

## ACCIDENT REHABILITATION AND COMPENSATION INSURANCE AMENDMENT BILL (NO. 2)

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### EXPLANATORY NOTE

THIS Bill amends the Accident Rehabilitation and Compensation Insurance Act 1992 and relates to—

- (a) Return to work:
- (b) The purchase of health services:
- (c) The calculation of weekly compensation:
- (d) Flexibility and accountability:
- (e) The independence allowance:
- (f) Governance:
- (g) Miscellaneous and technical matters.

#### *Return to Work*

The proposals relating to return to work—

- (a) Will set out the relationship between the provisions for determining incapacity and the provisions for assessing capacity for work (*clause 7*).
- (b) Will enable the Corporation to assess the capacity of a claimant to return either to the claimant's pre-injury job or to any other work for which the claimant is suited by reason of experience, education, or training, or any combination of those things (*clauses 7 and 12*):
- (c) Replace the current work capacity test provisions in sections 49 to 51 of the Act with more broadly worded sections that require a reasonable assessment of capacity for work (*clause 12*):
- (d) Clarify the objective of vocational rehabilitation in section 22 to reflect an appropriate link to the new work capacity assessment process (*clause 3*):
- (e) Extend the maximum duration of vocational rehabilitation from 1 year (with a possible 1 year extension) to 3 years (*clause 3*).

#### *The Purchase of Health Services*

It is proposed that the prescriptive regime under sections 27 to 27D of the Act be replaced with an enabling regime (as set out in *clauses 5 and 6*) that allows the Corporation to contribute to treatment through regulations (as it does presently) or to purchase health services for claimants through Regional Health Authorities and directly from Crown Health Enterprises, and private providers, subject to Ministerial policy directions under section 159 of the Act. This will enable the Corporation to move over time from the current price setting regulations to a

variety of purchasing mechanisms. This will also allow flexibility in the handling of future decisions on health treatment for injured persons.

The new provisions do not permit the Corporation to make capital investments in relation to the provision of health services unless it obtains Ministerial consent (*clause 6*).

Annual bulk payments from the Corporation to the Crown, in respect of health services, will be made pursuant to an arrangement entered into under new *section 29A (clause 6)*. This will remove the need for annual legislation to authorise such bulk payments.

#### *The Calculation of Weekly Compensation*

It is proposed to retain the present 52-week divisor for the purposes of calculating weekly earnings but to allow a more flexible approach where that divisor would produce an inequitable outcome. It is proposed that sections 40, 41, and 47 (which sections relate to weekly compensation) be amended to—

- (a) Enable a shorter earnings period (but not less than 13 weeks) to be applied for newly employed permanent employees and for those who have become self-employed during the most recently completed tax year (*clauses 8 and 9*);
- (b) Allow a self-employed person to elect to pay a higher premium and thereby ensure that, in the event of injury following a poor business year, weekly earnings are assessed at a set amount (which set amount shall be the greater of that person's actual taxable income in the assessment period or the amount set by regulations) (*clause 10*);
- (c) Clarify that payments made on termination of employment (such as holiday pay but not redundancy or superannuation), whether they are paid at the time of termination or later, are to be abated for the purposes of weekly compensation payments (*clause 11*);
- (d) Clarify that amounts paid by employers to top up their employees' weekly compensation to 100 percent of pre-injury earnings are not subject to abatement (*clause 11*).

#### *Flexibility and Accountability*

It is proposed that a framework be enacted to allow the Corporation to move over time from the regulatory regime to a more flexible regime. The proposed changes—

- (a) Replace section 26 (which relates to social rehabilitation) to allow the Corporation to provide social rehabilitation in accordance with regulations or Ministerial policy directions under section 159, and thereby enable the Corporation—
  - (i) To match services to individual claimants to achieve better rehabilitation outcomes; and
  - (ii) To control better the financial risks to the Accounts (*clause 4*);
- (b) Include in the new *section 27* (which relates to treatment and physical rehabilitation) provision to allow the Corporation to purchase treatment and physical rehabilitation through regulations or agreements (*clause 5*).

#### *The Independence Allowance*

The proposed changes (as set out in *clause 13*)—

- (a) Alter the purpose of the independence allowance so that it provides compensation for impairment arising from an injury, rather than providing compensation for disability or handicap;
- (b) Replace the present self-assessment questionnaire with an objective medical assessment of a person's injury;
- (c) Increase from \$42.96 to \$60 a week the maximum amount of the allowance, with provision for that amount to be increased by regulations:

- (d) Clarify that impairment is whole-person impairment:
- (e) Prevent claimants aggregating the whole-person impairment caused by several injuries to a level that exceeds 100 percent:
- (f) Enable assessments to be carried out when a claimant's condition has stabilised or at 52 weeks after the date of injury, whichever is the earlier, and provide for reassessment at various intervals.

#### *Governance*

The principal changes—

- (a) Provide for a service agreement in section 159 and clarify the role of the Minister under the Act (*clause 19*):
- (b) Alter the principal function of the Board of the Corporation (*clause 18*):
- (c) Increase the maximum number of appointed members of the Board of the Corporation from 6 to 8 (*clause 18*):
- (d) Remove the provision that makes the Managing Director of the Corporation a member of the Board of the Corporation (*clause 18*):
- (e) Abolish the office of Managing Director of the Corporation and make the holder of that office, at the time of its abolition, the Chief Executive of the Corporation (*clause 22*):
- (f) Clarify the role of the Corporation in establishing or amending the reserves policy of the Corporation and its responsibility to consult in doing so (*clause 16*):
- (g) Clarify the role of the Corporation in setting premiums and the process by which premium payers are consulted (*clause 20*).

#### *Miscellaneous and Technical Matters*

The principal changes—

- (a) Include optometrists in the definition of the term registered health professional (*clause 2*):
- (b) Increase from \$2040 to \$2500 the maximum amount of the funeral grant (*clause 14*):
- (c) Remove provisions relating to the exempt employer scheme and require the Minister to establish a framework under which any employer may agree to act as the agent of the Corporation for the purposes of managing and meeting the cost of claims for work injuries under the Act (*clause 15 and the Schedule*):
- (d) Correct some technical anomalies in section 166 of the Act and extend from 6 months to 5 years the limitation period for offences against the Act (*the Schedule*).

*Clause 1* relates to the Short Title and commencement. The Bill is to come into force on a date appointed by Order in Council; and different provisions may be brought into force on different dates.

*Clause 2* adds registered optometrists to the list of persons covered by the definition of the term “registered health professional”.

*Clause 3*, which relates to vocational rehabilitation, replaces sections 22 and 23 of the principal Act. The objective of vocational rehabilitation is clarified to reflect an appropriate link to the new work capacity assessment process (as set out in *clause 12*) and to give the Corporation flexibility to enable it to integrate in a better way vocational rehabilitation into its case management system.

The new *section 22* restates the objective of vocational rehabilitation, which is presently set out in section 22 (2) of the principal Act, and also lists the persons who are eligible to receive vocational rehabilitation. The objective is to assist persons to maintain employment, obtain employment, or, in all other

circumstances, to have a capacity for work (as defined in the new *section 51 (2)* set out in *clause 12*). The new section differs from the existing provision in that it does not focus on the person's pre-injury employment.

The new *section 23* relates to the provision of, and payment for, vocational rehabilitation. The section enables the Corporation to provide or meet the costs of vocational rehabilitation for up to 3 years in total, if the provision or payment is appropriate and cost-effective and meets the objective of vocational rehabilitation (as set out in the new *section 22*). Presently, vocational rehabilitation can be provided for 1 year and that period may be extended by not more than 1 year in certain circumstances.

*Clause 4*, which relates to social rehabilitation, repeals *section 26* of the principal Act, and substitutes a new section. The Corporation will have flexibility to achieve the objective of restoring persons to independence by enabling it to make provision or payment in respect of social rehabilitation even if regulations made under the Act would otherwise prevent such provision or payment. The exercise of the discretion will be subject to Government policy directions given to the Corporation under *section 159* of the principal Act.

*Clause 5*, which relates to the entitlement of a person to the provision of treatment and physical rehabilitation, repeals *sections 27 to 27D* of the principal Act. Although those sections relate also to health purchasing, *clause 5* merely deals with the entitlement itself. The health purchasing provisions are dealt with separately in *clause 6*.

The new *section 27* continues the present entitlement that requires the Corporation to contribute to the cost of purchased services (the cost of any treatment, service, physical rehabilitation, related transport, or certificate). The principal change is the introduction of flexibility. Subject to Government policy directions given to the Corporation under *section 159* of the principal Act, the Corporation may contribute to the cost of purchased services either through the regulatory regime or through contracts under the new *section 29A*.

*Clause 6*, which relates to health purchasing under the Act, inserts into the principal Act a new *section 29A*. The clause replaces the health purchasing provisions presently contained in *sections 27 to 27D* of the principal Act and incorporates provisions similar to corresponding provisions in the Health and Disability Services Act 1993.

The object of the amendment is to provide a framework that enables the Corporation to purchase health care (and other goods and services) in the manner it considers most appropriate, subject to Government policy directions. The present prescriptive regime constrains the Corporation's ability to purchase health care for persons covered by the Act.

The new *section 29A* is a provision that applies for the purposes of the principal Act generally. The section makes it clear that the Corporation has similar contracting powers to other corporate entities. The section is located with other general provisions in Part III of the Act.

*Subsections (1) to (3)* enable the Corporation to purchase any goods, services, or facilities for the purposes of the Act. The provisions are enabling rather than prescriptive and provide a flexible framework that allows for a variety of purchasing arrangements.

*Subsection (4)* is based on *section 51* of the Health and Disability Services Act 1993, and allows the Corporation to use standard terms and conditions.

*Subsections (5) and (6)* impose constraints on the Corporation.

*Clause 7*, which relates to the determination of a person's incapacity for the purposes of weekly compensation, repeals section 37 of the principal Act, and substitutes new sections 37 to 37B.

Section 37 presently defines incapacity as—

- (a) In the case of a claimant employed at the time of the injury, the inability to engage in that employment:
- (b) In other cases, the inability to engage in employment for which the person is qualified by reason of experience, education, or training, or any combination of them.

The new section 37 states when the new provisions relating to incapacity apply and how they relate to the work capacity assessment provisions in *clause 12*. In relation to the incapacity provisions, it should be noted that—

- (a) The incapacity provisions provide for the initial determination of incapacity (and thus whether a person commences to receive weekly compensation) and also continue to apply while a person is receiving weekly compensation:
- (b) The incapacity provisions in the new section 37 may operate at the same time as the work capacity assessment provisions in *clause 12* and accordingly a person's entitlement to weekly compensation may cease by virtue of the operation of either of those sets of provisions:
- (c) While the incapacity provisions and the work capacity assessment provisions are operating, there will be an ongoing vocational rehabilitation programme in operation under new section 23 as part of the Corporation's case management system.

The new section 37A relates only to the assessment of the eligibility to weekly compensation of persons employed at the time of incapacity.

The purpose of the assessment of any person to whom the new section 37A applies remains the same, namely, to determine the ability of the person to engage in his or her pre-injury employment. Assessments may be carried out at intervals determined by the Corporation.

*Subsection (1) of the new section 37A* provides that incapacity is to be determined under this section in all cases except those to which section 37B applies.

*Subsection (2) of the new section 37A* states the object of the determination. The object is to determine whether or not the person is unable to engage in his or her pre-injury employment.

*Subsection (3) of the new section 37A* enables the Corporation to consider a person's incapacity at different times and to obtain whatever specialist or technical assistance it requires.

*Subsection (4) of the new section 37A* applies if the Corporation determines that a person is able to engage in his or her pre-injury employment. In such a case,—

- (a) If the person is not at the time of the determination receiving weekly compensation for loss of earnings, he or she is not eligible to commence receiving weekly compensation:
- (b) If the person is at that time receiving weekly compensation for loss of earnings, that entitlement ceases immediately.

Conversely, if a person is assessed as not being able to engage in that employment, he or she remains on weekly compensation or becomes entitled to weekly compensation, but may be reassessed at any subsequent time under either the new section 37A or the new section 51 and as a result of any such assessment may cease to be eligible to receive weekly compensation.

*Subsection (5) of the new section 37A* relates to the effect of an assessment under section 51 that a person has a capacity for work. In such a case, that assessment will be regarded as a determination under this section that a person is able to engage in his or her pre-injury employment but the person's weekly compensation

continues for a further 3 months (as provided for in the new *section 49* set out in *clause 12*).

The new *section 37B* relates to persons to whom *section 44* (persons who have ceased to be employees) or *section 45* (non-earners who elect to purchase weekly compensation) or *section 46* (persons under 18 years or full-time students) of the Act applies. It contains provisions similar to those contained in new *section 37A* but the decision process is different because the persons concerned were not employed at the time of injury. The object of the determination under this section is to determine whether or not the person is for the time being unable to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things. The same test applies under the new *section 51* but the process under this section is less formal.

*Clause 8*, which relates to the calculation of weekly earnings as an employee, amends *section 40* of the principal Act. The amendment enables an earnings period of less than 52 weeks (but not less than 13 weeks) to be applied for newly-employed permanent employees.

*Clause 9*, which relates to the calculation of weekly earnings of self-employed persons, amends *section 41* of the principal Act. The amendment is to the same effect as the amendment contained in *clause 8*.

*Clause 10*, which provides for the calculation of weekly earnings of self-employed persons who elect to pay a higher premium and therefore become eligible to receive weekly compensation at a corresponding rate set by regulations, inserts into the principal Act a new *section 41A*. Presently, self-employed persons who are injured during, or immediately following, a poor business year may receive only the minimum compensation of \$250.60 a week.

*Clause 11*, which relates to the abatement of weekly compensation, amends *section 47* of the principal Act. The amendment clarifies the intention of *section 47* by providing that—

- (a) Payments made in respect of the termination of employment (such as holiday pay but not redundancy or superannuation), regardless of when the payments are made, are subject to the abatement provisions of the section:
- (b) Payments made by employers to “top up” an employee’s weekly compensation to 100 percent of pre-injury earnings are not subject to the abatement provisions of the section.

*Clause 12*, which relates to the assessment of the work capacity of a person receiving weekly compensation, replaces *sections 49 to 51* of the principal Act. This assessment is independent of and broader than the assessment of incapacity provided for in new *section 37A* or the new *section 37B*.

The principal features of the changes are—

- (a) The Corporation will establish the assessment procedure after consultation and must publish the procedure in the *Gazette*. The procedure will replace the existing provision for scales of incapacity which differentiate between persons with 85 percent or more work capacity and those without that level of work capacity. The scales require a degree of scientific precision that is unobtainable in practice:
- (b) Assessments may be carried out at intervals determined by the Corporation.

The new *section 49* provides for the cessation of weekly compensation for persons assessed under *section 51* as having a capacity for work. Cessation takes effect 3 months after the claimant is notified of the assessment.

The new *section 50* provides for the development of a procedure to be used to assess the work capacity of persons for the purposes of this Act.

*Subsection (1)* requires the Corporation to develop the procedure.

*Subsection (2)* requires the Corporation to publicly notify a draft procedure in the *Gazette* and in the metropolitan daily newspapers.

*Subsection (3)* specifies the contents of the notice. Members of the public are to have not less than 42 days to make submissions on the Corporation's draft.

*Subsection (4)* requires the Corporation to consider the public submissions and to repeat the substance of the public notification process (with a 28-day public submission period) if the Corporation decides to amend the draft. Once the draft is finalised, the Corporation must publicly notify the procedure that is finally adopted.

*Subsection (5)* states that the object of the procedure is to establish a reasonable basis for making assessments under *section 51*.

*Subsection (6)* makes it clear that the procedure may disregard—

(a) An inability to do any thing that does not result from personal injury covered by this Act or a former Act:

(b) Whether or not any relevant employment opportunities exist.

*Subsection (7)* provides for professional, technical, specialised, and other advice to be used in the assessment process.

*Subsection (8)* provides for the amendment of the procedure.

The new *section 51* relates to the actual assessment of a person's capacity for work under the procedure established under *section 50*.

*Subsection (1)* provides that work capacity assessments of persons receiving weekly compensation for loss of earnings or loss of potential earning capacity, or who may be entitled to compensation for loss of potential earning capacity, are to be carried out under this section.

*Subsection (2)* defines the term "capacity for work" to mean the ability to engage in employment for which the person is suited by reason of experience, education, or training, or any combination of those things. The definition is derived from the present *section 37* but uses the word "suited" rather than the word "qualified". The definition may be compared with the definition of the term "incapacity" in new *section 37A* (in *clause 7*), which focuses on a person's ability to perform his or her pre-injury job. If a person has the ability to perform his or her pre-injury job, it follows that he or she is able to engage in work for which he or she is suited by reason of experience (and possibly other factors).

*Subsection (3)* requires that the assessment be carried out in accordance with the procedure determined under *section 50* and the principles of natural justice.

*Subsection (4)* enables the Corporation to carry out the assessment itself or arrange for some other person to do it. The subsection also makes the Corporation liable for the costs of the assessment.

*Subsection (5)* enables the Corporation to assess a person at any time and at such reasonable intervals as it considers appropriate.

*Subsection (6)* provides for the reassessment of persons whose capacity for work deteriorates after an assessment is carried out.

*Subsection (7)* states, for the purposes of *sections 37A and 37B*, the effect of an assessment that a person has a capacity for work. The effect of such an assessment is that a person is to be regarded as *not* being incapacitated for the purposes of those other sections.

*Clause 13*, which relates to the independence allowance, repeals *section 54* of the principal Act, and substitutes new *sections 54 and 54A*. Under the new sections—

(a) The purpose of the allowance is to compensate persons for impairment rather than the costs arising from a disability:

- (b) The maximum amount is increased to \$60 but that amount may be increased by regulations:
- (c) A person has access to the allowance after 52 weeks after the injury or when his or her condition has stabilised, whichever is the earlier (rather than after 13 weeks after incapacity as at present).

*Section 54* relates to the allowance itself.

*Subsection (1)* relates to the entitlement to the independence allowance. Subject to the provisions of the section, an independence allowance is available to every person who has cover under the Act and has a degree of whole-person impairment of 10 percent or more.

*Subsection (2)* provides that an assessment of a person's impairment will be not be carried out until 52 weeks after the injury or the person's condition has stabilised, whichever is the earlier. Stabilisation must be certified by a registered medical practitioner.

*Subsection (3)* enables the Corporation to arrange the assessment of both stabilisation and the degree of impairment but makes the Corporation liable for the costs.

*Subsection (4)* requires that the assessment of a person's entitlement to the allowance be carried out in accordance with *section 54A*.

*Subsection (5)* relates to a person's entitlement when he or she lodges a number of claims. It ensures that a person cannot be assessed as having a total whole-person impairment exceeding 100 percent and prevents a person being entitled to receive more than 1 independence allowance at any time.

*Subsection (6)* sets the maximum amount of the independence allowance at \$60 a week (which will remain subject to the indexation provisions).

*Subsection (7)* empowers the making of regulations to increase the maximum amount and set the graduated rates of the independence allowance.

*Subsection (8)* contains provisions relating to the payment of the independence allowance.

*Section 54A* relates to the assessment and reassessment process. *Subsection (1)* provides for the process to be set out in regulations and enables such regulations to incorporate by reference provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment ("AMA") or other guides. At present, the assessment is to be carried out in accordance with scales set out in regulations or, in the absence of regulations, in accordance with the Second Edition of the AMA.

*Subsection (2)* provides for reassessments in cases where the initial assessment is carried out after the 52-week period but before stabilisation. In these cases, the person must be reassessed following stabilisation.

*Subsection (3)* provides for cases where a person has been assessed and his or her impairment subsequently increases. In such cases, a reassessment is permitted only at 12-monthly intervals.

*Subsection (4)* provides for cases where a person has been assessed and his or her impairment subsequently decreases. In such cases, a reassessment is permitted only at 5-yearly intervals.

*Subsection (5)* provides for the adjustment of the allowance following a reassessment. The adjustment will be effective from the next quarterly payment.

*Subsection (6)* excludes from the assessment any inability that does not result from a personal injury covered by the Act and carries over the existing section 54 (13).

*Subsection (7)* provides that the percentages previously assessed under former Acts will be deducted from the assessment of impairment and is similar to the existing section 54 (14).

*Subsection (8)* provides that assessments and reassessments may be undertaken by or on behalf of the Corporation but must be at its expense.



*Clause 14*, which relates to the funeral grant, amends section 55 of the principal Act to increase the maximum grant payable from the current \$2,040.60 (as adjusted by the indexation provisions) to \$2,500. If the actual costs of the funeral are less than \$2,500, the lesser amount is payable.

*Clause 15*, which relates to the accredited employer programme, repeals sections 105 to 107 of the principal Act, and substitutes a new section 105. The new section requires the Minister to establish a framework under which any employer may agree to act as the agent of the Corporation for the purposes of managing and meeting the cost of claims for work injury under the Act.

*Clause 16*, which relates to the Corporation's reserves policy, repeals and replaces section 128 of the principal Act. The amendment makes it clear that the Corporation must establish a reserves policy and must ensure that the reserves policy has regard to the potential liability of each Account. The amendment also establishes a consultation process that must be complied with when the Corporation establishes or amends the reserves policy.

*Clause 17* effects consequential changes to section 139 of the principal Act.

*Clause 18*, which relates to the composition of the Board of the Corporation and to the principal function of the Board, amends section 157 of the principal Act by replacing subsections (1) and (2).

The new subsection (1) increases from 6 to 8 the maximum number of appointed members of the Board of the Corporation. The Managing Director of the Corporation ceases to be a member of the Board of the Corporation.

The new subsection (2) alters the principal function of the Board of the Corporation. Presently, section 157 (2) provides that the Board's principal function is to formulate policy in relation to the provisions of the Act. The Government has decided that policy advice on the provisions of the Act should be provided by the Department of Labour (a decision that does not require legislation) and that the Board's principal function should be to ensure the efficient and effective management of the Corporation and the Accounts.

*Clause 19*, which provides for service agreements between the Minister and the Corporation, amends section 159 of the principal Act by adding new subsections (3) to (7).

Subsections (3) to (6) provide for service agreements between the Board and the Minister and also provide that, as well as setting out the Government's desired outcomes or objectives in relation to the functions, duties, and powers of the Corporation, a service agreement may contain policy directions given under subsection (1). If policy directions are set out in a service agreement, they need not be gazetted. The subsection also provides that a service agreement must be laid before the House of Representatives.

Subsection (7) clarifies the Minister's role under the principal Act. The Minister must act in the public interest and, in particular, in the interests of taxpayers, premium payers, and claimants.

*Clause 20*, which relates to regulations, consequentially amends section 167 of the principal Act.

*Clause 21*, which relates to premium setting, inserts a new section 167A into the principal Act. The new section requires the Corporation to consult premium payers before recommending to the Minister that premium setting regulations be made. The Minister must consider the Corporation's recommendation before making his or her own recommendation.

*Clause 22: Subclause (1)* effects technical and consequential amendments to the principal Act.

*Subclause (2)* abolishes the office of the Managing Director of the Corporation.

*Subclause (3)* provides that the person who holds office as the Managing Director of the Corporation when the abolition of that office takes effect will be deemed to have been appointed to the office of Chief Executive of the Corporation.

*Clause 23* effects repeals.

*Clause 24*, which is a transitional provision, enables the Corporation to continue to use the present section 27 (6) of the principal Act in relation to existing health purchasing contracts. That provision prevents the Corporation from paying for a service until it is satisfied that the service is necessary, appropriate, timely, of the required quality, and not excessive in number or duration.

*Clause 25* is a transitional provision relating to the independence allowance. The clause provides that—

- (a) Current recipients of the allowance will retain their existing level of entitlement:
- (b) On reassessment under the new provisions (as set out in *clause 13*), any adjustment to the existing level of entitlement will be effective from—
  - (i) Three months after the date of the decision on the level of impairment, if the entitlement is to be reduced or to cease:
  - (ii) The date of commencement of this clause, if the entitlement is to be increased.

*Clause 26* empowers the making of regulations containing transitional and savings provisions relating to the coming into force of the Bill.

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*Hon. Doug Kidd*

**ACCIDENT REHABILITATION AND COMPENSATION  
INSURANCE AMENDMENT (NO. 2)**

ANALYSIS

Title	11. Abatement of compensation for loss of earnings or loss of potential earning capacity
1. Short Title and commencement	12. New sections substituted
2. Interpretation	49. Cessation of weekly compensation when person has capacity for work
3. New sections substituted	50. Procedure for assessment of capacity for work
22. Objective of vocational rehabilitation	51. Assessment of capacity for work
23. Provision of or payment for vocational rehabilitation	13. New sections substituted
4. Social rehabilitation	54. Independence allowance
5. Treatment and physical rehabilitation	54A. Assessment and reassessment
6. Contracts relating to goods, services, or facilities	14. Funeral grant
7. New sections substituted	15. Management of claims by employers
37. Application of incapacity and work capacity provisions	16. Reserves
37A. Determination of incapacity in relation to earners generally	17. Cessation of compensation
37B. Determination of incapacity if person has ceased to be an employee or in cases of loss of potential earning capacity	18. Board of Corporation
8. Calculation of weekly earnings where earner had earnings solely as an employee during the 12 months before commencement of incapacity	19. Corporation to comply with Government policy
9. Calculation of weekly earnings where earnings are solely earnings other than earnings as an employee during the 12 months before commencement of incapacity	20. Regulations
10. Deemed weekly earnings	21. Regulations relating to premium setting
	22. Further amendments to principal Act
	23. Repeals
	24. Transitional provision relating to existing health purchasing contracts
	25. Transitional provisions relating to independence allowance
	26. Regulations providing for transitional matters
	Schedule

A BILL INTITULED

**An Act to amend the Accident Rehabilitation and Compensation Insurance Act 1992**

BE IT ENACTED by the Parliament of New Zealand as follows:

- 5 **1. Short Title and commencement**—(1) This Act may be cited as the Accident Rehabilitation and Compensation

2      *Accident Rehabilitation and Compensation Insurance  
Amendment (No. 2)*

Insurance Amendment Act (No. 2) 1995, and shall be read together with and deemed part of the Accident Rehabilitation and Compensation Insurance Act 1992\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and one or more Orders in Council may be made bringing different provisions into force on different dates. 5

**2. Interpretation**—Section 3 of the principal Act is hereby amended by adding to the definition of the term “registered health professional” the expression “; or” and the following paragraph: 10

“(c) Any optometrist registered with the Opticians Board:”.

**3. New sections substituted**—The principal Act is hereby amended by repealing sections 22 and 23, and substituting the following sections: 15

“**22. Objective of vocational rehabilitation**—The objective of vocational rehabilitation is to assist—

“(a) Those persons who are entitled to compensation for loss of earnings under section 38 or section 39 or section 44 of this Act; and 20

“(b) Those persons who are entitled to compensation for loss of potential earning capacity under section 45 or section 46 of this Act; and

“(c) Those persons who have cover under this Act and are likely, without vocational rehabilitation, to be entitled to compensation for loss of earnings or loss of potential earning capacity under this Act— 25

to maintain employment, obtain employment, or, in all other circumstances, to have a capacity for work (as defined in section 51 (2) of this Act). 30

“**23. Provision of or payment for vocational rehabilitation**—(1) Subject to subsection (2) of this section and to any direction for the time being in force under section 159 of this Act, the Corporation may make any provision of or payment for vocational rehabilitation if it considers it appropriate in the circumstances and the provision or payment is expected by the Corporation to be cost-effective. 35

\*1992, No. 13

Amendments: 1992, No. 91; 1992, No. 136; 1993, No. 25; 1993, No. 55; 1993, No. 135; 1995, No. 1

“(2) The Corporation may, at its discretion, provide or meet the costs of any vocational rehabilitation for the minimum period necessary to meet the objective set out in **section 22** of this Act, but in no case shall such provision be made or costs be met in respect of any vocational rehabilitation that exceeds 3 years in duration.

5 “(3) The 3-year period referred to in **subsection (2)** of this section does not include any period of vocational rehabilitation provided before the commencement of **section 3 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1995.**”

**4. Social rehabilitation**—(1) The principal Act is hereby amended by repealing section 26 (as amended by subsections (1) and (2) of section 10 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following section:

15 “26. (1) The objective of social rehabilitation is to restore the independence of a person to the extent that the person’s independence has been lost by personal injury covered by this Act.

20 “(2) Notwithstanding anything in any regulations made under this Act, the Corporation may, subject to any directions for the time being in force under section 159 of this Act, make any provision or payment in respect of social rehabilitation which is required or permitted under this Act and which is consistent with the objective set out in **subsection (1)** of this section.

25 “(3) In this Act, ‘social rehabilitation’ includes, but is not limited, to—

“(a) Provision of, or payment for, attendant care; and

30 “(b) Purchase of, and modifications to, motor vehicles and other means of transport; and

“(c) Modifications to residential premises; and

“(d) Provision of, or payment for, household help; and

“(e) Provision of, or payment for, child care; and

35 “(f) Provision of, or payment for, wheelchairs and any other aids and appliances likely to assist independence in daily living; and

40 “(g) Provision of, or payment for, teacher aides, teacher aide hours, and transport to or from school for a child requiring special assistance as the result of personal injury covered by this Act to enable the child to receive education.

“(4) The Corporation may provide or meet the cost of modifications to residential premises or purchase of or modifications to motor vehicles in respect of any rehabilitation programme at intervals of—

“(a) Not more frequently than 5 years; or 5

“(b) Less than 5 years only if the Corporation is satisfied that such purchase or modifications are necessary to enable the disabled person to obtain or maintain employment, and are expected to be cost-effective for the Corporation. 10

“(5) Nothing in **subsection (4)** of this section shall be so construed as to oblige the Corporation to provide or meet the cost of any purchase or modifications within or outside any 5-year period.

“(6) No payment in respect of any item referred to in **subsection (3)** of this section may be made by the Corporation other than under this section or **section 23** of this Act.” 15

(2) Section 10 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993 is hereby consequentially amended by repealing subsections (1) and (2). 20

**5. Treatment and physical rehabilitation**—The principal Act is hereby amended by repealing section 27 (as substituted by section 3 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993), section 27A (as inserted by section 4 of that Act), and sections 27B to 27D (as inserted by section 11 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following section: 25

“27. (1) The Corporation shall contribute to the cost of any treatment, service, physical rehabilitation, related transport, or certificate (in this section called a purchased service), in respect of personal injury that is covered by this Act,— 30

“(a) To the extent required or permitted by regulations made under this Act; or 35

“(b) Pursuant to an agreement, contract, or arrangement entered into under **section 29A** of this Act.

“(2) No agreement, contract, or arrangement entered into under **section 29A** of this Act in respect of any purchased service shall be invalid merely because any regulations made under this Act make some other provision in respect of that purchased service. 40

“(3) The Corporation shall not do anything under this section that is inconsistent with any directions for the time being in force under section 159 of this Act.

5 “(4) The Corporation shall not be obliged under subsection (1) of this section to contribute to the cost of any purchased service that is provided, or is obliged to be provided or arranged, pursuant to—

“(a) A purchase agreement; or

10 “(b) An obligation created pursuant to section 51 of the Health and Disability Services Act 1993,—  
except to the extent that the contribution by the Corporation to the cost of that purchased service is specifically provided for by—

“(c) Regulations made under this Act; or

15 “(d) An agreement, contract, or arrangement entered into under section 29A of this Act.

“(5) The Corporation shall not make any payment in respect of any purchased service under any regulations made under this Act, unless it is satisfied that the purchased service to  
20 which the payment relates is necessary, appropriate, timely, of the required quality, and not excessive in number or duration.”

**6. Contracts relating to goods, services, or facilities—**

25 The principal Act is hereby amended by inserting, after the heading immediately preceding section 30, the following section:

“29A. (1) For the purposes of this Act, the Corporation may purchase from any person any goods, services, or facilities.

30 “(2) The Corporation may purchase such goods, services, or facilities for any case or class of case, or on any other basis whatsoever.

“(3) Without limiting the powers of the Corporation, it may—

35 “(a) Purchase such goods, services, or facilities in conjunction with other persons, whether under an agency arrangement or a joint venture arrangement or otherwise:

“(b) Enter into, with any person, an agreement or contract or arrangement, including a purchase agreement.

40 “(4) The Corporation may make any payment to any person subject to standard terms and conditions determined by the

Corporation; and the following provisions shall apply in relation to such standard terms and conditions:

“(a) The terms and conditions shall be notified to the persons concerned or publicly in such manner as the Corporation considers appropriate: 5

“(b) Acceptance by the person of the payment shall constitute acceptance by the person of the terms and conditions:

“(c) Compliance by the person with the terms and conditions may be enforced by the Corporation as if the person had signed a deed under which the person agreed to the terms and conditions. 10

“(5) Notwithstanding **subsection (1)** of this section, the Corporation shall not, without the consent of the Minister, invest in the provision of health services by making capital contributions or directly purchasing plant or equipment. 15

“(6) The Corporation shall not do anything under this section that is inconsistent with any directions for the time being in force under section 159 of this Act.”

**7. New sections substituted**—The principal Act is hereby amended by repealing section 37, and substituting the following sections: 20

**“37. Application of incapacity and work capacity provisions**—(1) Where the Corporation is required to consider the claim of any person for weekly compensation under this Act— 25

“(a) The Corporation shall determine the person’s incapacity under **section 37A or section 37B** of this Act, as the case may require; and

“(b) If the Corporation determines that the person is not incapacitated within the meaning of **section 37A or section 37B** of this Act, as the case may be, the person shall not be eligible to receive weekly compensation under this Act; and 30

“(c) If the Corporation determines that the person is incapacitated within the meaning of **section 37A or section 37B** of this Act, as the case may be, the person shall be eligible to receive weekly compensation under this Act and the provisions of this Act (including **sections 22 and 23**) apply accordingly. 35

“(2) While a person is receiving weekly compensation under this Act,— 40



5 “(a) **Section 37A or section 37B** of this Act, as the case may be, shall continue to apply to the person and the Corporation may further determine from time to time, in accordance with **section 37A or section 37B** of this Act, as the case may require, the person’s incapacity:

10 “(b) **Section 51** of this Act shall also apply to the person and the Corporation may from time to time assess, in accordance with that section, the person’s capacity for work.

“(3) A person’s entitlement to weekly compensation under this Act may cease as a consequence of the operation of **section 37A or section 37B or section 51** of this Act.

15 “(4) Nothing in this section limits any other provision of this Act.

“**37A. Determination of incapacity in relation to earners generally**—(1) For the purposes of this Part of this Act, the Corporation shall determine the incapacity of a person (other than a person to whom **section 37B** of this Act applies) in accordance with this section.

20 “(2) The object of a determination of incapacity under this section is to determine whether or not the person is, by reason of his or her personal injury, for the time being unable to engage in employment in which the person was engaged when the personal injury occurred.

25 “(3) The Corporation may make a determination under this section at any time and from time to time, and, in so doing, the Corporation may obtain such professional, technical, specialised, or other advice from such persons as it considers appropriate.

30 “(4) If the Corporation determines under this section that a person is able to engage in employment in which the person was engaged when the personal injury occurred, then,—

35 “(a) If the person is not at that time receiving weekly compensation under this Act for loss of earnings, that person shall not then be eligible to commence receiving weekly compensation for such loss:

40 “(b) If the person is at that time receiving weekly compensation under this Act for loss of earnings, that entitlement shall cease immediately and the power to assess the person under **section 51** of this Act shall no longer be exercisable.

“(5) If a person is assessed under **section 51** of this Act as having a capacity for work, then,—

“(a) For the purposes of this section, that assessment shall be regarded as a determination that the person is able to engage in employment in which the person was engaged when the personal injury occurred; and 5

“(b) The person shall cease to be entitled to receive weekly compensation under this Act for loss of earnings (with **section 49** of this Act determining the time when the entitlement actually ceases). 10

“**37B. Determination of incapacity if person has ceased to be an employee or in cases of loss of potential earning capacity**—(1) For the purposes of sections 44, 45, and 46 of this Act, the Corporation shall determine a person’s incapacity in accordance with this section. 15

“(2) The object of a determination under this section is to determine whether or not the person is, by reason of his or her personal injury, for the time being unable to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things. 20

“(3) The Corporation may make a determination under this section at any time and from time to time, and, in so doing, the Corporation may obtain such professional, technical, specialised, or other advice from such persons as it considers appropriate. 25

“(4) If the Corporation determines under this section that a person is able to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things, then,—

“(a) If the person is not at that time receiving weekly compensation under this Act for loss of earnings or loss of potential earning capacity, that person shall not then be eligible to commence receiving weekly compensation for such loss: 30

“(b) If the person is at that time receiving weekly compensation under this Act for loss of earnings or loss of potential earning capacity, that entitlement shall cease and the power to assess the person under **section 51** of this Act shall no longer be exercisable. 35 40

“(5) If a person is assessed under **section 51** of this Act as having a capacity for work, then,—

- 5 “(a) For the purposes of this section, that assessment shall be regarded as a determination that the person is able to engage in employment for which the person is suited by reason of experience, education, or training, or any combination of those things; and
- 10 “(b) The person shall cease to be entitled to receive weekly compensation under this Act for loss of earnings or loss of potential earning capacity (with section 49 of this Act determining the time when the entitlement actually ceases).”

15 **8. Calculation of weekly earnings where earner had earnings solely as an employee during the 12 months before commencement of incapacity**—Section 40 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“**(2)** The weekly earnings of any person to whom this section applies shall be,—

20 “(a) In respect of each of the 4 weeks next following the sixth day after the day on which the incapacity first commenced, the person’s earnings as an employee during the 4 weeks immediately before the commencement of the incapacity divided by the number of full or part weeks during which the person earned those earnings as an employee during that 4-week period:

25 “(b) In respect of any weekly period of incapacity after the period referred to in paragraph (a) of this subsection, if the person was in permanent employment immediately before the commencement of the incapacity, the person’s earnings as an employee during the 52 weeks immediately before the commencement of the incapacity, divided by—

30 “(i) The number of full or part weeks during which the person earned those earnings as an employee during that 52-week period; or

35 “(ii) Thirteen,—  
whichever is the greater:

40 “(c) In respect of any weekly period of incapacity after the period referred to in paragraph (a) of this subsection, if the person was not in permanent employment immediately before the commencement of the incapacity,  $1/52$ nd of the person’s earnings as an

employee during the 52 weeks immediately before  
the commencement of the incapacity.

“(2A) For the purposes of this section, a person shall be  
regarded as having been in permanent employment if, in the  
opinion of the Corporation, that person would have continued  
to receive earnings from that employment for a continuous  
period of more than 12 months after the commencement of  
incapacity if the personal injury had not occurred.” 5

**9. Calculation of weekly earnings where earnings are  
solely earnings other than earnings as an employee  
during the 12 months before commencement of  
incapacity**—Section 41 (2) of the principal Act (as substituted  
by section 14 of the Accident Rehabilitation and  
Compensation Insurance Amendment Act (No. 2) 1993) is  
hereby amended by repealing paragraph (b), and substituting  
the following paragraphs: 10 15

“(b) In respect of any period of incapacity after the period  
referred to in paragraph (a) of this subsection, the  
earnings of that person other than earnings as an  
employee in the most recent income year (as  
defined in section OB 1 of the Income Tax Act  
1994) last ended before the commencement of the  
period of incapacity as shown in an income tax  
return, divided by— 20

“(i) The number of weeks in that income year; or 25

“(ii) If the most recent income year (as so defined)  
last ended before the commencement of the period  
of incapacity was the first year during which the  
person received earnings other than as an  
employee, such number of weeks as the  
Corporation considers fairly and reasonably  
represents the number of weeks or part weeks in  
that income year during which the person earned  
those earnings other than as an employee, but in no  
case shall that number be less than 13: 30 35

“(c) Notwithstanding any other provision of this section, if  
the person has elected to pay and has paid the  
optional premium on earnings provided for in  
regulations made under this Act, the weekly  
earnings calculated in accordance with section 41A of  
this Act.” 40

**10. Deemed weekly earnings**—The principal Act is hereby amended by inserting, after section 41, the following section:

5 “41A. (1) If a person has elected to pay and has paid the optional premium on earnings provided for in regulations made under this Act, his or her weekly earnings for the purposes of the calculation under section 41 of this Act of his or her entitlement to compensation for loss of earnings shall be—

10 “(a) The amount of deemed weekly earnings prescribed for that rate of premium in regulations made under this Act; or

15 “(b) The actual weekly earnings as calculated in accordance with paragraph (a) or paragraph (b) of section 41 (2) of this Act,—

whichever is the greater.

20 “(2) Deemed weekly earnings shall not be used under section 41 of this Act as a basis for calculating the compensation payable in respect of any period of incapacity resulting from any personal injury that occurred prior to an election to pay an optional premium on earnings provided for in regulations made under this Act.

25 “(3) For the purposes of section 45 (6) of this Act, the reference in that provision to weekly earnings calculated under this Act does not include a reference to deemed weekly earnings under **subsection (1)** of this section.”

**11. Abatement of compensation for loss of earnings or loss of potential earning capacity**—Section 47 of the principal Act is hereby amended by repealing subsection (2),  
30 and substituting the following subsection:

“ (2) For the purposes of this section,—

35 “(a) Earnings include any payments made on or in respect of the termination of employment (other than as redundancy or superannuation):

“ (b) Earnings do not include—

“ (i) Compensation for loss of earnings or loss of potential earning capacity or any other compensation payable under this Act; or

40 “ (ii) Any payment (other than a payment for work actually undertaken by the person) made by the person’s employer during the person’s incapacity that does not exceed the difference

between the level of the person's actual earnings immediately before the commencement of incapacity and the level of the person's compensation for loss of earnings or loss of potential earning capacity: 5

“(c) Payments referred to in **paragraph (a)** of this subsection shall be treated as being received at such weekly rate, and for such period, as the Corporation shall determine having regard to—

“(i) The period to which the payment related; and 10

“(ii) The amount of the payment; and

“(iii) The nature of the payment; and

“(iv) Any other factors the Corporation considers relevant.”

**12. New sections substituted**—The principal Act is hereby 15 amended by repealing sections 49 to 51, and substituting the following sections:

“**49. Cessation of weekly compensation when person has capacity for work**—Every person assessed under **section 51** of this Act as having a capacity for work shall cease to be 20 entitled to receive compensation for loss of earnings or loss of potential earning capacity upon the expiration of 3 months after the person is notified of that assessment.

“**50. Procedure for assessment of capacity for work**—  
(1) For the purposes of **section 51** of this Act, the Corporation 25 shall develop a procedure for the assessment of the capacity for work of persons covered by this Act.

“(2) The Corporation shall publicly notify a draft of its proposed procedure by publishing in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, 30 Hamilton, Wellington, Christchurch, and Dunedin, a notice relating to the draft of the proposed procedure.

“(3) The notice shall—

“(a) State that a draft procedure has been developed; and

“(b) State where copies of the draft procedure may be 35 obtained; and

“(c) Explain the reasons why the Corporation has chosen the draft procedure or state where a copy of those reasons may be obtained; and

“(d) Invite members of the public to make written 40 submissions on the draft procedure; and

- “(e) State the last date on which the Corporation will receive written submissions on the draft procedure (which date shall be not less than 42 days after the date of the publication of the notice in the *Gazette*).
- 5 “(4) The Corporation shall—
- “(a) Consider all submissions on the draft procedure that are received by the Corporation not later than the date stated pursuant to **subsection (3) (e)** of this section; and
- “(b) Make such amendments to the draft procedure as the Corporation considers appropriate; and
- 10 “(c) Publicly notify the Corporation’s final draft of the procedure by publishing in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin, a notice—
- 15 “(i) Stating either that the draft procedure has been amended or that no amendments have been made; and
- “(ii) Stating where copies of the final draft of the procedure may be obtained; and
- 20 “(iii) Explaining the reasons why the Corporation has amended, or has decided not to amend, the draft procedure; and
- “(iv) Inviting members of the public to make written submissions on the final draft of the procedure; and
- 25 “(v) Stating the last date on which the Corporation will receive written submissions on the final draft of the procedure (which date shall be not less than 28 days after the date of the publication of the notice in the *Gazette*); and
- 30 “(d) Consider all submissions on the final draft of the procedure that are received by the Corporation not later than the date stated pursuant to **paragraph (c) (v)** of this subsection; and
- 35 “(e) Make such amendments to the final draft procedure as the Corporation considers appropriate; and
- “(f) Publicly notify its final version of the procedure (hereafter in this section referred to as the procedure) by publishing in the *Gazette* a notice—
- 40 “(i) Setting out in full the procedure or giving a summary of it; and
- “(ii) Stating where copies of the procedure may be obtained; and

- “(g) Forthwith after publishing a notice under **paragraph (f)** of this subsection, deliver a copy of the notice to the Minister, who shall, as soon as practicable after receiving a copy of the notice, lay a copy of the notice before the House of Representatives. 5
- “(5) The object of the procedure is to provide a reasonable method of making assessments under **section 51** of this Act.
- “(6) The procedure shall not be invalid merely because the procedure disregards—
- “(a) Any inability to do any thing that does not result from— 10
- “(i) Personal injury covered by this Act; or
- “(ii) Personal injury by accident in respect of which a claim has been accepted under the Accident Compensation Act 1972 or the Accident Compensation Act 1982; or 15
- “(b) Whether or not there are any employment opportunities existing in any employment for which the person is then suited.
- “(7) The procedure may allow for the provision of professional, technical, specialised, or other advice. 20
- “(8) The Corporation may from time to time—
- “(a) Amend the procedure; or
- “(b) Revoke the procedure, and substitute a new procedure,—
- and the provisions of **subsections (2) to (4)** of this section, with any necessary modifications, shall apply to any proposed amendment or substituted procedure unless the changes are of a minor or technical kind and the Corporation is satisfied that compliance with all or any of those provisions is unnecessary. 25
- “**51. Assessment of capacity for work**—(1) For the purposes of determining whether or not a person who is receiving compensation for loss of earnings or for loss of potential earning capacity, or who may have any entitlement to compensation for loss of potential earning capacity, has a capacity for work, the Corporation shall determine the person’s capacity for work in accordance with this section. 30
- “(2) For the purposes of this Act, the term ‘capacity for work’, in relation to any person, means the person’s capacity to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things, and that capacity shall be determined having regard to the consequences of the person’s personal injury. 35 40



“(3) Every assessment under this section shall be carried out—

5 “(a) In accordance with the procedure for the time being determined by the Corporation under **section 50** of this Act; and

“(b) In accordance with the principles of natural justice.

“(4) Every assessment under this section shall be undertaken by or on behalf of the Corporation and at its expense.

10 “(5) The Corporation may require a person to be assessed at any time and from time to time at such reasonable intervals as the Corporation considers appropriate in each case.

15 “(6) If a person’s entitlement to compensation for loss of earnings or loss of potential earning capacity has ceased, whether by virtue of this section or otherwise, and the Corporation considers that the person’s capacity for work has deteriorated since that cessation,—

“(a) The Corporation may reassess the person’s capacity for work under this section; and

20 “(b) If the person is assessed as no longer having a capacity for work, then, subject to the provisions of this Act, the person shall be entitled, as from such date as the Corporation shall determine, to compensation for loss of earnings or loss of potential earning capacity.

25 “(7) If a person is assessed under this section as having a capacity for work, then,—

30 “(a) For the purposes of **section 37A** of this Act, that assessment shall be regarded as a determination that the person is able to engage in employment in which the person was engaged when the personal injury occurred:

35 “(b) For the purposes of **section 37B** of this Act, that assessment shall be regarded as a determination that the person is able to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things.”

**13. New sections substituted**—The principal Act is hereby amended by repealing section 54, and substituting the following sections:

40 “**54. Independence allowance**—(1) Subject to the provisions of this section, every person who has cover under this Act is entitled to receive an independence allowance at the

appropriate prescribed rate if the person's personal injury has or personal injuries have resulted in a degree of whole-person impairment of 10 percent or more.

"(2) No person's entitlement to the independence allowance shall be assessed or reassessed until— 5

"(a) The expiration of fifty-two weeks after the date of the personal injury; or

"(b) The Corporation has received a certificate from a registered medical practitioner to the effect that the person's condition arising from the personal injury has stabilised and that it is likely that there is impairment resulting from the personal injury,— 10

whichever first occurs.

"(3) The assessment of whether or not a person's condition has stabilised for the purposes of **subsection (2)** of this section shall be undertaken by or on behalf of the Corporation and at its expense. 15

"(4) The assessment of a person's entitlement to the independence allowance shall be carried out in accordance with **section 54A** of this Act and if, and only if, the entitlement is established by such an assessment, it shall be payable in accordance with **subsection (8)** of this section. 20

"(5) No person shall—

"(a) Be assessed as having more than 100 percent whole-person impairment; or 25

"(b) At any time receive more than one independence allowance,—

irrespective of the number of claims lodged by that person.

"(6) Subject to **subsection (7)** of this section, the maximum amount of the independence allowance shall be \$60 a week. 30

"(7) Regulations made under this Act—

"(a) May increase the maximum amount of the independence allowance set out in **subsection (6)** of this section:

"(b) Shall prescribe the graduated rates at which the independence allowance is payable. 35

"(8) The following provisions apply in relation to payment of an independence allowance:

"(a) If the independence allowance is payable, it shall be paid with effect on and from the date of assessment: 40

"(b) Subject to **paragraph (a)** of this subsection, payment in respect of any period after the completion of the

assessment of the degree of impairment shall be made by the Corporation quarterly in advance:

5 “(c) Where, during a quarter, the impairment of a person decreases or the entitlement of a person to an independence allowance ceases, the Corporation shall not take any action to recover the whole or any part of the quarterly payment made to that person by way of an independence allowance in respect of that quarter:

10 “(d) When a person dies, that person’s entitlement to an independence allowance shall cease on the date of the person’s death.

15 “54A. **Assessment and reassessment**—(1) For the purposes of section 54 of this Act, a person’s whole-person impairment shall be assessed in accordance with regulations made under this Act, and any such regulations may—

“ (a) Refer to or incorporate by reference, in whole or in part, the American Medical Association Guides to the Evaluation of Permanent Impairment:

20 “ (b) Prescribe guides other than or in addition to the American Medical Association Guides to the Evaluation of Permanent Impairment:

“ (c) Do any combination of the things referred to in paragraphs (a) and (b) of this subsection.

25 “(2) If the initial assessment is carried out after the expiration of the 52-week period referred to in section 54 (2) (a) of this Act but before the Corporation has received a certificate from a registered medical practitioner to the effect that the person’s condition arising from the personal injury has stabilised and is likely to have resulted in impairment, the person shall be reassessed following stabilisation of his or her condition.

30 “(3) If the injured person’s impairment increases after the date of assessment, the Corporation shall reassess the person following verification, by a certificate from a medical practitioner, of the increase in impairment, but not more than 1 such reassessment (other than a reassessment under subsection (2) of this section) shall be undertaken in any 12-month period.

40 “(4) If the injured person’s impairment decreases after the date of assessment, the Corporation may reassess the person, but not more than 1 such reassessment (other than a reassessment under subsection (2) of this section) shall be undertaken in any 5-year period.

“(5) If a reassessment is undertaken in accordance with this section, the Corporation shall make any necessary adjustment to the level of entitlement to the independence allowance with effect on and from the date of the next quarterly payment.

“(6) An assessment of a person’s whole-person impairment under this section shall not include as impairment any impairment that does not result from personal injury that is covered by this Act or that does not result from personal injury by accident in respect of which a claim has been accepted under the Accident Compensation Act 1972 or the Accident Compensation Act 1982.

“(7) If any person who has received a payment under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982 is assessed for the purposes of establishing an entitlement to the independence allowance, the percentage or percentages of permanent loss or impairment of bodily function upon which any payment or payments under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982 were based shall be deducted from the person’s impairment as assessed under this section.

“(8) Every assessment and reassessment of a person’s impairment under this section shall be undertaken by or on behalf of the Corporation and at its expense.”

**14. Funeral grant**—The principal Act is hereby amended by repealing section 55, and substituting the following section:

“55. If a person dies as a result of personal injury covered by this Act, the Corporation shall pay to the personal representatives of the deceased a funeral grant of—

“(a) The actual costs of the funeral; or  
“(b) \$2,500,—  
whichever is the lesser.”

**15. Management of claims by employers**—The principal Act is hereby amended by repealing sections 105 to 107, and substituting the following section:

“105. (1) The Minister shall establish a framework under which the Corporation and any employer may agree that the employer shall be an agent of the Corporation for the purposes of managing and meeting the cost of claims for work injury under this Act.

“(2) Without limiting anything in section 156 of this Act, the Corporation and any employer may, in accordance with any

framework established under **subsection (1)** of this section, agree that the employer shall be an agent of the Corporation for the purposes referred to in **subsection (1)** of this section; and, for the purposes of this Act, a decision of an employer under any such agreement shall be regarded as a decision of the Corporation.”

5  
10     **16. Reserves**—The principal Act is hereby amended by repealing section 128 (as substituted by section 40 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following section:

“128. (1) The Corporation shall establish, and may from time to time amend, a reserves policy which, in relation to each Account, has regard to the estimated liability arising from—

15     “(a) Claims already lodged with the Corporation; and  
       “(b) Estimated future claims.

“ (2) The Corporation shall, before establishing or amending a reserves policy under **subsection (1)** of this section,—

20     “(a) Publicly notify its intention to establish or amend a reserves policy under that subsection by publishing in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin, a notice—

25     “(i) Setting out in full, or giving a summary of, the proposed reserves policy or amendment; and

       “(ii) Stating where copies of the proposed reserves policy or amendment may be obtained; and

30     “(iii) Giving the Corporation’s reasons for the proposed reserves policy or amendment, or stating where a copy of those reasons may be obtained; and

       “(iv) Inviting members of the public to make written submissions on the proposed reserves policy or amendment; and

35     “(v) Stating the last date on which the Corporation will receive written submissions on the proposed reserves policy or amendment (which date shall be not less than 28 days after the date of the publication of the notice in the *Gazette*); and

40     “(b) Consider all submissions on the proposed reserves policy or amendment that are received by the Corporation

not later than the date stated pursuant to **paragraph (a)(v)** of this subsection.

“(3) The content of the reserves policy established or amended under **subsection (1)** of this section shall be subject to any direction given by the Minister under section 159 of this Act. 5

“(4) The Minister shall, not later than the **30th day of September 1997**, and as soon as practicable thereafter whenever there is a change in the reserves policy of the Corporation,—

“(a) Publish in the *Gazette*; and 10

“(b) Lay before the House of Representatives— a copy of the reserves policy or amended reserves policy of the Corporation.”

**17. Cessation of compensation**—The principal Act is hereby amended by repealing section 139, and substituting the following section: 15

“139. The continued eligibility of any person to receive compensation continued by virtue of section 138 of this Act shall be determined in accordance with this Act, except that **section 51** of this Act does not apply if the Corporation is satisfied that the determination is unlikely to find that the person has a capacity for work.” 20

**18. Board of Corporation**—Section 157 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections: 25

“(1) The Board of the Corporation shall consist of not more than 8 members appointed by the Minister.

“(2) Without limiting the functions of the Board, the principal function of the Board is to ensure the efficient and effective management of the Corporation and the Accounts.” 30

**19. Corporation to comply with Government policy**—Section 159 of the principal Act is hereby amended by adding the following subsections:

“(3) The Corporation shall, if so directed in writing by the Minister, enter into and comply with one or more service agreements with the Minister. 35

“(4) A service agreement may set out—

“(a) The Government’s desired outcomes and objectives in relation to the performance and exercise of the functions, duties, and powers of the Corporation: 40

- “(b) The Government’s desired outcomes and objectives in relation to the performance of the Accounts:
- “(c) Policy directions under subsection (1) of this section:
- 5 “(d) Reporting requirements of the Corporation either in relation to the Accounts or in relation to the Corporation’s functions and powers or in relation to both:
- “ (e) Such other matters relating to the performance and exercise of the functions, duties, and powers of the Corporation as the Minister thinks expedient.
- 10 “(5) The Minister shall, as soon as practicable after entering into a service agreement, lay a copy of the service agreement before the House of Representatives.
- 15 “(6) The inclusion in a service agreement of a policy direction under subsection (1) of this section is sufficient compliance with the obligation under subsection (2) (a) of this section to publish a copy of the direction in the *Gazette*.
- 20 “(7) It is hereby declared that, in exercising any function or power under this Act, the Minister shall have regard to the public interest and, in particular, the interests of taxpayers, premium payers, claimants, and potential claimants.”

**20. Regulations**—(1) Section 167 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

25 “(a) Prescribing the assessment to be used to establish the degree of whole-person impairment for the purposes of section 54 of this Act; and prescribing the maximum amount and rates of the independence allowance payable under that section.”

30 (2) Section 167 (1) (d) of the principal Act is hereby amended by inserting, after the words “deemed minimum”, the words “and optional”.

35 (3) Section 167 (1) of the principal Act is hereby amended by repealing paragraph (g), and substituting the following paragraphs:

“ (g) Prescribing the rates of premiums (including minimum and optional premiums for those persons with earnings other than as an employee):

40 “(ga) Prescribing the rates of deemed weekly earnings for the purposes of section 41A of this Act.”

(4) Section 167 of the principal Act is hereby amended by repealing subsection (1) (i) and also subsection (5A) (as inserted

by section 16(2) of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993).

**21. Regulations relating to premium setting**—The principal Act is hereby amended by inserting, after section 167, the following section:

“167A. (1) The Minister shall not recommend the making, under section 167(1)(g) of this Act, of regulations prescribing the rates of premiums unless the Minister has first received and considered a recommendation from the Corporation made in accordance with the provisions of this section.

“(2) The Corporation shall consult premium payers before recommending to the Minister that such regulations be made, and that obligation to consult is satisfied if—

“(a) The Corporation publicly notifies its intention to recommend to the Minister that such regulations be made by publishing in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin, a notice—

“(i) Stating that the Corporation is proposing to recommend that such regulations be made; and

“(ii) Stating where copies of the proposed regulations may be obtained; and

“(iii) Giving the Corporation’s reasons for its proposal to recommend the making of the proposed regulations, or stating where a copy of those reasons may be obtained; and

“(iv) Inviting members of the public to make written submissions on the proposed regulations; and

“(v) Stating the last date on which the Corporation will receive written submissions on the proposed regulations (which date shall be not less than 28 days after the date of the publication of the notice in the *Gazette*); and

“(b) The Corporation considers all submissions on the proposed regulations that are received by the Corporation not later than the date stated pursuant to paragraph (a)(v) of this subsection.

“(3) The Corporation shall, before recommending to the Minister the making, under section 167(1)(g) of this Act, of regulations prescribing the rates of premiums, have regard to



the relevant reserves policy established under **section 128** of this Act.

5 “(4) Nothing in this section obliges the Minister to accept the Corporation’s recommendation or prevents the Minister recommending that the regulations prescribe rates of premiums different from the rates recommended by the Corporation.”

**22. Further amendments to principal Act**—(1) The principal Act is hereby further amended in the manner indicated in the Schedule to this Act.

(2) The office of Managing Director of the Corporation is hereby abolished.

15 (3) The person who, immediately before the day on which this section comes into force, holds office as the Managing Director of the Corporation shall become instead, as from the commencement of that day, the Chief Executive of the Corporation as if that person had been appointed to the office of Chief Executive of the Corporation under **clause 20** of the Second Schedule to this Act (as substituted by **subsection (1)** of this section); and, subject to **subsection (2)** of this section, the remuneration and terms and conditions of employment that applied immediately before the commencement of that day in respect of that person, in that person’s capacity as the holder of the office of Managing Director of the Corporation, shall  
20 continue to apply to that person in that person’s capacity as Chief Executive of the Corporation as if that remuneration and those terms and conditions of employment had been determined under **clause 20** of the Second Schedule to this Act (as so substituted).  
25

30 **23. Repeals**—(1) Sections 25, 30, 32A, and 68 of the principal Act are hereby repealed.

(2) The following enactments are hereby consequentially repealed:

35 (a) The Accident Rehabilitation and Compensation Insurance Amendment Act 1992:

(b) Sections 3, 4, 6, 7, 8, 9, and 16 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993:

40 (c) Sections 9 (2), 11, 12, 13, 15(2), 17, 19, 20, 22, 28 (2), 35, 40, 54, and 55 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993:

(d) Section 4 of the Finance Act 1994.

**24. Transitional provision relating to existing health purchasing contracts**—Notwithstanding the repeal of section 27 of the principal Act by **section 5** of this Act and without limiting anything in the Acts Interpretation Act 1924, section 27 (6) of the principal Act (as it read immediately before the date of commencement of **section 5** of this Act) shall continue to apply in respect of the provision of any specified services under any contract entered into under section 27 of the principal Act and in force immediately before that date.

**25. Transitional provisions relating to independence allowance**—(1) Any person who was, immediately before the date of commencement of this section, receiving the independence allowance shall be deemed to have been assessed under **section 54** of the principal Act (as substituted by **section 13** of this Act) as having a degree of whole-person impairment of 10 percent or more and, until reassessed under **section 54A** of that Act (as so substituted), shall continue to receive the allowance at the rate payable on that date.

(2) On the reassessment of the person under **section 54A** of that Act (as so substituted), any adjustment to the rate at which the independence allowance is being paid shall—

(a) If the entitlement is to be reduced or is to cease, be effective 3 months after the date on which the person is notified of the Corporation's decision in respect of the level of impairment:

(b) If the entitlement is to be increased, be effective as from the commencement of this section.

**26. Regulations providing for transitional matters**—Without limiting anything in section 167 of the principal Act, the Governor-General may from time to time, by Order in Council, make regulations prescribing transitional and savings provisions relating to the coming into force of this Act and such regulations may be in addition to, but not in place of, any of the provisions of **sections 24 and 25** of this Act.

**Section 22**

**SCHEDULE**

FURTHER AMENDMENTS TO PRINCIPAL ACT

Provision of Principal Act	Amendment
Section 3            ...            ...	<p>By omitting from paragraph (e) of the definition of the term "arising in the course of employment" the words "or the exempt employer".</p> <p>By repealing the definition of the term "exempt employer".</p> <p>By omitting from the definition of the term "incapacity" the words "or an exempt employer".</p> <p>By repealing the definition of the term "public health care costs" (as inserted by section 2 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993).</p>
Section 15 (3)    ...            ...	<p>By omitting the words "and an exempt employer may,".</p>
Section 20            ...            ...	<p>By repealing subsection (4) (as substituted by section 9 (2) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following subsection:</p> <p style="padding-left: 2em;">"(4) Before any individual rehabilitation programme is implemented, the Corporation may approve the programme in whole or in part and shall meet only the costs of matters in respect of which and to the extent to which the Corporation has given its prior approval."</p>
Section 24            ...            ...	<p>By inserting in subsection (2), before the words "The Corporation may", the words "Subject to <b>section 23 (2)</b> of this Act,".</p> <p>By repealing subsection (3).</p>
Section 28 (4)    ...            ...	<p>By omitting the words "agreement under section 27" in both places where it occurs, and substituting in each case the words "agreement or contract or arrangement under <b>section 29A</b>".</p> <p>By adding the words "or contract or arrangement".</p>

26 *Accident Rehabilitation and Compensation Insurance  
Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 29     ...     ...	By omitting the words "or under any agreement made under section 27 of this Act" (as added by section 6 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993), and substituting the words "or under an agreement or contract or arrangement under section 29A of this Act".
Section 31     ...     ...	By omitting the words ", including any exempt employer,".
Section 39 (2)     ...     ...	By omitting the words "except to the extent that it is payable by an exempt employer under section 106 of this Act".
Section 42(2)     ...     ...	By repealing paragraph (b) (as substituted by section 15 (2) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph: "(b) In respect of any period of incapacity after the period referred to in paragraph (a) of this subsection, the total of— "(i) The person's weekly earnings calculated under paragraph (b) or paragraph (c) of section 40 (2) of this Act, whichever is applicable in the circumstances; and "(ii) One fifty-second of the weekly earnings of the person calculated under section 41 of this Act multiplied by the number of weeks or part weeks during the 52 weeks immediately preceding the commencement of the incapacity during which the person earned weekly earnings other than as an employee."
Section 46 (1)     ...     ...	By repealing paragraph (c) (as substituted by section 17 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph: "(c) If the person has been assessed under section 51 of this Act, has

*Accident Rehabilitation and Compensation Insurance*     27  
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SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 46 (1)— <i>continued</i>	been assessed as not having a capacity for work; and”.
Section 60 (3)     ...     ...	By repealing paragraph (c) (as substituted by section 25 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph: “(c) Attaining capacity for work, as assessed under section 51 of this Act.”
Section 63(3)     ...     ...	By omitting the words “either directly or pursuant to an agreement made under section 27 of this Act” (as inserted by section 9 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993), and substituting the words “either directly or under an agreement or contract or arrangement under section 29A of this Act”.
Section 65     ...     ...	By omitting from subsection (2) the words “(other than an exempt employer)”.
Section 71     ...     ...	By repealing subsections (3) and (5). By omitting the words “independence allowance”, and substituting the words “amount specified in section 54 (6) (a) of this Act”.
Section 72     ...     ...	By omitting the words “or exempt employer” wherever it occurs.
Section 73     ...     ...	By omitting from subsection (1) the words “and any exempt employer may,”. By omitting from subsection (1A) the words “an agreement made under section 27”, and substituting the words “an agreement or contract or arrangement under section 29A”.
Section 74 (1)     ...     ...	By omitting from subsection (2) the words “and any exempt employer may,” and also the words “or exempt employer”.
Section 77 (10)     ...     ...	By omitting the expression “section 54 (3)”, and substituting the expression “section 54”.
Section 80     ...     ...	By omitting the words “an agreement under section 27”, and substituting the words “an agreement or contract or arrangement under section 29A”.
	By omitting the words “or exempt employer” wherever they occur.

28 *Accident Rehabilitation and Compensation Insurance  
Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act			Amendment
Section 82	...	...	By omitting from subsection (3) the words “, and an exempt employer may,”. By omitting from subsection (4) the words “or an exempt employer”. By omitting from subsection (4) the words “or the exempt employer and in the case of the Corporation”, and substituting the word “and”.
Section 84	...	...	By omitting from subsection (1) the words “or exempt employer” and also the words “, or the exempt employer may,”. By omitting from subsection (2) the words “or exempt employer”.
Section 86 (2) (h)	...	...	By omitting the words “or exempt employer”.
Section 87 (2) (a)	...	...	By omitting the words “an agreement made under section 27”, and substituting the words “an agreement or contract or arrangement under <b>section 29A</b> ”.
Section 89	...	...	By omitting from subsection (1) the words “or exempt employer” where they first occur, and also the words “or exempt employer, as the case may be,”. By omitting from subsection (6) the words “or exempt employer”. By omitting from subsection (6A) the words “an agreement made under section 27”, and substituting the words “an agreement or contract or arrangement under <b>section 29A</b> ”.
Section 90	...	...	By omitting from subsection (1), and also from subsection (7), the words “or exempt employer, as the case may be,”. By omitting from subsection (4) (a), and also from subsection (5) (a), the words “or exempt employer”. By omitting from subsection (4) (b) the words “or the exempt employer”.
Section 91	...	...	By repealing subsection (2) (b). By omitting from subsection (6) the words “and the exempt employer (if any)”.
Section 95	...	...	By omitting the words “or the exempt employer”.
Section 96 (1)	...	...	By omitting the words “or the exempt employer”.
Section 100	...	...	By omitting from subsection (1) the words “public health care costs, and”.

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 100— <i>continued</i>	By repealing paragraph (a) of subsection (3) (as substituted by section 55 (1) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph: “(a) Paying the Crown for goods, services, and facilities provided or arranged by the Crown under any contract or agreement or arrangement under <b>section 29A</b> of this Act; and”.
Section 108      ...      ...	By omitting from subsection (1) the words “public health care costs, and”. By repealing paragraph (a) of subsection (3) (as substituted by section 55 (2) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph: “(a) Paying the Crown for goods, services, and facilities provided or arranged by the Crown under any contract or agreement or arrangement under <b>section 29A</b> of this Act; and”.
Section 109 (4)      ...	By omitting the words “paying public health care costs”, and substituting the words “the payments to be made”.
Section 121 (4)      ...	By repealing paragraph (a) of subsection (3) (as substituted by section 55 (3) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph: “(a) Paying the Crown for goods, services, and facilities provided or arranged by the Crown under any contract or agreement or arrangement under <b>section 29A</b> of this Act; and”.
Section 166      ...      ...	By inserting in subsection (1), before the word “treatment” in both places where it occurs, the word “payment,”. By inserting in subsection (1), after the words “or allowance under this Act”, the

30 *Accident Rehabilitation and Compensation Insurance  
Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 166— <i>continued</i>	<p>words “(whether or not authorised under this Act)”.</p> <p>By omitting from subsection (2) the words “or the exempt employer, as the case may be,”.</p> <p>By omitting from subsection (3) the words “, for which a person is liable on summary conviction to a fine”.</p>
Section 179 (5) ...	By omitting the words “, irrespective of whether or not the employer is an exempt employer under this Act”.
Second Schedule ...	<p>By repealing clause 19, and substituting the following clause:</p> <p>“19. <b>Chief Executive</b>—(1) There shall be appointed from time to time by the Board, acting after consultation with the Minister, a Chief Executive of the Corporation, who shall not be a member of the Board.</p> <p>“(2) The remuneration and terms and conditions of employment of the Chief Executive of the Corporation shall be determined from time to time by the Board, acting after consultation with the Minister”.</p> <p>By repealing paragraph (b) of clause 20 (2), and substituting the following paragraph:</p> <p>“(a) Every reference to the Chief Executive shall be read as a reference to the Chief Executive of the Corporation; and”.</p> <p>By omitting from clause 29A (as inserted by section 53 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993) the words “specified services as defined in section 27”, and substituting the words “purchased services as defined in section 27 (1)”.</p>