satisfied that there were exceptional circumstances. The Minister would exercise discretion regarding the relevant exceptional circumstances in each case. We note that home detention is not specifically included as a relevant sentence alongside imprisonment.

The majority of us recommend that clause 11 be amended to clarify that a sentence of home detention would meet the sentencing criterion for disentitlement proposed in clause 11, new section 122(1)(c).

New Zealand Labour minority view

We recommend that the bill not proceed. The bill would make New Zealand's ACC system worse rather than better. It would shift more of the costs of being injured to the injured person and the State. It would erode the protection of New Zealanders who were injured at work, despite the costs of ACC to employers already being substantially lower than those paid by Australian employers.

The case for cuts to entitlements is not made out. In the opinion of Labour members, the recent increase in the liabilities of ACC (that is, the increase in the amount the ACC needs to have set aside to meet the ongoing costs of earlier claims) are being used by the Government as an excuse for unjustified cuts to the ACC scheme.

Most costs saved by cutting ACC entitlements will not go away, but will be passed to the health system, the injured and their families, and other State agencies.

We support the extension to the date for full funding of historic claims, but oppose the bill overall.

Cost comparisons

The main justification for changes to the scheme is said to be to save cost. Given that, we were surprised at the paucity of information provided about the cost-effectiveness of the current ACC system compared with alternative models overseas.

While it is not straightforward to compare some costs between New Zealand's and overseas schemes, it is easier to do so for some parts of the scheme than others.

Administrative Costs: A PricewaterhouseCoopers (Australia) report found that the administrative costs of New Zealand's ACC are lower than for any other scheme. This confirmed the results of previous assessments. No information was provided to us to the contrary. This lower cost structure is achieved through simple no-fault entitlement rules for injuries at work or elsewhere, and by broad risk-pools for those paying levies.

Profits: ACC is currently a Government-owned entity which recovers the costs of running the scheme. It does not charge any profit margin on its levies, which is another reason why New Zealand's ACC is cheaper than overseas schemes run by private insurance companies.

ACC employer levies compared with premiums for worker compensation schemes in Australia

Treasury advice to the Government has stated that it is not clear that ACC costs are excessive.

While we had submissions from some employer groups asserting that ACC levies were too high, not one submitter provided evidence to show that costs in New Zealand are higher than overseas. We asked a number of submitters if they could provide us with any such information. No such information was received, even from representative bodies with members that include multinational businesses operating in New Zealand and overseas.

At the request of the committee, officials provided advice comparing New Zealand levies for employers to premiums in Australia. The table below was provided. While the various schemes are not identical, the table is the best and only advice we received as to comparative costs. Officials adjusted the Australian levies to exclude motor vehicle accident costs so as to give a better comparison with employer levies in New Zealand. Levies for New Zealand employers exclude vehicle accident costs, which are paid via registration and petrol levies.

Australian wages and salaries are higher than those in New Zealand, and so the table shows the cost per hundred dollars of earnings (rather than the cost per full-time worker, which would show an even greater difference).

The table shows that ACC costs for New Zealand employers are substantially lower than the costs paid by Australian employers.

The following table sets out comparative rates for employer levies for ACC and Australian workers compensation schemes. The rates have been standardised to take into account differences in the schemes including the different coverage for motor vehicle injuries.[1]

Jurisdiction	**06/07 rate (per $100 in Australian earnings)**
Seacare	5.50
South Australia	3.14
ACT	2.58
Northern Territories	1.98
New South Wales	1.94
Tasmania	1.71
Victoria	1.61
Western Australia	1.51
Australian Government	1.17
Queensland	1.18
Australian average	1.73
New Zealand	0.94

The New Zealand rate does not include the Residual Claims Levy.

The costs shown exclude the catch-up cost being paid for older residual claims, so that the comparisons are for the same year's costs.

The 2006/07 year was chosen by officials presumably because it was the latest year they had complete data for.

Costs have increased on both sides of the Tasman since, but the committee received no information to show that New Zealand's ACC costs for employers are higher than overseas. On the contrary, the information we had shows their costs are already lower.

The cuts to the scheme detailed below should then be judged by whether they are fair.

[1] Information for this table was taken from the *Comparative Performance Monitoring Report* prepared for the Workplace Relations Ministers' Council (2008), p. 18

Deemed ready for work at 30 rather than 35 hours per week

Labour members do not believe the reduction is justified. Most full-time workers work more than 35 hours per week. Most need the income based on those hours to meet their living costs. Deeming an injured person vocationally independent when they are physically able to work 30 hours per week (which would trigger an end to earnings-related compensation) rather than 35 hours per week is unfair and will cause hardship to more injured people.

The current rules are strict. Deeming someone ready for work does not mean they can get a job. A study by Hazel Armstrong published in the New Zealand Law Review showed that under current rules only 3 percent of the long-term injured deemed work-ready were in full-time work, 21 percent were in part-time work, 22.5 percent on a Work and Income New Zealand benefit, 10 percent were not working and not on a benefit and 9 percent remained on weekly compensation.[2]

As the author said "These figures demonstrate a point made by Purse, Meridith, and Guthrie 'high exit rates are not the same as high return to work rates'.[3] This has implications for the State because many workers put through the process do not return to work but are simply shifted from weekly compensation to "Work and Income" benefits."[4]

The change to make this rule even tougher will reduce employer levies that are already lower than overseas, but will do so at the cost of both the injured person and the State. Labour members oppose it.

Change to allow ACC to disregard pre-accident earnings

Currently under the existing legislation, when assessing whether to deem someone work-ready, ACC "must" have regard to the injured person's pre-accident earnings. The bill changes this to "may".

Officials readily conceded that in effect this will mean "may or may not".

Labour members agree with the submitters who say this is unfair. Someone on a middle or higher income could be injured at work but be deemed work ready when they were able to work for just 30 hours in a far lower-paid job.

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2 *New Zealand Law Review*, 2008, p. 21ff

3 Neoliberalism, Workers' Compensation, and The Productivity Commission (2004) 54, *Journal of Australian Political Economy* pp. 45, 53

4 *New Zealand Law Review*, 2008, pp. 21, 24

One example given by a submitter illustrates the point. A bank teller who suffered an occupational overuse injury while working full time and was off work for a period could lose her job because the bank needed someone to fill her role. If this bill passed, then the bank teller could be deemed work-ready when able to work 30 hours per week as a shelf stacker at the supermarket on the minimum wage. In effect her income could halve.

Privatisation

ACC says they have operational procedures that would make the outcome referred to in the previous paragraph unlikely. That of course would depend upon those processes being applied universally and not changing. Already self-insuring employers are not bound by those processes.

If the Government follows through with its plans to privatise the work account of ACC, which the Government euphemistically calls "introducing competition", then what is currently provided by the State via ACC will be provided by profit-motivated private insurers.

In the opinion of Labour members, all but the most naïve can see that a private insurer competing to make a profit while offering lower levies will cut its claim costs by doing exactly what these law changes are designed to allow.

Seasonal and part-time workers

The bill reduces the amount of weekly compensation for seasonal and part-time workers. If they suffered an accident that stopped them working in their seasonal work or stops them taking up longer hours, they would not be properly compensated. The Minister has asserted that this is to stop abuses of the current rules. We received no evidence of the asserted abuses, and conclude that the changes are unjustified.

Effects on women and the disabled

We agree with the concerns expressed by the Human Rights Commission that the changes proposed will disproportionately affect women and people with disabilities, who are disproportionately represented in the groups adversely affected by the bill.

Holiday pay

The bill requires holiday pay, including that accrued before the injury, to be counted and abated against weekly compensation if employees lose their jobs. This is unfair, and especially in respect of holiday pay accrued before the accident, which is random in its effects.

Someone who has used up their holidays suffers no abatement, but someone who has not loses them. Pre-accident holiday entitlements arise from pre-accident earnings and should not be taken off the injured person.

Risk rating

The bill departs from ACC's founding principles by introducing further risk rating. This undermines the principle that in society we are all interdependent. Office workers use desks made of timber logged and milled by workers in more dangerous occupations. We all share the benefits of each other's efforts and so should share some of the risks.

Further cutting and dicing of risk comes at an administrative cost. If privatisation follows, it will also leave the smaller and often riskier businesses paying higher levies than those who have the systems and can afford the administrative costs of proving their lower claims cost to private insurers. This change would predominantly benefit larger employers and would over time cost smaller New Zealand businesses more.

Submitters also said it leads to pressure on injured workers to return to work prematurely and to disputes about whether an accident is work-related or outside work. The literature also suggests it leads to discriminatory employment practices, where previously injured workers would find it even harder to get work.

If the outcome were lower accident rates or better rehabilitation outcomes, then we could understand the motivation for it. However officials advised us there is no clear evidence that this has been the case overseas, and that research in New Zealand has yet to be carried out.

Hearing loss

Gradual hearing loss at work (but not outside work) is currently covered by the Act. The entitlement that arises from work-related hearing loss is for a hearing aid if this is needed. The bill introduces a

6 percent threshold for hearing loss, below which hearing aids would not be provided. This 6 percent is over and above the age-related thresholds that already apply.

The Minister has said publicly that this is consistent with the position in Australia. This is incorrect. In most Australian states there is no such threshold for hearing aids. They are paid for where work-related hearing loss makes them necessary. There are thresholds for lump-sum or periodic compensation.

The effect of this change is to open up the right to sue for work-related hearing loss of up to 6 percent. This would result in litigation by employees and their representatives against employers.

There has been a decrease in the cost of each hearing aid appliance in the last two years, while the service fee has not increased. The increase in the number of new claims has tailed off, perhaps because the benefits of improvements in ear protection in the workplace in recent decades are beginning to appear.

We should remember that aids are only ever available when they are needed to hear adequately. The change would mean that some people who lost some of their hearing at work and needed a hearing aid would now not be entitled to one. The comparison with Australia supports the view that this entitlement should be retained rather than cut.

Cutting ACC for those sent to prison or home detention

Labour members agree that that an offender like Graeme Burton should not receive lump-sum or earnings-related compensation. If offenders such as he have received compensation, then that is because of ACC's failure to properly apply the current law.

There is nothing to stop ACC using its existing power to apply to disentitle claimants more often, and we would approve of its doing so. Its failure to do so operationally is no excuse for the draconian change now proposed.

The provisions in the bill apply to any offence where the maximum theoretical penalty is two years or more in prison, and the offender is imprisoned or put on home detention for any period (that is, even a week!).

This is unjust on a number of levels. For a start, the offender has already received the appropriate criminal penalty. Under this bill,

they receive an additional penalty, which can also be disproportionate to the scale of their crime. This would affect not just the offender, but also their family. This outcome arises despite the injured offender having paid ACC levies through their work, and their petrol and registration fees.

The change would disproportionately affect lower-paid New Zealanders. They are more likely to end up in prison because they lack the means to pay large fines or reparation, which can enable a better-off person to avoid a custodial sentence.

ACC already has the ability to apply to the court to cancel or reduce ACC cover where it would be manifestly unjust for it to be paid. It transpires that ACC have applied to the court only 12 times. In nine of the 12 times the court agreed and wholly or partly disentitled the offender.

We were told that part of the reason ACC has not applied more often is that they do not always know the claimant has been convicted. We asked whether data sharing was prohibited by law, because we would have been willing to fix that by amending the bill to provide for it. We were told this was unnecessary as this was now being resolved with the Department of Corrections.

The proposed change applies not just to the most serious crimes like murder, but also offences like careless use of a motor vehicle causing death. The list of offences caught by the change runs to many pages.

We agree with the New Zealand Law Society and others that blanket disentitlement, subject to discretion for the Minister to reinstate, is bad policy. We have confidence that the courts are better placed to make this decision.

Accordingly we oppose what is patently a populist change.

Green Party Minority View

The Green Party will continue to oppose this bill.

We believe that the erosion of entitlements (and coverage) that this bill intends, along with the limits it proposes to compensation and rehabilitation, represent a fundamental betrayal of the social contract which saw ACC established in the first place, and we share the criticisms of the bill set out in the New Zealand Labour minority view in this report.

While the changes proposed by the bill would save money for ACC, it will do this by cost-shifting to taxpayer-funded services or to people who have suffered injuries and their families, thereby doubly victimising them.

However, we differ from both National and Labour members on the subject of ACC's funding mechanism.

This bill has been introduced against a backdrop of levy increases, restriction of services available to some of the most vulnerable New Zealanders, who have made sensitive claims, and a growing culture of disentitlement. These measures, and those proposed by the bill, are generally justified by the Government, and by the board of ACC, as being necessary for ACC to cope with a "financial crisis".

It is the Green Party's view that this claimed crisis is purely an artefact of the attempt to fund ACC as if it were a suite of insurance schemes, directly analogous to those in the private sector. The Green Party rejects this analogy and contends that a return to "pay-as-you-go" funding would be both fairer and more appropriate.

Pay-as-you-go funding, accompanied by a sufficient reserve (which we believe already exists), would also mean that no financial crisis exists, and curtailment of services and entitlements would be manifestly unnecessary.

The Green Party believes that the case for a return to pay-as-you-go funding was compellingly set out in the submission by Susan St John, an economist from the University of Auckland Business School Retirement Policy and Research Centre, and we note that such funding was supported by all those submitters who commented on this particular issue.

Appendix

Committee process

The Injury Prevention, Rehabilitation, and Compensation Amendment Bill was referred to the committee on 27 October 2009. The closing date for submissions was 26 November 2009. We received and considered 133 submissions from interested groups and individuals, of which 47 were heard orally.

A subcommittee heard and considered submissions on 10 and 16 December 2009.

We received advice from the Department of Labour and from the Accident Compensation Corporation.

Committee membership

David Bennett (Chairperson)

Carol Beaumont

Dr Jackie Blue

Darien Fenton

Kevin Hague (non-voting member)

Hon Tau Henare

Moana Mackey

Allan Peachey

Michael Woodhouse

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Dr Nick Smith

Injury Prevention, Rehabilitation, and Compensation Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Injury Prevention, Rehabilitation, and Compensation Amendment Act **2009**.

2 Commencement

(1) The following provisions come into force on **1 July 2010**:
- (a) **section 4(2)**:
- (b) **section 6**:
- (c) **section 7**:
- (d) **sections 9 to 11**:
- (e) **section 17**:
- (f) **section 32**:
- (g) **section 44(1) and Part 1 of Schedule 1**:
- (h) **sections 50 to 58**.

(2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

3 Principal Act amended

This Act amends the Injury Prevention, Rehabilitation, and Compensation Act 2001.

Part 1
Amendments to principal Act

4 Interpretation

(1) Section 6(1) is amended by repealing the definitions of **Earners' Account Residual levy**, **Motor Vehicle Account Residual levy**, **Residual Claims Account**, and **Residual Claims levy**.

(2) The definition of **vocational independence** in section 6(1) is amended by omitting "35 hours" and substituting "30 hours".

5 Earnings as an employee: Work Account levy payable under section 168 and Residual Claims levy payable under section 193

(1) The heading to section 12 is amended by omitting "**and Residual Claims levy payable under section 193**".

(2) Section 12 is amended by omitting "and the Residual Claims levy payable under section 193".

~~**6 Personal injury**~~

~~Section 26 is amended by inserting the following subsection after subsection (4):~~

~~"(4A) Personal injury does not include any degree of hearing loss that is less than 6% of binaural hearing loss."~~

6 Personal injury

Section 26 is amended by inserting the following subsections after subsection (1):

"(1A) **Personal injury** includes any degree of hearing loss that is 6% or more of binaural hearing loss caused by a personal injury described in section 20(2).

"(1B) **Personal injury** does not include any degree of hearing loss caused by—

"(a) a personal injury other than a personal injury described in section 20(2); or

"(b) the ageing process; or

"(c) any other factors."

7 Personal injury caused by work-related gradual process, disease, or infection

(1) Section 30(1A) is repealed.

(2) Section 30(2)(b) is amended by inserting the following ~~paragraph~~ subparagraph after ~~paragraph (i)~~ subparagraph (i):

"(ii) is not found to any material extent in the non-employment activities or environment of the person; and".

(3) Section 30(2) is amended by repealing paragraph (c) and substituting the following paragraph:

"(c) the risk of suffering the personal injury—

"(i) is significantly greater for persons who perform the employment task than for persons who do not perform it; or

"(ii) is significantly greater for persons who are employed in that type of environment than for persons who are not."

(4) Section 30(2A) is repealed.

8 Section 31 repealed

Section 31 is repealed.

9 Conduct of initial occupational assessment

Section 91(1A) is amended by omitting "must" and substituting "may".

10 New section 119 inserted

The following section is inserted after section 118:

"**119 Disentitlement for wilfully self-inflicted personal injuries and suicide**

"(1) The Corporation must not provide any entitlements under Schedule 1 for any of the following:

"(a) a personal injury that a claimant wilfully inflicts on himself or herself, or, with intent to injure himself or herself, causes to be inflicted upon himself or herself:

"(b) the death of a claimant due to an injury inflicted in the circumstances described in **paragraph (a)**:

"(c) the death of a claimant due to suicide.

~~"(2) However, **subsection (1)** does not excuse the Corporation from liability to provide the claimant with entitlements for treatment.~~

"(2) However, **subsection (1)** does not excuse the Corporation from liability to provide the claimant with entitlements for—

"(a) treatment; and

"(b) any ancillary service related to treatment referred to in clause 3(1) of Schedule 1.

"(3) **Subsection (1)** does not apply if the personal injury or death was the result of—

"(a) mental injury suffered because of physical injuries suffered by the claimant for which he or she had cover; or

"(b) mental injury suffered by the claimant in the circumstances described in section 21 or 21B."

11 New sections 122 and 122A substituted

Section 122 is repealed and the following sections are substituted:

"**122 Disentitlement for certain imprisoned offenders**

"(1) The Corporation must not provide any entitlements under Schedule 1 to a claimant if—

"(a) the claimant suffers a personal injury in the course of committing an offence; and

"(b) the offence is punishable by a maximum term of imprisonment of 2 years or more; and

"(c) the claimant is sentenced to imprisonment or home detention for committing the offence; and

"(d) the Corporation would, but for this section, be liable to provide entitlements to the claimant for the personal injury.

"(1A) In addition, the Corporation must not provide any entitlements under Schedule 1 to the following persons if the Corporation would, but for **subsection (1)**, be liable to provide entitlements to any of them in relation to a deceased claimant's personal injury:

"(a) the surviving spouse or partner of the deceased claimant:

"(b) any child of the deceased claimant:

"(c) any other dependant of the deceased claimant.

~~"(2) However, **subsection (1)** does not excuse the Corporation from liability to provide the claimant with entitlements for treatment.~~

"(2) However, **subsection (1)** does not excuse the Corporation from liability to provide the claimant with entitlements for—

"(a) treatment; and

"(b) any ancillary service related to treatment referred to in clause 3(1) of Schedule 1.

"(3) Despite **subsection (2)**, the Corporation must not provide any entitlement for surgery unless the surgery is required to restore the claimant's function to enable him or her to return to work.

"**122A Exemption from section 122(1)**

"(1) The Minister may exempt a claimant from **section 122(1)** if the Minister is satisfied that there are exceptional circumstances relating to the claimant.

"(2) Nothing in this section gives a claimant the right to apply for an exemption ~~from **section 122(1)**~~ under **subsection (1)**."

12 Separate Accounts

Section 166(1)(b) is repealed.

13 New section 167 substituted

Section 167 is repealed and the following section substituted:

"**167 Application and source of funds**

"(1) The purpose of the Work Account is to—

"(a) finance entitlements provided under this Act by the Corporation to employees, private domestic workers, and self-employed persons for work-related personal injuries; and

"(b) finance the following entitlements that are required to be provided in respect of persons whose entitlements would have been provided from the Employers' Account under the Accident Rehabilitation and Compensation Insurance Act 1992:

"(i) entitlements for work injuries (as defined in the Accident Rehabilitation and Compensation Insurance Act 1992) suffered before 1 July 1999; and

"(ii) entitlements for non-work injuries to earners suffered before 1 July 1992.

"(2) The funds for the Work Account are to be derived from—

"(a) levies payable under sections 168, 168A, 168B, and 211 by employers, private domestic workers, and self-employed persons; and

"(b) payments made to the Corporation in respect of obligations taken on by the Corporation under section 7 of the Accident Insurance (Transitional Provisions) Act 2000 in relation to the accident insurance contracts of employers and private domestic workers, and for self-employed persons; and

"(c) premiums continued by or payable under Part 11.

"(3) The funds in the Work Account must be applied to meet the costs of—

"(a) entitlements in respect of employees, private domestic workers, and self-employed persons for work-related personal injuries; and

"(b) entitlements in respect of obligations, under accident insurance contracts of employers and private domestic workers, and for self-employed persons, taken on by the Corporation under section 7 of the Accident Insurance (Transitional Provisions) Act 2000; and

"(c) entitlements that are required to be provided in accordance with Part 11 in respect of persons whose entitlements would have been provided from the Self-Employed Work Account under the Accident Insurance Act 1998; and

"(d) entitlements in respect of employers, private domestic workers, and self-employed persons that, immediately before 1 April 2007, would have been funded from the Self-Employed Work Account or the Employers' Account; and

"(e) entitlements that, immediately before ~~**4 July 2010**~~ the commencement of **section 19 of the Injury Prevention, Rehabilitation, and Compensation Amendment Act 2009**, would have been funded from the Residual Claims Account as it was immediately before that ~~date~~ commencement; and

"(f) administering the Account; and

"(g) audits and assessments referred to in section 175; and

"(h) any other expenditure authorised by this Act.

"(4) Regulations made under this Act may prescribe, in relation to a prescribed period, what portion of the levies payable under sections 168, 168A, 168B, and 211 is necessary to achieve the purpose specified in **section 169AA(1)(a)**."

14 Rates of levies

Section 169 is amended by repealing subsection (2) and substituting the following subsections:

"(2) Regulations made under this Act may—

"(a) establish a system or systems for either or both of the following:

"(i) the experience rating of employers, private domestic workers, or self-employed persons:

"(ii) risk sharing between employers, private domestic workers, or self-employed persons, on the one hand, and the Corporation on the other; and

"(b) adjust the levies under sections 168, 168A, 168B, and 211 in relation to a particular employer, private domestic worker, or self-employed person on the basis of that system or those systems.

"(3) The systems referred to in **subsection (2)** may include no-claims bonuses, higher or lower levies, and claim thresholds.

"(4) None of the following applies, or can be made to apply, to the portion of the levies payable under sections 168, 168A, 168B, and 211 that is necessary to achieve the purpose specified in **section 169AA(1)(a)**:

"(a) any of the systems referred to in **subsection (2)**:

"(b) section 175."

15 New section 169AA inserted

The following section is inserted after section 169:

"**169AA Basis on which funds to be calculated**

"(1) The extent of funds to be derived from levies under sections 168, 168A, and 168B is to be calculated to achieve the following purposes:

"(a) the residual amount is to be completely paid off or funded no later than **31 March 2019**:

"(b) the cost of all claims under the Work Account is fully funded.

~~"(2) In this section, **residual amount** means an amount equal to the sum of—~~

~~"(a) the total value of the outstanding claims liability for the Residual Claims Account as at 30 June 2009 that is set out in the Corporation's annual report for the financial year ending on that date; and~~

~~"(b) the best estimate of the Corporation's potential liability as at 30 June 2009 (as notified by the Corporation in~~

~~a notice published in the *Gazette*) in respect of future claims for cover for personal injury caused by work-related gradual process, disease, or infection by persons who,—~~

~~"(i) before 1 July 1999, may have been exposed to a particular property or characteristic of their employment tasks or environment that causes, or contributes to the cause of, the personal injury; but~~

~~"(ii) by 1 July 2009, have not suffered the personal injury.~~

"(2) The Minister may, by notice in the *Gazette*, specify the residual amount.

"(3) The Minister's power under **subsection (2)** may be exercised only once.

"(4) In this section, **residual amount** means the amount that—

"(a) is specified by the Minister; and

"(b) represents, as at 30 June 2009, the sum of—

"(i) the estimated value of the outstanding claims liability for the Residual Claims Account (minus the value of any accrued assets); and

"(ii) the estimated value of the Corporation's potential liability (minus the value of any accrued assets) in respect of future claims for cover for personal injury caused by work-related gradual process, disease, or infection by persons who,—

"(A) before 1 July 1999, may have been exposed to a particular property or characteristic of their employment tasks or environment that causes, or contributes to the cause of, the personal injury; but

"(B) by 30 June 2009, have not suffered the personal injury."

16 Classification of industries or risks

(1) Section 170 is amended by repealing subsection (1) and substituting the following subsection:

"(1) 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 for the following purposes:

"(a) setting levies payable under sections 168, 168B, and 211:

"(b) setting those levies to include a portion that is necessary to achieve the purpose specified in **section 169AA(1)(a)**."

(2) Section 170(4A) is amended by inserting "that relate to an industry or risk class defined under **subsection (1)(a)**" after "subsection (4)".

17 Purchase of weekly compensation by shareholder-employees

(1) Section 190(1) is amended by—

(a) omitting "person with earnings as a shareholder-employee" and substituting "shareholder-employee"; and

(b) omitting "the person" and substituting "the shareholder-employee".

(2) Section 190(2) is amended by omitting "person with earnings as a shareholder-employee" and substituting "shareholder-employee".

~~**18 Effect on Work Account levy**~~

~~Section 191(2) is amended by omitting "Residual Claims levy" and substituting "the portion of the Work Account levy referred to in **section 167(4)** that is payable".~~

18 Effect on Work Account levy

Section 191 is amended by repealing subsection (2) and substituting the following subsection:

"(2) However, subsection (1) does not affect the employer's obligation to pay the portion of the Work Account levy referred to in **section 167(4)** that is payable in respect of the earnings of that employee."

19 Heading above section 192 and sections 192 to 200 repealed

The heading above section 192 and sections 192 to 200 are repealed.

20 Earner levies for self-employed persons who purchase weekly compensation

Section 212 is amended by omitting "and the Earners' Account Residual levy required by section 219(2)".

21 Application and source of funds

(1) Section 213(2)(d) is repealed.

(2) Section 213(5) is amended by inserting the following paragraph after paragraph (b):

"(ba) claims that would have been provided from the Motor Vehicle Account under the Accident Rehabilitation and Compensation Insurance Act 1992; and".

(3) Section 213 is amended by repealing subsection (6) and substituting the following subsection:

"(6) Regulations made under this Act may prescribe, in relation to a prescribed period, what portion of the levies is necessary to achieve the purpose specified in **section 215(1)(a)**."

22 Rate of levies

Section 214(3) is repealed.

23 New section 215 substituted

Section 215 is repealed and the following section substituted:

"**215 Basis on which funds to be calculated**

"(1) The extent of funds to be derived under section 213(2) is to be calculated to achieve the following purposes:

"(a) the residual amount is to be completely paid off or funded no later than **30 June 2019**:

"(b) the cost of all claims under the Motor Vehicle Account is to be fully funded.

~~"(2) In this section, **residual amount** means the amount of the total value of the outstanding claims liability for the Motor Vehicle~~

~~Account as at 30 June 1999 that is set out in the Corporation's annual report for the financial year ending on 30 June 2009.~~

"(2) The Minister may, by notice in the *Gazette*, specify the residual amount.

"(3) The Minister's power under **subsection (2)** may be exercised only once.

"(4) In this section, **residual amount** means the amount that—

"(a) is specified by the Minister; and

"(b) represents, as at 30 June 2009, the estimated value of the outstanding claims liability for the Motor Vehicle Account (minus the value of any accrued assets) in respect of the claims described in **section 213(5)(ba)**."

24 Levy categories

Section 216 is amended by adding the following subsections as subsections (2) and (3):

"(2) The regulations may also classify all or any of the following, or categories of the following, into classes that most accurately describe their risk rating and may impose levies at different rates in relation to those classes in accordance with the system of differential levies referred to in subsection (1):

"(a) motor vehicles:

"(b) registered owners of motor vehicles:

"(c) persons who hold trade licences under section 34(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

"(3) **Subsection (2)** does not limit subsection (1)."

25 Collection of levies

Section 217(3) is repealed.

26 Application and source of funds

(1) Section 218(3)(b) is repealed.

(2) Section 218(4) is amended by inserting the following paragraph after paragraph (e):

"(ea) claims that would have been provided from the Earners' Account under the Accident Rehabilitation and Compensation Insurance Act 1992; and".

(3) Section 218 is amended by repealing subsection (5) and substituting the following subsection:

"(5) Regulations made under this Act may prescribe, in relation to a prescribed period, what portion of the levies is necessary to achieve the purpose specified in **section 220A(1)(a)**."

27 Earners to pay levies

Section 219(2) is repealed.

28 Rate of levies

Section 220(2) is repealed.

29 New section 220A inserted

The following section is inserted after section 220:

"**220A Basis on which funds to be calculated**

"(1) The extent of funds to be derived from levies under section 219 is to be calculated to achieve the following purposes:

"(a) the residual amount is to be completely paid off or funded no later than **31 March 2019**:

"(b) the cost of all claims under the Earners' Account is to be fully funded by levies.

~~"(2) In this section, **residual amount** means the amount of the total value of the outstanding claims liability for the Earners' Account as at 30 June 1999 that is set out in the Corporation's annual report for the financial year ending on 30 June 2009.~~

"(2) The Minister may, by notice in the *Gazette*, specify the residual amount.

"(3) The Minister's power under **subsection (2)** may be exercised only once.

"(4) In this section, **residual amount** means the amount that—

"(a) is specified by the Minister; and

"(b) represents, as at 30 June 2009, the estimated value of the outstanding claims liability for the Earners' Account (minus the value of any accrued assets) in respect of the claims described in **section 218(4)(ea)**."

30 Collection of levies by deduction from employee earnings

Section 221(1) is amended by omitting "(including the Earners' Account Residual levy)".

31 Payment of Earners' Account levy and Earners' Account Residual levy by self-employed persons

The heading to section 222 is amended by omitting "**and Earners' Account Residual levy**".

32 Persons eligible to purchase weekly compensation

Section 223(3)(c)(i) is amended by inserting "permanent" after "in".

33 Mixed earnings as employee and self-employed person

Section 231(4) and (5) are repealed.

34 Residual Claims levy and Work Account levy payable by employers on disposal or cessation of business or when ceasing to employ

(1) The heading to section 232 is amended by omitting "**Residual Claims levy and**".

(2) Section 232(1) is amended by omitting "a Residual Claims levy or".

(3) Section 232 is amended by repealing subsection (2) and substituting the following subsection:

"(2) An employer must comply with subsection (3) by the 15th day of the second month after the month in which the employer disposes of or ceases carrying on the business or continues the business as a self-employed person without employing any other person."

35 New section 233 substituted

Section 233 is repealed and the following section substituted:

"**233 Levies payable to Corporation by self-employed person who ceases to derive earnings as such**

"(1) Every self-employed person who, during a tax year, ceases to derive earnings as a self-employed person must—

"(a) deliver to the Commissioner a statement of the person's earnings as a self-employed person for the tax year concerned, within the applicable time within which a return for that tax year is required to be furnished to the Commissioner under the Tax Administration Act 1994; and

"(b) pay to the Corporation, on or before the due date,—

"(i) the Work Account levy, at the rate prescribed, to the extent that it applied to the person's earnings as a self-employed person in that tax year; and

"(ii) the earner levy, at the rate prescribed, to the extent that it applied to the person's earnings as a self-employed person in that tax year.

"(2) The provisions of this section (other than **subsection (1)(b)(ii)**) and sections 239 and **329(1)(b)** apply, with any necessary modifications, to private domestic workers."

36 Section 235 repealed

Section 235 is repealed.

37 Corporation to define risk classification and decide levy if activity not classified by regulations

Section 239(1) is amended by omitting "either, or both, of sections 170 (Work Account levies) and 195 (Residual Claims Account levies)" and substituting "section 170 (Work Account)".

38 Information available to Corporation

Section 246 is amended by inserting the following subsections after subsection (4):

"(4A) The Corporation may also request the Commissioner to provide any of the following information:

"(a) whether an employer, self-employed person, private domestic worker, or shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies has a tax agent and, if so, the tax agent's name and contact details:

"(b) for an employer, self-employed person, private domestic worker, or shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies who

is an individual, whether the individual is deceased and, if so,—

"(i) the individual's date of death; and

"(ii) the name and contact details of the administrator or executor of the individual's estate.

"(4B) In this section, **tax agent** has the same meaning as in section 3 of the Tax Administration Act 1994."

39 Section 265 substituted

Section 265 is repealed and the following section substituted:

"**265 Ancillary powers of Corporation**

"(1) In addition to services required to be provided under this Act, the Corporation may provide services under **subsection (2) or (4)**—

"(a) that are outside the functions of the Corporation under section 262 (as long as the services are consistent with the purposes of this Act):

"(b) whether or not the services are provided to a person who would not otherwise have cover under this Act.

"(2) The Corporation may provide services on a commercial basis, but only if—

"(a) the service is provided by a Crown entity subsidiary of the Corporation; and

"(b) the provision of the service is a viable commercial proposition for the Crown entity subsidiary; and

"(c) the service being provided is one that is consistent with the role and functions of the Corporation under this Act; and

"(d) any decision to provide the service, and the provision of the service, is consistent with any relevant policy direction given by the Minister under section 103 of the Crown Entities Act 2004.

"(3) **Subsection (2)** applies despite section 97(a) of the Crown Entities Act 2004.

"(4) The Corporation may provide government services or payments funded by an appropriation by Parliament, other than on a commercial basis, but only if—

"(a) the service being provided is one that is consistent with the role and functions of the Corporation under this Act; and

"(b) any decision to provide the service, and the provision of the service, is consistent with any relevant policy direction given by the Minister under section 103 of the Crown Entities Act 2004.

"(5) All money received by the Corporation from an appropriation by Parliament for the purposes of **subsection (4)**, and the expenditure of that money, must be allocated and managed through the Accounts if it is reasonable and practicable to do so; but otherwise it must be applied, accounted for, and reported on separately from the Accounts."

40 Management of Accounts

Section 274(3A) is repealed.

41 New section 278A inserted

The following section is inserted after section 278:

"**278A Annual financial condition report**

"(1) The Corporation must—

"(a) prepare an annual report on its financial condition as soon as practicable after the end of each financial year; and

"(b) provide the report to the Minister.

"(2) The purpose of the report is to—

"(a) provide ~~impartial~~ advice in relation to the Corporation's operations, financial condition, and liabilities; and

"(b) discuss the implications of any material risks to the Corporation that have been identified in the report.

~~"(c) if the implications of those material risks are adverse, set out operational and management responses to address those risks.~~

"(3) The report must—

"(a) be prepared in accordance with generally accepted practice within the insurance sector in New Zealand; and

"(b) contain the information required to achieve the purpose in **subsection (2)**.

"(4) The Minister must—

"(a) provide a copy of the report to the Minister of Finance; and

"(b) after complying with **paragraph (a)** but within 5 working days after receiving the report from the Corporation or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament, present the report to the House of Representatives."

42 Section 291 repealed

Section 291 is repealed.

43 Regulations relating to levies

(1) Section 329(b)(ii) is amended by omitting "sections 169(1) and 193" and substituting "section 169(1)".

(2) Section 329 is amended by inserting the following paragraph after paragraph (c):

"(ca) prescribing the terms and conditions of the system or systems of experience rating or of risk sharing referred to in **section 169(2)**:".

(3) Section 329(g) is amended by omitting "sections 170 and 195" and substituting "section 170".

(4) Section 329(h) is amended by omitting "sections 170 and 195" and substituting "section 170".

(5) Section 329(l) is amended by omitting "section 216" and substituting "**section 216(1) or (2)**".

(6) Section 329 is amended by repealing paragraph (m) and substituting the following paragraph:

"(m) setting, in relation to a prescribed period, what portion of the Work Account, the Motor Vehicle Account, or the Earners' Account is necessary to achieve,—

"(i) in the case of the Work Account, the purpose specified in **section 169AA(1)(a)**; and

"(ii) in the case of the Motor Vehicle Account, the purpose specified in **section 215(1)(a)**; and

"(iii) in the case of the Earners' Account, the purpose specified in **section 220A(1)(a)**:".

(7) Section 329 is amended by adding the following subsection as subsection (2):

"(2) Regulations made under **subsection (1)(ca)** may—

"(a) specify the types of claims to which the system or systems of experience rating or of risk sharing referred to in **section 169(2)** apply; and

"(b) make different provision for different classes of levy payers or in respect of different industries or levies."

44 Schedules 1 and 4 amended

(1) Schedule 1 is amended in the manner set out in **Part 1 of Schedule 1** of this Act.

(2) Schedule 4 is amended in the manner set out in **Part 2 of Schedule 1** of this Act.

Part 2
Miscellaneous provisions

Validation

45 Validation of disclosure of information for assessment of levies

(1) Every disclosure of the information specified in **subsection (2)** by the Commissioner of Inland Revenue to the Accident Compensation Corporation under section 85E of the Tax Administration Act 1994 that was made before the commencement of this section must be taken to be, and always to have been, lawful.

(2) The information referred to in **subsection (1)** is as follows:

(a) whether an employer, self-employed person, private domestic worker, or shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies has a tax agent and, if so, the tax agent's name and contact details:

(b) for an employer, self-employed person, private domestic worker, or shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies who is an individual, whether the individual is deceased and, if so,—

(i) the individual's date of death; and

(ii) the name and contact details of the administrator or executor of the individual's estate.

(3) In this section, **tax agent** has the same meaning as in section 3 of the Tax Administration Act 1994.

Consequential amendments

46 Consequential amendments to other ~~Acts~~enactments

The enactments specified in **Schedule 2** of this Act are consequentially amended in the manner indicated in that schedule.

Transitional provisions for levies

47 Transfer of assets and liabilities to Work Account

All assets and liabilities of the Residual Claims Account as it was immediately before the commencement of this section are, on that commencement, transferred to the Work Account.

~~**48 Sections 330 and 331 of principal Act do not apply to making of regulations for Work Account in 2010–11 tax year**~~

~~Sections 330 and 331 of the principal Act do not apply to the making of regulations in relation to the Work Account for the 2010–11 tax year.~~

48 Sections 330 and 331 of principal Act do not apply to making of regulations for Earners' Account, Motor Vehicle Account, or Work Account

Sections 330 and 331 of the principal Act do not apply to the making of regulations in relation to—

(a) the Earners' Account or the Work Account for the 2010–11 tax year:

(b) the Motor Vehicle Account for the period that starts on 1 July 2010 and ends on 30 June 2011.

49 Levies continue to be payable

(1) This section applies to the amounts of levy that were, or will become, payable to the Residual Claims Account, the Motor

Vehicle Account, or the Earners' Account as they were immediately before the commencement of this section.

(2) The amounts to which this section applies—

(a) continue to be due and payable; and

(b) must be paid,—

(i) in the case of the Residual Claims levy, to the Work Account; and

(ii) in the case of the Motor Vehicle Account Residual levy, to the Motor Vehicle Account; and

(iii) in the case of the Earners' Account Residual levy, to the Earners' Account.

Transitional provisions for other matters

50 Transitional provision for disentitlement for wilfully self-inflicted personal injuries and suicide

To avoid doubt, this Act applies to disentitle a claimant for a wilfully self-inflicted personal injury, death, or suicide described in **section 119** of the principal Act (as inserted by this Act) only if the personal injury was suffered or, as the case may be, the death or suicide occurred on or after the commencement of this section.

51 Transitional provision for disentitlement for certain imprisoned offenders

To avoid doubt, this Act applies to disentitle a claimant who suffers a personal injury in the circumstances described in **section 122** of the principal Act (as substituted by this Act) only if the personal injury was suffered on or after the commencement of this section.

52 Claims for personal injury including hearing loss that have been lodged but not decided

(1) This section applies if, before the commencement of this section,—

(a) a person has suffered a personal injury that includes any degree of hearing loss that is less than 6% of binaural hearing loss ~~before the commencement of this section~~

caused by a personal injury described in section 20(2) of the principal Act; and

(b) he or she has lodged a claim with the Accident Compensation Corporation under section 48 of the principal Act in respect of the personal injury ~~before that commencement~~; and

(c) the Corporation has not made a decision on the claim ~~before that commencement~~.

(2) On or after the commencement of this section, the Corporation must make a decision on the claim in all respects as if **section 6** of this Act had not been enacted.

53 Claims for work-related gradual process, disease, or infection that have been lodged but not decided

(1) This section applies if, before the commencement of this section,—

(a) a person has suffered a personal injury caused by a work-related gradual process, disease, or infection ~~before the commencement of this section~~; and

(b) he or she has lodged a claim with the Accident Compensation Corporation under section 48 of the principal Act in respect of the personal injury ~~before that commencement~~; and

(c) the Corporation has not made a decision on the claim ~~before that commencement~~.

(2) On or after the commencement of this section, the Corporation must make a decision on the claim in all respects as if **section 7** of this Act had not been enacted.

54 Assessment of vocational independence

An assessment of a claimant's vocational independence that has been commenced, but not determined, before the commencement of this section must, on or after that commencement, be considered and determined in all respects as if **sections 4(2), 9, and 44** (to the extent that it relates to clause 25 of Schedule 1 of the principal Act) of this Act had not been enacted.

55 Calculations of weekly earnings for weekly compensation

To avoid doubt, sections 223(3)(c)(i) and clauses **33**, 34, **35, 36**, 38, 39, 41, and 42 of Schedule 1 of the principal Act (as amended by this Act) apply to the calculation of weekly earnings for the purposes of weekly compensation that is payable in respect of a period of incapacity that commences only on or after the commencement of this section.

56 Calculations of weekly compensation for loss of potential earning capacity

To avoid doubt, clause 47 of Schedule 1 of the principal Act (as amended by this Act) applies to the calculation of weekly compensation for loss of potential earning capacity in respect of a claimant whose incapacity commences only on or after the commencement of this section.

57 Special provision for claimant already entitled to receive weekly compensation for loss of potential earning capacity

(1) This section applies to a claimant who is entitled to weekly compensation for loss of potential earning capacity immediately before the commencement of this section.

(2) The weekly compensation payable to the claimant is the amount of weekly compensation to which the claimant was entitled immediately before the commencement of this section.

(3) However, if the calculation of weekly compensation for loss of potential earning capacity in respect of the claimant is, but for **subsection (2) and section 56**, more favourable to the claimant under clause 47(4) of Schedule 1 of the principal Act (as amended by this Act), then clause 47(4) applies despite **subsection (2) and section 56**.

58 Abatement of weekly compensation

To avoid doubt, clause 49 of Schedule 1 of the principal Act (as amended by this Act) applies to the abatement of a claimant's weekly compensation in accordance with that clause and clause 51 of Schedule 1 of the principal Act in respect of a period of incapacity that commences only on or after the commencement of this section.

59 Members of ministerial advisory panels not entitled to compensation

(1) Nothing in this Act entitles a member of the ministerial advisory panel referred to in section 31 or 291 of the principal Act to any compensation in respect of the repeal of those sections and the removal of the panel, or for any fees or allowances that would otherwise be payable for the remainder of the term of an appointment affected by the repeals.

(2) In this section, **member** includes the chair of the ministerial advisory panel referred to in section 31 or 291 of the principal Act.

Schedule 1

s 44

Amendments to Schedules 1 and 4

Part 1
Amendments to Schedule 1

Clause 25

Subclause (1A): omit "must" and substitute "may".

Heading above clause 33

Omit "*claimant*" and substitute "*in permanent employment* ".

Clause 33

Repeal and substitute:

"**33 Weekly earnings if earner had earnings as employee immediately before incapacity commenced: application of clause 34**

"(1) Clause 34 applies to a claimant who—

"(a) was an earner immediately before his or her incapacity commenced; and

"(b) was in permanent employment at that time; and

"(c) had earnings as an employee from that permanent employment at that time.

"(2) If the claimant had permanent employment with more than 1 employer at that time, the weekly earnings of the claimant, in respect of each employer he or she had at that time, are as calculated separately under clause 34 and aggregated under clause 41.

"(3) For the purposes of this clause and clause 34, the claimant is regarded as having been in permanent employment if, in the opinion of the Corporation, he or she would have continued to receive earnings from that employment for a continuous period of more than 12 months after the date on which his or her incapacity commenced, if he or she had not suffered the personal injury.

"(4) **Subclause (5)** applies if—

"(a) the claimant was in permanent employment (that was full-time employment) as an employee immediately before his or her incapacity commenced; and

Part 1—*continued*

Clause 33—*continued*

"(b) before the employment, the claimant was employed by the same employer for less than 30 hours per week.

"(5) The weekly earnings of the claimant is the greater of—

"(a) the claimant's weekly earnings calculated in accordance with clause 34:

"(b) the claimant's weekly earnings calculated in accordance with **clause 36**, as if the claimant were not in permanent employment immediately before his or her incapacity commenced."

Clause 34

Heading to clause 34: insert "**in permanent employment**" after "**employee**".

Subclause (1): omit "(from the claimant's employment immediately before the claimant's incapacity commenced)" and substitute "(from that permanent employment)".

Subclause (2): omit "(from the claimant's employment immediately before the claimant's incapacity commenced)" and substitute "(from employment with that employer)".

New clauses 35 and 36 inserted

Insert after clause 34:

"**35 Weekly earnings if earner had earnings as employee not in permanent employment immediately before incapacity commenced: application of clause 36**

"(1) **Clause 36** applies to a claimant who—

"(a) was an earner immediately before his or her incapacity commenced; and

"(b) had at that time earnings as an employee (from employment that was not permanent employment).

"(2) For the purposes of this clause and **clause 36**, employment is not permanent employment if, in the opinion of the Corporation, the claimant would have not continued to receive earnings from that employment for a continuous period of more

Part 1—*continued*

New clauses 35 and 36 inserted—*continued*

than 12 months after the date on which his or her incapacity commenced, if he or she had not suffered the personal injury.

"**36 Weekly earnings if earner had earnings as employee not in permanent employment immediately before incapacity commenced: calculations**

"(1) This subclause applies to each of the 4 weeks after the first week of incapacity. The claimant's weekly earnings for each of the 4 weeks are calculated using the following formula:

$$\frac{a}{b}$$

where—

a is the claimant's earnings as an employee (from all employment that was not permanent employment) in the 4 weeks immediately before his or her incapacity commenced

b is the number of full or part weeks during which the claimant earned those earnings as an employee in the 4 weeks immediately before his or her incapacity commenced.

"(2) This subclause applies to any weekly period of incapacity after the 4 weeks described in **subclause (1)**. The claimant's weekly earnings for any such weekly period are calculated using the following formula:

$$\frac{a}{b}$$

where—

a is the claimant's earnings as an employee (from all employment that was not permanent employment) in the 52 weeks immediately before his or her incapacity commenced

b is 52 or such smaller number, if adjustments are required under **subclause (4)**.

Part 1—*continued*

New clauses 35 and 36 inserted—*continued*

"(3) For the purposes of this clause the following must be disregarded in calculating weekly earnings:
  "(a) any period during which the claimant was entitled to weekly compensation:
  "(b) any continuous period of unpaid sick leave, during a period of employment, of more than 1 week:
  "(c) any period during which—
    "(i) the claimant did not receive earnings as an employee; and
    "(ii) the claimant did receive earnings as a self-employed person or as a shareholder-employee; and
    "(iii) those earnings ceased before the commencement of the claimant's incapacity:
  "(d) any earnings in respect of any period under **paragraph (a), (b), or (c)**.

"(4) In item b of the formula set out in **subclause (2)**, the expression 52 is adjusted by deducting from it any number of weekly periods that **subclause (3)(a), (b), or (c)** applies to.

"(5) For the purposes of **subclause (3)(c)**, the Corporation may determine the number of weeks that fairly and reasonably represent the period during which the claimant received earnings as a self-employed person or as a shareholder-employee."

Clause 38

Subclause (5): omit "clauses 33 and 34" and substitute "clauses 33 to **36**".

Clause 39

Subclause (1)(a): insert "or **clause 36**, whichever is applicable" after "clause 34".

Subclause (4): omit "clauses 33 and 34" and substitute "clauses 33 to **36**".

Subclause (5): omit "clauses 33 and 34" and substitute "clauses 33 to **36**".

Part 1—*continued*

Clause 41

Subclause (1): omit "clauses 33 and 34" in each place where it appears and substitute in each case "clauses 33 to **36**".

Subclause (3): omit "clauses 33 and 34" in each place where it appears and substitute in each case "clauses 33 to **36**".

Subclause (5): insert "or **clause 36**" after "clause 34".

Subclause (6): omit "clause 34" in each place where it appears and substitute in each case "clause 34 or **clause 36**".

Clause 42

Subclause (1)(b): insert "**36**," after "clauses 34,".

Subclause (1)(c): omit "1 week" and substitute "5 weeks".

Subclause (2): omit "first week of incapacity" and substitute "5-week period".

Clause 47

Subclause (4): omit "multiplied by 125%".

Clause 49

Subclause (3): repeal and substitute:

"(3) In clause 51(2), **earnings** includes any payment made on the termination of employment in respect of leave entitlements. The Corporation must treat such a payment as having been derived after the termination of employment for a period that is equal to the total period that the claimant could have taken as leave if the claimant had not received the payment."

Part 2
Amendments to Schedule 4

Clause 7

Repeal and substitute:

"7 An employer who makes a payment to a shareholder-employee must, within the time within which the employer is required to furnish a return of income under section 33 of the

Part 2—*continued*

Clause 7—*continued*

Tax Administration Act 1994, deliver a statement of the total amount of shareholder-employee earnings paid or payable by the employer for the tax year to which the return relates."

Clause 16(b)

Repeal and substitute:

"(b) pay to the Commissioner, on or before the due date, an earner levy, at the rate prescribed, on any earnings that do not exceed the specified maximum."

Clause 18

Omit "and Earners' Account Residual levy".

Omit "or Earners' Account Residual levy".

Clause 19(a)

Omit "and Earners' Account Residual levy".

Clause 20

Omit "or Earners' Account Residual levy".

Schedule 2

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Consequential amendments to other ~~Acts~~ enactments

Part 1

Amendments to other Acts

Health and Safety in Employment Act 1992 (1992 No 96)

Definition of **Residual Claims levy** in section 59(1): repeal.

Section 59(1): add:

"**Work Account levy** means the levy payable under section 168, 168A, 168B, or 211 of the applicable Act".

Section 59(3): omit "Residual Claims levy" in each place where it appears and substitute in each case "Work Account levy".

Income Tax Act 2007 (2007 No 97)

Section EF 3(5)(b): repeal.

Section EF 3(5)(e): repeal and substitute:

"(e) an Earners' Account levy under section 283(2) of the Accident Insurance Act 1998:".

New Zealand Superannuation and Retirement Income Act 2001 (2001 No 84)

Section 16(2): omit "and (2)".

Tax Administration Act 1994 (1994 No 166)

Section 81(1)(a)(iia): omit "sections 193 and 219" and substitute "section 219".

Section 85E(2): add:

"(g) whether an employer, self-employed person, private domestic worker, or shareholder-employee has a tax agent and, if so, the tax agent's name and contact details:

"(h) in the case of an employer, self-employed person, private domestic worker, or shareholder-employee who is an individual, whether the individual is deceased and, if so,—

"(i) the individual's date of death; and

Part 1—*continued*

Tax Administration Act 1994 (1994 No 166)—*continued*

"(ii) the name and contact details of the administrator or executor of the individual's estate."

Part 2
Amendments to regulations

Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334)

Definition of **ACC earner levies** in regulation 4: omit "section 219(1) and (2)" and substitute "section 219(1)".

Legislative history

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