

Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 2)

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 (No 2) and recommends by majority that it be passed with the amendments shown.

Introduction

The purpose of this bill is to maintain a fair and sustainable accident compensation scheme by reducing the incidence and impact of personal injury. To this end it proposes amendments to the existing legislation in relation to cover for work-related injuries, changes in eligibility for and entitlement to weekly compensation, and processes regarding vocational rehabilitation.

Work-related mental injury

Scope of work-related mental injury

Several submitters were concerned that the bill as drafted may exclude some claims that should be covered, and argued for extending the bill's proposed amendments to cover mental injury caused by a series of events.

We were advised that extending the proposed cover for work-related mental injury to include mental injuries arising from gradual or cumulative exposure to work tasks or the characteristics of a particular job would have significant policy and financial implications.

There would be difficulties in determining causation and particularly in establishing that the mental injury was directly caused by factors in the work environment. It would also be hard to isolate non-work factors that might have caused the mental injury.

The effect of extending cover to gradual process work-related mental injuries would be significant increases in employer levies. This would be likely to compromise the scheme's sustainability.

However, the bill was intended to provide cover for work-related mental injury caused by a single event, such as a road accident, even where that single event might be interpreted as consisting of a number of inter-related events.

For example a truck hitting a person on the road may be construed as a succession of events: the driver of the truck seeing the person; the truck hitting the person; the driver stopping to ascertain injuries; and the driver seeing the person's injuries.

The intent of the bill is to ensure that the truck driver would be covered by the ACC scheme if he or she incurred mental injury as a result of the accident.

The bill was also intended to provide cover for a work-related mental injury caused by encountering a traumatic scene, such as a serious industrial accident, even though the person may have encountered the scene after the accident had occurred and did not witness it.

It was intended that encountering this kind of situation could, in itself, amount to a traumatic event and the person doing so would be covered by the ACC scheme for any resulting mental injury.

The majority of us therefore recommend the bill be amended to better reflect its intention regarding cover for work-related mental injuries;

that is, that cover not be excluded where the single event that caused the injury could be construed as consisting of a number of inter-related events, or where the event consisted of encountering a traumatic scene rather than witnessing the accident itself that gave rise to the scene.

Intra-grounds discrimination

It was pointed out that the bill appears to impose different criteria depending on whether people are claiming compensation for mental and physical injury.

New section 21B(2)(c) allows people to claim compensation for a work-related mental injury only if the event that leads to the injury could be “reasonably expected” to do so. The effect of section 21B(2)(c) is to make it more difficult to claim for mental injury than for physical injury, because it introduces a subjective assessment of what can be reasonably expected to cause an injury into a list of criteria that are otherwise objectively ascertainable. Submitters noted that this is not the case with physical injury.

We were advised that the proposed amendment might have some implications for people with a pre-existing mental health condition who were exposed to a sudden work-related traumatic event. However, it is not the intent of the amendment to exclude such people from cover on the grounds of their underlying health condition.

The intent behind the requirement that the event be one that could “reasonably be expected to cause mental injury” is to ensure that cover for work-related mental injury does not extend to injuries caused by minor events or by gradual process. Costs for the introduction of cover for work-related mental injury will be borne directly by employers through the Work Account. Consequently, it is also necessary to ensure that only work-related injuries are gaining cover under this provision. This means that the cause of the injury must be clearly identifiable, and that it must not be the result of work-related stress, or an event that is the “final straw” in a series of events (work or non-work-related) that would not, in itself, usually cause a mental injury. The intent is that the event must be one that could reasonably be expected to cause mental injury in the general population.

The majority of us recommend amendments to reflect the bill’s intention regarding work-related mental injuries: that the triggering event

must be one that could reasonably be expected to cause mental injury in the general population.

Eligibility for lump sum compensation

To correct a reference error the majority of us recommend that the reference to section 31 of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No. 2) 2007 in the amendments in the Schedule to the bill that relate to new clause 55A(2)(c) of Schedule 1 of the Act, be replaced by a reference to section 33 of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No. 2) 2007.

Due date for levy payment

The bill as drafted does not include any transitional provisions for the amendments related to the due date for the payment of levies.

The majority of us recommend the bill be amended to make it clear that the amendments relating to the due date for the payment of levies do not apply to levy invoices issued by ACC before the commencement date of the amendments.

Repeal of disentitlements for wilfully self-inflicted injuries

Clause 20 of the bill repeals section 119 of the Injury Prevention, Rehabilitation and Compensation Act 2001, which prohibits ACC from providing entitlements (except for treatment) in respect of wilfully self-inflicted personal injury and suicide unless the injury or suicide was the result of mental injury.

Some submitters argued that this clause may provide an incentive for self-harm by employees. In their view, the provision of entitlements for self-harm is inconsistent with the purposes of the ACC scheme.

Some of us believe clause 20 will have the effect of encouraging self-inflicted injuries by employees. ACC informed us they generally do not decline claims for self-inflicted injuries; however, we do not believe that compensation should be provided in such instances.

Other matters

Some of us also wish to discuss matters that were raised during the hearing of evidence process but are not covered in the committee's recommendations on the bill. These are as follows:

Work-related mental injury — inequity with non-work situation

Submitters representing employers argued it was unfair that the increased level of cover for work-related mental injury provided by the bill is only provided to those people in paid employment. This creates an unfair distinction between working and non-working individuals, and imposes an unfair burden on employers.

For example, only workplace claims for workers witnessing traumatic events that cause mental injury will be covered, while non-working witnesses to the same accidents will receive nothing.

Positions of submitters

Some of us are concerned that the submissions of business organisations, which argued that the bill imposes additional costs on employers, have not been sufficiently taken into account or addressed by the committee's advisors in their report on the bill.

National Party minority view

The stated aim of this bill is to commit to a fair and sustainable ACC scheme. However it is difficult to reconcile this statement with the changes which are included in the bill.

It is estimated that the total claims for witnesses who are exposed to a sudden traumatic event during the course of employment could cost between \$7.6 and \$72.2 million. The reason for not extending this provision to non-worked related exposure is because the cost would be too high for the Government. The same consideration does not apply to the Work Account levy payers.

Together with the changes to cover for work-related gradual process, disease or infection and changes to weekly compensation, the estimated cost varies between \$58 million and \$123.7 million.

There are other changes that will increase the cost of the scheme without any cost estimates being provided — such as introducing flexibility to add additional categories to Schedule 2.

The repeal of disentitlements for wilfully self-inflicted injuries is a worrying change that negates the original intention of the scheme, which was to cover injuries caused by accidents.

The cumulative effects of changes introduced in this bill will increase costs substantially. It will also extend the coverage of the ACC scheme beyond the scope of covering injuries caused by accidents where victims forgo their rights to sue in return for compensation.

New Zealand First Party minority view

Nowadays there are more and more people over the age of 65 taking an active role in the workforce. Some work full-time, others part-time or casual. Employers pay, on their behalf, appropriate premiums and the individual has the relevant ACC levy deducted from his/her wages at source. Despite this, in the event of an off-work accident, the compensation entitlement paid to these individuals is restricted.

New Zealand First acknowledges this legislation moves forward somewhat by addressing rehabilitation requirements of older workers but it fails to address the financial entitlements problem.

Older workers regard the premiums, levies or fees paid on their behalf as workplace insurance premiums. They believe that by paying such they are entitled to the same compensation entitlements as any other working person.

New Zealand First largely shares that view and is disappointed this bill does not do more to address this important issue by, at the very least, extending the 24-month period of entitlement to weekly compensation and not penalising entitlement to New Zealand Superannuation.

Appendix

Committee process

The Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 2) was referred to the committee on 13 December 2007. The closing date for submissions was 15 February 2008. We received and considered 51 submissions from interested groups and individuals. We heard 25 submissions, which included holding hearings in Auckland and Christchurch.

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

Committee membership

Hon Mark Gosche (Chair)

Hon Maurice Williamson (Deputy Chair)

David Bennett

Peter Brown

Russell Fairbrother

Darien Fenton

Lesley Soper

Hon Judith Tizard

Kate Wilkinson

Pansy Wong

**Injury Prevention, Rehabilitation, and
Compensation Amendment Bill (No 2)**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text deleted by a majority

Hon Maryan Street

**Injury Prevention, Rehabilitation,
and Compensation Amendment
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Schedule
Amendments to Schedule 1

16

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) **2007**.

2 Commencement

5

(1) **Section 4(4)** comes into force on a date to be appointed by the Governor-General by Order in Council.

(2) **Section 33(1) and the Schedule** of this Act, in so far as they relate to the amendments to clause 42(3) of Schedule 1 of the principal Act, come into force on 1 July 2008.

10

(3) ~~This~~ The rest of this Act comes into force on 1 August 2008.

3 Principal Act amended

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

Part 1

15

Amendments to principal Act

4 Interpretation

(1) Section 6(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**nurse practitioner** means a health practitioner who— 20

“(a) is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of nurse practitioner functions; and 25

“(b) holds a current practising certificate”.

- (2) The definition of **registered health professional** in section 6(1) is amended by inserting “nurse practitioner,” after “nurse,”.
- (3) The definition of **treatment provider** in section 6(1) is amended by inserting “nurse practitioner,” after “nurse,”. 5
- (4) The definition of **nurse practitioner** in section 6(1) is repealed and the following definition substituted:
“**nurse practitioner** has the meaning given to it in regulations made under this Act”.
- 5 Cover for personal injury suffered in New Zealand (except mental injury caused by certain criminal acts)** 10
- (1) The heading to section 20 is amended by inserting “**or work-related mental injury**” after “**criminal acts**”.
- (2) Section 20(3)(b) is amended by omitting “(2)(d)” and substituting “(2)(e)”. 15
- 6 New section 21B inserted**
- The following section is inserted after section 21A:
- ~~21B~~ Cover for work-related mental injury**
- ~~“(1) A person has cover for a personal injury that is a mental injury if—~~ 20
- ~~“(a) he or she suffers the mental injury inside or outside New Zealand on or after the date that **section 6** of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) **2007** came into force; and~~
- ~~“(b) the mental injury is caused by a single event of a type to which **subsection (2)** applies.~~ 25
- ~~“(2) **Subsection (1)(b)** applies to an event that—~~
- ~~“(a) the person experiences, sees, or hears in the circumstances described in section 28(1); and~~
- ~~“(b) is sudden; and~~ 30
- ~~“(c) is an event that could reasonably be expected to cause mental injury; and~~
- ~~“(d) is experienced, seen, or heard by the person directly; and~~
- ~~“(e) occurs—~~ 35
- ~~“(i) in New Zealand; or~~

- ~~“(ii) outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs.”~~
- ~~“(3) For the purposes of this section, it is irrelevant whether or not the person is ordinarily resident in New Zealand on the date on which he or she suffers the mental injury.”~~ 5
- ~~“(4) Section 36(1) describes how the date referred to in subsection (3) is determined.”~~
- ~~“(5) In this section, a person experiences, sees, or hears an event directly if that person—~~ 10
- ~~“(a) is involved in or witnesses the event himself or herself; and~~
- ~~“(b) is in close physical proximity to the event at the time of the event.”~~
- ~~“(6) To avoid doubt, a person does not experience, see, or hear an event directly if that person experiences, sees, or hears an event through a secondary source, for example, by—~~ 15
- ~~“(a) seeing the event on television (including closed circuit television);~~
- ~~“(b) seeing pictures of, or reading about, the event in news media;”~~ 20
- ~~“(c) hearing the event on radio or by telephone;”~~
- ~~“(d) hearing about the event from radio, telephone, or another person.”~~
- 6** **New section 21B inserted** 25
The following section is inserted after section 21A:
- “21B Cover for work-related mental injury**
- “(1) A person has cover for a personal injury that is a work-related mental injury if—**
- “(a) he or she suffers the mental injury inside or outside New Zealand on or after 1 August 2008; and** 30
- “(b) the mental injury is caused by a single event of a kind described in **subsection (2)**.**
- “(2) Subsection (1)(b) applies to an event that—**
- “(a) the person experiences, sees, or hears directly in the circumstances described in section 28(1); and** 35

- “(b) is an event that could reasonably be expected to cause mental injury to people generally; and
- “(c) occurs—
- “(i) in New Zealand; or
- “(ii) outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs. 5
- “(3) For the purposes of this section, it is irrelevant whether or not the person is ordinarily resident in New Zealand on the date on which he or she suffers the mental injury. 10
- “(4) Section 36(1) describes how the date referred to in **subsection (3)** is determined.
- “(5) In **subsection (2)(a)**, a person experiences, sees, or hears an event directly if that person—
- “(a) is involved in or witnesses the event himself or herself; and
- “(b) is in close physical proximity to the event at the time it occurs. 15
- “(6) To avoid doubt, a person does not experience, see, or hear an event directly if that person experiences, sees, or hears it through a secondary source, for example, by— 20
- “(a) seeing it on television (including closed circuit television):
- “(b) seeing pictures of, or reading about, it in news media:
- “(c) hearing it on radio or by telephone: 25
- “(d) hearing about it from radio, telephone, or another person.
- “(7) In this section, **event**—
- “(a) means—
- “(i) an event that is sudden; or 30
- “(ii) a direct outcome of a sudden event; and
- “(b) includes a series of events that—
- “(i) arise from the same cause or circumstance; and
- “(ii) together comprise a single incident or occasion; but 35
- “(c) does not include a gradual process.”

- 7 Cover for personal injury suffered outside New Zealand (except mental injury caused by certain criminal acts)**
- (1) The heading to section 22 is amended by inserting “**or work-related mental injury**” after “**criminal acts**”.
- (2) Section 22 is amended by adding the following subsection: 5
- “(7) A person who suffers personal injury that is work-related mental injury in circumstances described in **section 21B** has cover under **section 21B**, but not under this section.”
- 8 Personal injury**
- Section 26(1) is amended by inserting the following paragraph 10 after paragraph (d):
- “(da) work-related mental injury that is suffered by a person in the circumstances described in **section 21B**; or”.
- 9 Work-related personal injury**
- Section 28 is amended by inserting the following subsection 15 after subsection (4):
- “(4A) **Work-related personal injury** includes work-related mental injury that is suffered in the circumstances described in **section 21B**.”
- 10 Personal injury caused by work-related gradual process, disease, or infection** 20
- (1) Section 30 is amended by inserting the following subsection after subsection (1):
- “(1A) Subsection (1)(c) is subject to **subsection (2A)**.”
- (2) Section 30(2)(b)(ii) is repealed. 25
- (3) Section 30(2) is amended by repealing paragraph (c) and substituting the following paragraph:
- “(c) that, if the particular property or characteristic is present in both the person’s employment tasks or environment and non-employment activities or environment, 30 it is more likely that the person’s personal injury was caused as a result of the employment tasks or environment rather than the non-employment activities or environment.”

- (4) Section 30 is amended by inserting the following subsection after subsection (2):
- “(2A) However, even if it is established that a claimant’s personal injury was caused in the circumstances described in subsection (2), the Corporation may decline the claim if the Corporation establishes that the risk of suffering the personal injury is not significantly greater for persons who—
- “(a) perform the employment task than it is for persons who do not perform it; or
- “(b) are employed in that type of environment than it is for persons who are not.”
- (5) Section 30 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) **Personal injury caused by a work-related gradual process, disease, or infection** includes personal injury that is—
- “(a) of a type described in Schedule 2; and
- “(b) suffered by a person who is or has been in employment—
- “(i) that involves exposure, or the prescribed level or extent of exposure, to agents, dusts, compounds, substances, radiation, or things (as the case may be) described in that schedule in relation to that type of personal injury; or
- “(ii) in an occupation, industry, or process described in that schedule in relation to that type of personal injury.”
- (6) Section 30 is amended by inserting the following subsection after subsection (3):
- “(3A) To avoid doubt, where a claim is lodged for cover for a work-related gradual process, disease, or infection, section 57 applies to require, among other things, the Corporation to investigate the claim at its own expense.”
- (7) The amendments made by this section do not apply in respect of claims that have been—
- (a) lodged before the commencement of this section; or
- (b) decided before, and resubmitted on or after, the commencement of this section.

(8) Claims referred to in **subsection (7)** must be determined in accordance with section 30 as it was immediately before the commencement of this section.

11 Motor vehicle injury

Section 35 is amended by repealing subsection (1) and substituting the following subsection: 5

“(1) **Motor vehicle injury**—

“(a) means—

“(i) a personal injury suffered because of the movement of a motor vehicle; or 10

“(ii) a personal injury suffered because of a stationary motor vehicle being struck by another motor vehicle or some other means of conveyance; but

“(b) does not include a personal injury that is a work-related mental injury.” 15

12 Date on which person is to be regarded as suffering mental injury

Section 36(1) is amended by inserting “or **21B**” after “section 21”.

13 Date on which person is to be regarded as suffering personal injury caused by work-related gradual process, disease, or infection 20

Section 37(1)(a) is amended by inserting “or nurse practitioner” after “medical practitioner”.

14 Steps Corporation takes to action complicated claims for cover 25

Section 57(1)(a) is amended by inserting “or **21B**” after “section 21”.

15 Corporation liable to provide vocational rehabilitation

Section 85 is amended by adding the following subsection as subsection (2): 30

“(2) Despite subsection (1)(b)(i), the Corporation is liable to provide vocational rehabilitation to a person who was entitled

to weekly compensation and who would, but for clause 52 of Schedule 1 (relationship between weekly compensation and New Zealand superannuation), continue to be entitled to weekly compensation.”

16 Further matters to be considered in deciding whether to provide vocational rehabilitation 5

Section 87 is amended by inserting the following subsections after subsection (2):

“(2A) Subsection (2) is subject to **subsection (2B)**.

“(2B) Despite subsection (2), the Corporation may, at its discretion, provide vocational rehabilitation for longer than 3 years if the Corporation considers that— 10

“(a) the vocational rehabilitation would be likely to achieve its purpose under the claimant’s individual rehabilitation plan; and 15

“(b) the vocational rehabilitation would be likely to be cost-effective, having regard to the likelihood that costs of entitlements under this Act will be reduced as a result of the provision of vocational rehabilitation; and

“(c) the vocational rehabilitation would be appropriate in the circumstances. 20

“(2C) However, despite subsections (1)(b) and **(2B)(b)**, if the Corporation is liable to provide vocational rehabilitation to a claimant under **section 85(2)**, it must not take into account as a factor against providing the vocational rehabilitation that costs of entitlements will not be reduced because the claimant is no longer entitled to weekly compensation.” 25

17 Conduct of initial occupational assessment

Section 91 is amended by inserting the following subsection after subsection (1): 30

“(1A) In considering the suitability of the types of work referred to in subsection (1)(b), the occupational assessor must take into account, among other things, the claimant’s earnings before the claimant’s incapacity.”

- 18 Procedure in determining incapacity under section 103 or section 105**
Section 102(2)(a) is amended by inserting “or nurse practitioner” after “medical practitioner”.
- 19 Corporation to determine incapacity of claimant who, at time of incapacity, had ceased to be employee, was potential earner, or had purchased weekly compensation under section 223** 5
- (1) Section 105 is amended by omitting the heading and substituting the following heading: “**Corporation to determine incapacity of certain claimants who, at time of incapacity, had ceased to be in employment, were potential earners, or had purchased weekly compensation under section 223**”. 10
- (2) Section 105(1)(a) is amended by inserting “, a self-employed person, or a shareholder-employee, as the case may be” after “employee”. 15
- 20 Disentitlement for wilfully self-inflicted personal injuries and suicide**
- (1) Section 119 is repealed.
- (2) To avoid doubt, any claimant who was, at any time before this section came into force, disentitled under section 119(1) remains disentitled. 20
- 21 Employers to pay levies**
Section 168(3) is amended by omitting “2 months” and substituting “30 days”. 25
- 22 Private domestic workers to pay levies**
Section 168A(3) is amended by omitting “2 months” and substituting “30 days”.
- 23 Self-employed persons to pay levies**
Section 168B(3) is amended by omitting “2 months” and substituting “30 days”. 30

24 Persons eligible to purchase weekly compensation

- (1) Section 223(3)(b) is amended by omitting “less than 3 months nor”.
- (2) Section 223(3)(c)(i) is amended by omitting “permanent”.
- (3) Section 223(3)(c) is amended by repealing subparagraph (ii) 5
and substituting the following subparagraphs:
- “(ii) the person had an incapacity that commenced on
the last full day of the employment referred to
in subsection (2)(a) and that resulted from a per- 10
sonal injury for which he or she had cover; and
- “(iia) the weekly earnings were to be calculated for
a period of incapacity after the first 5 weeks of
incapacity; and”.
- (4) Section 223 is amended by repealing subsection (6) and sub- 15
stituting the following subsection:
- “(6) A person who is on parental leave within the meaning of the
Parental Leave and Employment Protection Act 1987, or who
has had an application for parental leave approved under that
Act, is regarded as being still in employment for the purposes
of subsection (2) and, for the purposes of subsection (3)(c), 20
the person’s weekly earnings are to be calculated as if the period
of incapacity was before the commencement of the person’s
parental leave.”

**25 Penalties and interest due to Corporation in respect of
unpaid levies** 25

- (1) Section 250(1) is amended by inserting “that is 30 days” after
“unpaid on the day”.
- (2) Section 250(2) is amended by omitting “2 months” and sub-
stituting “30 days”.
- (3) Section 250(4) is amended by— 30
- (a) omitting “6 months after the due date” and substituting
“210 days after the due date”; and
- (b) omitting “every 6 months” and substituting “every 180
days”; and
- (c) omitting “first 6-month period” and substituting “210- 35
day period”.

26 Ancillary powers of Corporation

Section 265 is amended by inserting the following subsection after subsection (1):

“(1A) To avoid doubt, the Corporation may provide services under subsection (1)— 5

“(a) that are outside the functions of the Corporation under section 262, provided that the services are consistent with the purposes of the Act:

“(b) whether or not the services are provided to a person who would not otherwise have cover under this Act.” 10

27 Management of Accounts

Section 274(3B) is amended by omitting “section 270(2)” and substituting “section 115(2) of the Crown Entities Act 2004”.

28 Regulations relating to rehabilitation

Section 324 is amended by repealing subsection (2) and substituting the following subsection: 15

“(2) The Minister must not make any recommendation under subsection (1) without first receiving a recommendation from the Corporation and consulting the persons or organisations the Minister considers appropriate, having regard to the subject-matter of the proposed regulations.” 20

29 New section 324A inserted

The following section is inserted after section 324:

“**324A Annual review of amounts prescribed by regulations made under section 324** 25

“(1) The Corporation must conduct an annual review of the amounts, prescribed by regulations made under section 324, that the Corporation is liable to pay for the entitlement of rehabilitation.

“(2) The purpose of the review is to assess whether adjustment to any of the amounts is required to take into account changes in costs of rehabilitation. 30

“(3) The Corporation must, by 1 December each year,—

“(a) provide a report on the results of the review to the Minister; and 35

“(b) include in that report any recommendations for change that it may have.”

30 Amendment of Schedule 2 by Order in Council

Section 336(1) is amended by repealing paragraph (a) and substituting the following paragraph: 5

“(a) adding or varying the description of a personal injury, together with the corresponding—

“(i) agents, dusts, compounds, substances, radiation, or things (as the case may be) and, if appropriate, the relevant level or extent of exposure to such agents, dusts, compounds, substances, radiation, or things; or 10

“(ii) occupations, industries, or processes; or”.

31 Weekly earnings of certain claimants increased

Section 366(1)(b) is amended by inserting “was not receiving weekly compensation calculated under the Accident Compensation Act 1972 or the Accident Compensation Act 1982, and” before “had weekly earnings”. 15

32 Compensation payable to surviving spouses or de facto partners under 1972 and 1982 Acts 20

Section 384 is amended by inserting the following subsection after subsection (1):

“(1A) However, despite subsection (1), the spouse or de facto partner may choose to convert the entitlement to compensation under section 446 of the Accident Insurance Act 1998 to 1 or more aggregated payments and, in those circumstances, clause 67 of Schedule 1 applies as if the entitlement to compensation were an entitlement to weekly compensation under clause 66 of Schedule 1.” 25

Part 2
**Further amendment to principal Act and
regulations, and additional transitional
provision**

33	Schedule 1 amended	5
(1)	Schedule 1 is amended in the manner set out in the Schedule of this Act.	
(2)	The amendments set out in the Schedule that relate to clauses 33 to 36 and clause 43 of Schedule 1 of the principal Act apply only in respect of claimants whose incapacity commenced on or after the commencement of this section.	10
(3)	The amendments set out in the Schedule that relate to clauses 42(1)(c) and (2), 47(4), 49, and 51 of Schedule 1 of the principal Act apply only in respect of—	15
(a)	claimants who are entitled to the relevant weekly compensation on or after the commencement of this section; and	
(b)	weekly compensation payable for a period beginning on or after the commencement of this section.	20
34	Amendment to Injury Prevention, Rehabilitation, and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002	
(1)	This section amends the Injury Prevention, Rehabilitation, and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002.	25
(2)	Regulation 3(a) is amended by inserting “that is 30 days after the date” after “from the date”.	
34A	<u>Transitional provision for payment of levies and payment of penalties and interest due for unpaid levies</u>	30
	<u>The amendments in sections 21 to 23, 25, and 34 of this Act apply only in respect of an invoice or other appropriate document that is given to a person by the Corporation or an agent of the Corporation on or after 1 August 2008 in respect of any levy payable under the principal Act.</u>	35

Schedule
Amendments to Schedule 1

s 33

Clause 25

Insert after subclause (1): 5

“(1A) In considering the suitability of the types of work referred to in subclause (1)(c), the occupational assessor must take into account, among other things, the claimant’s earnings before the claimant’s incapacity.”

Heading above clause 33

10

Omit “*in permanent employment*” and substitute “*claimant*”.

Clause 33

Repeal and substitute:

“**33 Weekly earnings if earner had earnings as employee immediately before incapacity commenced: application of clause 34** 15

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

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

“(b) had earnings as an employee at that time. 20

“(2) If the claimant had 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.”

Clause 34

25

Heading to clause 34: omit “**in permanent employment**”.

Subclause (1): item a: omit “(from that permanent employment)” and substitute “(from the claimant’s employment immediately before the claimant’s incapacity commenced)”.

Subclause (2): item a: omit “(from employment with that employer)” and substitute “(from the claimant’s employment immediately before the claimant’s incapacity commenced)”.

Clause 35

Repeal.

Clause 36

Repeal.

Clause 38

Subclause (5): omit “clauses 33 to 36” and substitute “clauses 33 and 34”. 5

Add:

“(7) To avoid doubt, if a claim for weekly compensation is made in respect of a period of incapacity that commenced before 1 July 2005, this clause—

“(a) applies only to the calculation of weekly earnings for the purposes of weekly compensation that is payable for a period commencing on or after 1 July 2005; and 10

“(b) does not authorise an increase to the rate of weekly compensation that is payable for a period before 1 July 2005.” 15

Clause 39

Subclause (1)(a): omit “or clause 36, whichever is applicable”.

Subclause (4): omit “clauses 33 to 36” and substitute “clauses 33 and 34”.

Subclause (5): omit “clauses 33 to 36” and substitute “clauses 33 and 34”. 20

Add:

“(7) To avoid doubt, if a claim for weekly compensation is made in respect of a period of incapacity that commenced before 1 July 2005, this clause— 25

“(a) applies only to the calculation of weekly earnings for the purposes of weekly compensation that is payable for a period commencing on or after 1 July 2005; and

“(b) does not authorise an increase to the rate of weekly compensation that is payable for a period before 1 July 2005.” 30

Clause 41

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

Clause 41—*continued*

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

Subclause (5): omit “or clause 36”.

Subclause (6): omit “or clause 36” in each place where it appears.

Clause 42 5

Subclause (1)(b): omit “36,”.

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

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

Subclause (3)(a)(i): repeal and substitute: 10

“(i) the minimum weekly wage under the Minimum Wage Act 1983 for a person aged 18 years or older to whom section 4(1)(c) of that Act does not apply; or”

Subclause (3)(b): omit “over 18 years of age” and substitute “18 years of age or over” 15

Subclause (3)(b)(i): repeal and substitute:

“(i) the minimum weekly wage under the Minimum Wage Act 1983 for a person aged 18 years or older to whom section 4(1)(c) of that Act does not apply; or” 20

Clause 43

Repeal and substitute:

“43 Weekly earnings if employment ended before commencement of incapacity” 25

“(1) **Subclause (2)** applies to a claimant who, before his or her incapacity commenced, has ceased to be in employment.

“(2) The claimant is deemed to continue to be in employment and have earnings from that employment for the purposes of this schedule for the longer of— 30

“(a) 28 days from the date he or she ceased to be in employment, if he or she—

“(i) had been in employment within 28 days before his or her incapacity commenced; and

Clause 43—*continued*

- “(ii) would have been an employee within the period specified in **subclause (3)** after the date on which his or her incapacity commenced, but for the incapacity; or
- “(b) the period for which payments that the claimant is entitled to receive on ceasing employment and on which earner levy is payable constitute earnings under **subclause (4)**. 5
- “(3) For the purposes of **subclause (2)(a)(ii)**, the period is,—
- “(a) unless **paragraph (b)** applies, 3 months if the claimant had entered into an employment agreement, or had arranged to enter into an employment agreement, before the incapacity commenced; or 10
- “(b) 12 months if—
- “(i) the claimant was employed in seasonal employment with the same employer as he or she had been employed in the 2 seasons before the claimant’s incapacity commenced; and 15
- “(ii) the employer confirms that the claimant could reasonably have expected to be re-employed in the season after the claimant’s incapacity commenced. 20
- “(4) A claimant, who is deemed by **subclause (2)(b)** to continue to be in employment, is also deemed to be deriving earnings at the same rate as he or she derived earnings while in employment immediately before he or she ceased to be an employee, a self-employed person, or a shareholder-employee, as the case may be. 25
- “(5) For the purposes of calculating the claimant’s weekly earnings, the date his or her incapacity commenced is deemed to be the last date on which the claimant was in employment. 30
- “(6) Unless the personal injury is a motor vehicle injury, a work-related personal injury, or a treatment injury, payments under this clause come from the Earners’ Account.
- “(7) In this clause— 35
- “**employee** includes an employee who is on unpaid leave that is not unpaid parental leave

Clause 43—*continued*

“**employment** means employment as—

- “(a) an employee; or
- “(b) a self-employed person; or
- “(c) a shareholder-employee.”

Clause 45(3) 5

Omit “clause 38 or clause 39” and substitute “clauses 38 to 40”.

Clause 47

Insert after subclause (1):

“(1A) For the purposes of subclause (1)(d), **full-time study or training**— 10

- “(a) includes any full-time course or training leading to an educational or vocational qualification approved by the New Zealand Qualifications Authority that would be likely to enhance the employment prospects, either generally or in respect of any particular profession or occupation, of a person who has attained that qualification; but 15

- “(b) does not include full-time study or training in living or social skills.”

Subclause 4: omit “claimant is deemed to have the amount of minimum weekly earnings determined under clause 42(3)” and substitute “claimant’s weekly earnings are deemed to be the amount of weekly earnings determined under clause 42(3) multiplied by 125%”. 20

Clause 49

Subclause (1): repeal. 25

Subclause (2): repeal.

Subclause (3): repeal and substitute:

“(3) In clause 51(2), **earnings** does not include any payment made on the termination of employment in respect of leave entitlements.” 30

Subclause (4): omit “51(1) and (2)” and substitute “51(2)”.

Clause 51

Subclause (1): repeal.

Subclause (2): omit “The Corporation must also reduce the amount of weekly compensation paid” and substitute “In calculating weekly compensation under this Part, the Corporation must reduce the amount of weekly compensation paid to a claimant”.

Subclause (3): repeal.

Clause 55

Add:

“(6) Subclauses (2), (4), and (5) apply subject to clauses 55A to 55D.”

New clauses 55A to 55D

Insert after clause 55:

“55A Certain persons may elect to receive either lump sum compensation or independence allowance: assessment, notification, and election

“(1) The Corporation must, to enable a person to make an election under subclause (4), determine whether the person meets the criteria for entitlement to both lump sum compensation (under clauses 57 to 60) and an independence allowance (under clauses 58 to 60 of Schedule 1 of the Accident Insurance Act 1998).

“(2) However, a determination under subclause (1) is required only if the person—

“(a) suffered a personal injury caused by a work-related gradual process, disease, or infection in the circumstances described in section 30(2); and

“(b) last performed the task or was employed in the environment in those circumstances before 1 April 2002; and

“(c) suffered the personal injury on or after the date on which **section 34 33** of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) **2007** came into force.

“(3) The Corporation must, after complying with **subclause (1)**,—

New clauses 55A to 55D—continued

- “(a) make a decision (which, to avoid doubt, is to be treated as a single decision) as to whether the person has, for the purposes of an election under subclause (4), an entitlement to both lump sum compensation and an independence allowance; and 5
- “(b) notify the person of its decision, in accordance with section 64, and include with that notification information about—
 - “(i) the Corporation’s assessment of the person’s degree of whole-person impairment; and 10
 - “(ii) the amounts of lump sum compensation and independence allowance that the person would, if he or she elected to receive that compensation or allowance, be entitled to receive; and
 - “(iii) the Corporation’s estimate of the period for which the person would need to receive an independence allowance for that allowance to equal the value of the lump sum compensation that would be payable to the person, calculated using appropriate actuarial methodology; and 20
- “(c) inform the person—
 - “(i) that he or she is entitled to elect which of the entitlements he or she wishes to receive; and
 - “(ii) of the matters specified in subclause (4).
- “(4) A person who is assessed as having an entitlement to either lump sum compensation or an independence allowance— 25
 - “(a) may, within 60 days of being given notification in accordance with section 64, elect which entitlement he or she wishes to receive; or
 - “(b) is, if no election is made within 60 days, deemed to have elected to receive an independence allowance. 30
- “(5) An election under subclause (4)(a) must be made in writing to the Corporation.
- “(6) Section 37 applies for the purposes of subclause (2)(c).
- “(7) Section 64 applies to a notification by the Corporation under this clause as if the notification were a notice of a decision on a claim. 35

New clauses 55A to 55D—continued

“55B Certain persons may elect to receive either lump sum compensation or independence allowance: persons not entitled to make election under clause 55A

- “(1) If the result of the Corporation’s determination under **clause 55A(1)** is that the person does not meet the criteria for entitlement to both lump sum compensation and an independence allowance, the following provisions apply:
 - “(a) if the person meets the criteria for entitlement to lump sum compensation but not an independence allowance, the person may not exercise the right of election under **clause 55A(4)** but is entitled to receive lump sum compensation: 5 10
 - “(b) if the person meets the criteria for entitlement to an independence allowance but not lump sum compensation, the person may not exercise the right of election under **clause 55A(4)** but is entitled to receive an independence allowance: 15
 - “(c) if the person does not meet the criteria for entitlement to lump sum compensation or an independence allowance, the person may not exercise the right of election under **clause 55A(4)** and the Corporation must decline the person’s claims to those entitlements. 20
- “(2) However, the Corporation must again comply with **clause 55A(1)** in relation to a person if—
 - “(a) the person has been reassessed under clause 61 of Schedule 1 of the Accident Insurance Act 1998, and the reassessment indicates that the person’s degree of whole-person impairment has changed; or 25
 - “(b) a review of the Corporation’s decision (under section 134), or an appeal (under section 149), has resulted in a change to the assessment of the person’s degree of whole-person impairment. 30

“55C Certain persons may elect to receive either lump sum compensation or independence allowance: reassessment, notification, and further election

- “(1) A person may make a further election if— 35

New clauses 55A to 55D—continued

- “(a) the person has elected, or is deemed to have elected, to receive (or continue to receive) an independence allowance; and
- “(b) either of the situations in **subclause (2)** apply.
- “(2) The situations are that— 5
 - “(a) the person has been reassessed under clause 61 of Schedule 1 of the Accident Insurance Act 1998, and the reassessment indicates that the person’s degree of whole-person impairment has changed:
 - “(b) a review of the Corporation’s decision (under section 134), or an appeal (under section 149), has resulted in a change to the assessment of the person’s degree of whole-person impairment. 10
- “(3) If either of the situations in **subclause (2)** apply, the Corporation must— 15
 - “(a) provide the person with the information specified in **clause 55A(3)(b)**, updated to take account of the change in circumstances; and
 - “(b) inform the person— 20
 - “(i) that he or she is entitled to make a further election, in light of the reassessment, as to which of the entitlements he or she wishes to receive; and
 - “(ii) of the matters specified in **subclause (4)**.
- “(4) A person to whom either of the situations in **subclause (2)** applies— 25
 - “(a) may, within 60 days of being given the information specified in **subclause (3)**, make a further election as to which entitlement he or she wishes to receive; or
 - “(b) is, if no election is made within 60 days, deemed to have elected to continue to receive an independence allowance. 30
- “(5) An election under **subclause (4)(a)** must be made in writing to the Corporation.

New clauses 55A to 55D—continued

“55D Certain persons may elect to receive either lump sum compensation or independence allowance: general

- “(1) The information referred to in **clause 55C(3)(a)** must, in relation to the amount of lump sum compensation payable, take into account any amount of independence allowance paid to the person following his or her initial election, or deemed election, as the case may be, under **clause 55A(4) or 55C(4)**. 5
- “(2) If a claimant makes a further election, in accordance with **clause 55C(4)(a)**, in which he or she elects to receive lump sum compensation, the amount of lump sum compensation payable must be reduced by any amount of independence allowance paid to the person— 10
 - “(a) following his or her initial election, or deemed election, as the case may be, under **clause 55A(4) or 55C(4)**: 15
 - “(b) in accordance with **clause 55B(1)(b)**. 15
- “(3) A person is not entitled to receive both a lump sum payment and an independence allowance in respect of the same personal injury.
- “(4) However, **subclause (3)** does not apply to a person who has received— 20
 - “(a) both entitlements (at different times) as a result of a further election made in accordance with **clause 55C**: 20
 - “(b) an independence allowance before any right to election arose.
- “(5) Part 4 of Schedule 1 of the Accident Insurance Act 1998 applies for the purposes of deciding whether a person has an entitlement to an independence allowance for the purposes of **clauses 55A and 55C**.” 25

Clause 66(5)(c)

Omit “were” and substitute “is”. 30

**Injury Prevention, Rehabilitation, and
Compensation Amendment Bill (No 2)**

Legislative history

22 November 2007
11 December 2007

Introduction (Bill 170-1)
First reading and referral to Transport and Industrial
Relations Committee
