

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

Government Bill

## **Explanatory note**

### **General policy statement**

#### *Overview*

The overall purpose of this Bill is to continue the Government's commitment to a fair and sustainable ACC scheme for reducing the incidence and impact of personal injury, by proposing amendments to cover for work-related injuries, changes in weekly compensation eligibility and entitlement, and changes in entitlement and processes around vocational rehabilitation and independence. The Bill also includes a number of other issues that arise out of ongoing policy development, and also some technical changes.

#### *Summary of key changes*

##### **Key changes to cover for work-related injuries**

###### *Work-related gradual process, disease, and infection*

Under the Injury Prevention, Rehabilitation, and Compensation Act 2001 (the Act), work-related gradual process, disease, or infection is covered if it meets specific criteria. First, there must be a personal injury as defined in section 26. Second, a causal link must be established between the personal injury and the person's employment. Some diseases receive cover under Schedule 2, which provides a streamlined cover process for diseases with a strong link to occupation. However, the majority of work-related gradual process, disease, or infection claims must meet the three-part test of causation set out in section 30(2) of the Act before being covered.

The Ministerial Advisory Panel on Work-Related Gradual Process, Disease, or Infection highlighted the three-part test as a barrier for cover for claimants with a work-related gradual process, disease, or infection. The Panel noted that the burden of proof rested with the claimant, and could be hard to meet.

As a result of the Panel's report, the Government committed to making changes to ensure that people harmed by their work receive greater access to cover and more clarity around whether cover was available and how it was determined.

The Bill revises the three-part test of causation set out in section 30(2) of the Act, to provide greater certainty of cover for claimants with a work-related gradual process, disease, or infection.

The Bill also makes changes to provide greater flexibility to amend Schedule 2, and extends eligibility for lump sum compensation.

*Changes to cover provisions for work-related gradual process, disease, or infection*

The Bill makes 3 changes to section 30:

- it clarifies that the responsibility and cost for investigating a claim rests with ACC;
- the three-part test is amended to clarify the threshold of allowable non-work exposure. Under this change, if a person has both work and non-work exposure to the cause of the injury, the person will receive cover if the work exposure was the more likely cause;
- the section is amended so that if a person otherwise meets the requirements of section 30(2), a claim could be declined only if ACC proves that the work task or work environment places the claimant at no significantly greater risk of developing that personal injury.

*Improving the flexibility of section 30(3) and Schedule 2*

The Bill provides that descriptions of personal injury caused by work-related gradual process, disease, or infection for the purposes of section 30(3) can include personal injury caused by employment in certain occupations, industries, or processes, or personal injury caused by a specified level of extent of occupational exposure to a harmful agent. This provides greater flexibility in terms of adding

new work-related gradual processes, diseases, or infections to Schedule 2.

*Extending lump sum eligibility to pre-1 April 2002 work-related gradual process, disease, or infection claims*

Clause 55 of Schedule 1 of the Act denies eligibility for lump sum compensation for claimants who suffer personal injury caused by work-related gradual process, disease, or infection following 1 April 2002, but whose last exposure to the relevant agent or environment, first treatment, or incapacity was before that date. These claimants would receive an independence allowance instead of lump sum compensation. The case of *Estate of Priddle and Others v ACC* required ACC to provide lump sum compensation to claimants whose eligibility is determined under Schedule 2, and whose deemed date of injury was on or after 1 April 2002, even though their injury was caused by exposure that took place prior to that date.

An amendment is now required to ensure fairness between groups of claimants. The Bill provides entitlement to lump sum compensation to both Schedule 2 claimants and claimants whose eligibility for cover for work-related gradual process, disease, or infection is established through the three-part test in section 30(2). Claimants who suffered personal injury before the date the amendment comes into force (other than Schedule 2 claimants) will continue to be subject to the limitation in clause 55(2). However, those who suffer personal injury following the date the Bill comes into force will be entitled to lump sum compensation. The Bill also allows this group of claimants to elect between receiving an independence allowance or lump sum compensation to ensure those claimants are not disadvantaged. Should their level of impairment be reassessed, they will be able to re-elect to receive lump sum compensation if they previously chose to receive an independence allowance.

**Cover for mental injury arising from traumatic events in workplace**

The Act covers mental injury in 2 situations: mental injury suffered because of the claimant's physical injuries, and mental injury suffered as a result of certain types of sexual abuse or assault. No cover is currently available for mental injury caused by exposure to a sudden traumatic event in the course of employment (for example,

witnessing a colleague shot in a bank robbery, or a train driver hitting someone on the tracks).

Experiencing an extreme traumatic event affects people in different ways. Most will deal with the event in their own way, and with no longer-term consequences. However, some people develop severe, longer-term mental/psychological problems that impact on their ability to function in everyday life. The Bill aims to ensure that these people are covered by the scheme in the same way that others physically harmed in the workplace are covered.

The Bill introduces cover for mental injury caused by exposure to a sudden traumatic event in the course of employment. This provides cover for clinically significant mental injuries, rather than temporary distress that constitutes a normal reaction to trauma. The event must be seen, heard, or experienced by the person directly (and not, for example, seen on television), and be one which could reasonably be expected to cause mental injury. It does not introduce cover for mental injury caused by non-physical stress (gradual onset) in the workplace. Providing cover will help to ensure appropriate treatment, and will facilitate rehabilitation, including an early and sustainable return to work.

### **Key changes to eligibility and entitlement provisions for weekly compensation**

In general, weekly compensation is paid to eligible claimants at 80% of pre-injury earnings, and is intended to provide earnings-related compensation so that claimants can meet their everyday expenses and focus on recovery.

A review of the provisions for weekly compensation was undertaken in response to concerns that some seasonal and casual workers are disadvantaged by the current rules for calculating weekly compensation.

The review found that the rules for assessing weekly compensation continue to meet the needs of people in standard work. However, nearly a quarter of today's workforce is in non-standard work. They may be in part-time work, self-employment, undertake casual or seasonal work, or regularly move in and out of employment.

The Bill updates the weekly compensation framework by improving access to weekly compensation (particularly for seasonal and casual workers), making the assessment for claimants easier to understand,

allowing earlier access to minimum weekly compensation, and increasing the rate of weekly compensation paid to potential earners. The Bill also improves weekly compensation for seasonal workers who are incapacitated for more than 5 weeks.

*Lengthening extended employee status*

Currently, most claimants are not eligible for weekly compensation if they are between jobs or on unpaid leave and are injured more than 14 days after stopping work. The Bill extends eligibility for weekly compensation for these claimants to 28 days after stopping work. The proposal reduces uncertainty for the majority of people who are injured between jobs.

*Providing extended earner status to self-employed persons and shareholder employees*

Employees are currently eligible for weekly compensation if they are injured within 14 days of ceasing paid employment. The Act does not, however, allow access to weekly compensation for people who are injured in a period between moving from a self-employed, or a shareholder-employee, position to employment as an employee. The Bill allows extended earner status to apply to self-employed people and shareholder-employees who are injured during a transition to employment as an employee. The Bill also allows the extended 28 day period to apply to these people.

*Fairer and more straightforward weekly compensation for seasonal and casual employees*

The Act currently assesses non-permanent employee income against a period that includes both earning and non-earning periods. This results in a significant reduction of income for a number of seasonal or casual employees who receive weekly compensation for more than 4 weeks. The Bill addresses this issue by changing the way that weekly compensation is calculated. For short-term compensation, claimants' earnings (from employment held at the date of incapacity) in the 4 weeks before the incapacity will be divided by the full and part weeks worked in that period. For long-term compensation, claimants' earnings (from employment held at the date of incapacity) in the 52 weeks before the incapacity will be divided by the full and part weeks worked during that period.

*Improved abatement conditions for partially incapacitated people who return to work part-time*

Under the current Act, people who return to work part-time have their weekly compensation abated at the rate of 24 cents for every \$1 of earnings above \$67.24 per week, and 56 cents for every \$1 of earnings above \$107.52 per week. The total of claimants' earnings from employment and weekly compensation cannot be more than their weekly earnings as calculated under the Act. The provisions for abatement are complicated and can potentially discourage claimants from returning to work. The Bill provides that claimants are able to earn up to 100% of their weekly earnings (as calculated under the Act) before weekly compensation is abated and that, as per the status quo, abatement is dollar for dollar above that level.

*Improving fairness for abatement of leave provisions for weekly compensation, where leave payment is made on termination*

The Bill provides that any payment made at the end of a person's employment (that is employment held at the time of incapacity) in respect of leave entitlements would not be considered earnings for the purposes of abating weekly compensation. This means that ACC would not reduce claimants' weekly compensation over the equivalent period that they were paid leave entitlements after their employment ended.

*Increases for people receiving minimum weekly compensation after first week of incapacity*

At present, people who work full-time and earn less than the minimum weekly earnings (as determined under the Act) are eligible to increase their weekly compensation to the minimum weekly compensation amount only after the first 5 weeks of incapacity. Claimants in this group often receive less than the minimum weekly compensation amount for the first 5 weeks of incapacity, which can pose financial difficulty for these people. The Bill provides that full-time employees will be eligible for the minimum weekly compensation amount after the first week of incapacity.

*Increases in loss of potential earnings compensation for young people*

In certain circumstances, ACC pays weekly compensation for loss of potential earnings (**LOPE**) to people aged 18 years or older if they have an incapacity from a personal injury suffered when they were under 18 years or when they were in full-time study that started before they turned 18 years. The rate of LOPE compensation is 80% of the minimum weekly earnings (as determined under the Act). The minimum weekly earnings are determined under the Act as being the greater of the minimum wage or 125% of the Invalid's Benefit. Currently, the level of compensation does not adequately reflect an average life-long pattern of earnings. The Bill provides that weekly compensation for loss of potential earnings will be 100% of the minimum weekly earnings (as determined under the Act).

*Definition of full-time study for eligibility for LOPE compensation*

ACC pays LOPE compensation to claimants who meet particular conditions, one being that they are not engaged in full-time study or training during the period of their incapacity. The current definition of full-time study is "a course of study recognised as full-time by the place of education that administers it". This could be interpreted to exclude from LOPE compensation seriously injured claimants who undertake full-time courses to gain life skills.

The Bill clarifies the definition of full-time study for the purposes of eligibility to LOPE so that seriously injured claimants, otherwise eligible for LOPE payments, can receive compensation while they are enrolled in full-time courses for the purpose of gaining independent living and social skills (as opposed to NZQA approved vocational qualifications). Undertaking full-time study that is aimed at social, rather than vocational, rehabilitation outcomes does not make a claimant ineligible for LOPE.

*Interim estimation of weekly earnings for self-employed persons and shareholder-employees*

Clause 45 of Schedule 1 of the Act provides that ACC can estimate an amount that represents reasonable remuneration for a claimant who had earnings as a self-employed person or shareholder-employee in certain situations when it cannot readily ascertain the claimant's actual weekly earnings. However, the Act does not allow ACC to estimate weekly earnings for self-employed claimants who

had earnings as a self-employed person immediately before their incapacity and had earnings as a shareholder-employee in the relevant year, and vice versa; that is, self-employed or shareholder-employee claimants who have changed their employment status. The Bill remedies this situation.

*Clarifying cessation of weekly compensation for surviving spouses*

Clause 66(5)(c) of Schedule 1 is intended to relate to situations where a surviving spouse or partner is caring for the youngest child of the deceased and the child turns 18. It is currently not clear that the surviving spouse or partner cannot continue to receive spousal weekly compensation if the child is no longer in their care. The Bill clarifies this.

*Enabling aggregation of weekly compensation payable to surviving spouses*

Surviving spouses and partners to whom weekly compensation is payable under the 1992 and subsequent legislation can choose to aggregate their compensation payments; whereas aggregation is not permissible for those whose spousal weekly compensation is payable under earlier legislation. The Bill allows spouses and partners to whom weekly compensation is payable under the 1972 and 1982 legislation to choose to receive their compensation as 1 or more aggregated payments.

*Clarification of limit on calculation of weekly compensation for self-employed persons and shareholder-employees with previous earnings as employees*

The Bill amends clauses 38 and 39 of Schedule 1 of the Act to clarify that in relation to any self-employed/shareholder-employee claims accepted before 1 July 2005 and then resubmitted after that date, recalculated payments of weekly compensation will only be backdated to 1 July 2005.

*Maintaining minimum weekly compensation for claimants who are eligible under 1972 and 1982 legislation*

The Bill clarifies that section 366 of the Act only applies to claimants who had minimum weekly compensation established under the Accident Rehabilitation and Compensation Insurance Act 1992 or



the Accident Insurance Act 1998. This maintains the policy intent of allowing claimants to maintain their rate of weekly compensation where it has been established under the 1972 and 1982 Accident Compensation Acts.

*Enabling people to purchase TimeOut cover for periods less than 3 months*

Section 223 of the Act provides that, in certain circumstances, weekly compensation can be purchased for periods during which people take unpaid leave or are otherwise outside employment (TimeOut cover). However, TimeOut can only be purchased for periods outside employment that are longer than 3 months. The Bill enables people to purchase weekly compensation for periods outside employment of less than 3 months.

**Key changes to provisions for vocational rehabilitation and independence**

The ACC scheme entitles some claimants who are injured to vocational rehabilitation, for the purposes of restoring the claimant to employment or employability as far as practicable. Recent research and evaluation has indicated that the framework for vocational rehabilitation for claimants could be enhanced to provide better outcomes.

*Discretionary extension of the three-year limit on vocational rehabilitation*

At present, claimants are only eligible for a maximum of 3 years in total of vocational rehabilitation. There are some claimants who need more vocational rehabilitation such as those who are seriously injured and need ongoing assistance to stay in the work force. The Bill provides ACC with discretion to extend the 3-year limit on vocational rehabilitation, where appropriate.

*Removal of the upper age limit for vocational rehabilitation*

Vocational rehabilitation is currently linked to weekly compensation. Entitlement to weekly compensation is affected by the qualifying age for New Zealand superannuation. The Bill removes the

upper age limit so that eligibility for vocational rehabilitation continues despite the transitional arrangements between weekly compensation and superannuation. Eligibility for vocational rehabilitation will not be affected by loss of entitlement to weekly compensation, if the reason for the loss of entitlement is that claimants have reached, or are over, the qualifying age for New Zealand superannuation. Additional vocational rehabilitation can be delivered where this is appropriate to return claimants aged at or over the New Zealand superannuation qualification age to work.

*Requirement for occupational assessors to take into account pre-incapacity earnings*

Occupational assessors are not currently obliged to take into account a claimant's pre-injury earnings during any occupational assessment. The Bill requires occupational assessors to consider a claimant's pre-incapacity earnings when identifying suitable work-types in occupational assessments. This will help to ensure that jobs identified for claimants during assessments reflect a claimant's previous earnings, where this is possible.

**Key changes for other policy issues**

*Repeal of disentitlements for wilfully self-inflicted injuries*

Section 119 of the Act prohibits ACC from providing entitlements (other than treatment) for wilfully self-inflicted personal injury and suicide, unless the personal injury or death is a result of mental injury. This restriction creates a lack of transparency and certainty for claimants and surviving family members about whether they will receive cover. Research indicates that the vast majority of suicidal behaviour and wilfully self-inflicted injury is associated with having a mental health disorder, and having further proof of mental injury adds little value to the determination of cover. The Bill repeals section 119 so that ACC can provide entitlements to claimants who suffer wilfully self-inflicted injury on or after the date that the amendment comes into effect.

*Eligibility of nurse practitioners to determine incapacity and undertake assessment for ACC purposes*

Currently, only registered medical practitioners (doctors) and registered medical specialists perform certain functions under the Act

because these tasks require a minimum level of medical qualification and experience. Nurse practitioners are sufficiently qualified and experienced to deliver some treatments previously considered the sole purview of doctors. The Bill allows the date of treatment by a nurse practitioner to be considered as the date on which a person suffers a personal injury caused by a work-related gradual process, disease, or infection. The Bill also requires ACC to consider assessments undertaken by nurse practitioners when determining incapacity for employment.

*Establishing a mechanism for review of regulated treatment cost entitlements*

Currently, the Act does not provide for a regular review of treatment cost amounts. The Bill provides for a mechanism to require an annual review of the amounts ACC is liable to pay treatment providers under regulations for the purpose of assessing whether an adjustment is necessary to take into account changes in treatment costs. The Bill also amends section 324(2) to allow consultation on proposed treatment costs regulations to be at the Minister's discretion, having regard to the subject matter of the proposed changes.

*Due date for levy payment*

The Act currently states that the due date for self-employed, employers, and private domestic workers to pay their levy invoice cannot be less than 2 months after the invoice date. ACC must calculate and apply interest to any unpaid levy from the day after the date that payment is due. The Bill allows the due date for levy payments to be 1 month from the invoice date, rather than the current 2 months, while retaining the existing time frames for interest and penalties.

*Ancillary powers of ACC*

Section 265 of the Act allows ACC to provide services in addition to those that would normally be provided if those services are provided in a manner consistent with ACC's role and function. The Bill amends section 265 to clarify that it allows a subsidiary of ACC to provide services outside ACC's core functions, in situations where the services are consistent with the Act's purposes, and to provide the services to a person who would not otherwise be covered by the Act.

### *Technical amendments*

The Bill corrects a number of minor drafting issues and includes a consequential amendment arising from the Minimum Wage (New Entrants) Amendment Act 2007.

## **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. Clause 4(4) comes into force on a date to be appointed by the Governor-General by Order in Council. The commencement mechanism for clause 4(4) is to align that part of the Bill with section 3(2) of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) 2005, which will be brought into force by an Order in Council and will repeal certain definitions in the Injury Prevention, Rehabilitation, and Compensation Act 2001. Those definitions will be replaced with definitions contained in regulations made under the principal Act. The amendments to clause 42(3) of Schedule 1 of the principal Act come into force on 1 July 2008. The rest of the Bill comes into force on 1 August 2008.

*Clause 3* provides that this Act amends the Injury Prevention, Rehabilitation, and Compensation Act 2001 (the **principal Act**).

## **Part 1 Amendments to principal Act**

*Clause 4* amends section 6(1) by inserting a definition of nurse practitioner (*clause 4(1)*). *Clause 4(2) and (3)* insert the term nurse practitioner into the definitions of registered health professional and treatment provider. As set out in the analysis of *clause 2(1)*, *clause 4(4)* will repeal and substitute the definition of nurse practitioner on a date to be appointed by the Governor-General.

*Clause 5* amends—

- the heading to section 20 to include a reference to work-related mental injury, which is defined in *new section 21B*; and
- section 20(3)(b) to rectify an incorrect reference. The current reference to subsection (2)(d) will be corrected to subsection (2)(e).

*Clause 6* inserts *new section 21B*, which relates to cover for work-related mental injury that is caused by exposure to a sudden traumatic event during the course of the person's employment.

*Clause 7* amends the heading to section 22 to include a reference to work-related mental injury, for which cover is determined under *new section 21B*. *Clause 7* also adds a *new subsection (7)*, which provides that a person who suffers personal injury that is work-related mental injury in circumstances described in section 21B has cover under section 21B, but not under section 22.

*Clause 8* amends section 26(1) by inserting *new paragraph (da)*, which extends the meaning of personal injury to include a work-related mental injury for which a person has cover under *new section 21B*.

*Clause 9* amends section 28 by inserting *new subsection (4A)*, which extends the meaning of work-related personal injury to include a work-related mental injury described in *new section 21B*.

*Clause 10* amends section 30 by—

- inserting a *new subsection (1A)*, which makes subsection (1)(c) (which deals with the circumstances of the personal injury) subject to *new subsection (2A)*;
- repealing subsection (2)(b)(ii);
- repealing subsection (2)(c) and substituting it with a *new subsection (2)(c)*, which deals with situations in which personal injury caused by a work-related gradual process, disease, or infection may also be attributable to a non-work-related cause. *New subsection (2)(c)* provides that a person has cover provided that it is more likely that the employment-related task or exposure was the cause of the personal injury;
- inserting a *new subsection (2A)*, which will allow the Corporation to decline cover if it establishes that the risk of suffering that injury is not significantly greater for the person performing the employment-related task or working in a particular environment than it is for a person not performing the task or working in the environment. However, the Corporation need rely on this provision to decline cover only if it is established that the claimant's personal injury was caused in the circumstances described in subsection (2);
- repealing and substituting subsection (3). *New subsection (3)* relates to types of personal injury described in Schedule 2, which lists occupational diseases. The amendments to section

336 (in *clause 30*) will extend the scope of regulations that the Governor-General may make under that section to enable personal injuries to be described by reference to the matters specified in *new section 336(1)(a)(i) and (ii)*:

- inserting a *new subsection (3A)*, which makes clear that section 57 applies where a claim is lodged for cover for a work-related gradual process, disease, or infection, and the Corporation is required to investigate the claim at its own expense.

*Clause 10(7) and (8)* clarify that the amendments made to section 30 do not apply to claims that were lodged before *clause 10* comes into force or to claims that were decided before, and resubmitted on or after, the date that this Bill comes into force. Those claims must be determined in accordance with the current section 30.

*Clause 11* amends section 35 to make clear that a motor vehicle injury does not include a personal injury that is a work-related mental injury.

*Clause 12* amends section 36(1) to include a reference to *new section 21B*, which is to be inserted by *clause 6*.

*Clause 13* amends section 37(1)(a), which applies for the purposes of establishing the date on which a person suffers personal injury caused by a work-related gradual process, disease, or infection, by inserting a reference to a nurse practitioner. Currently, only treatment from a medical practitioner is relevant for the purposes of section 37(1)(a).

*Clause 14* amends section 57(1)(a) to include a reference to *new section 21B*, which is to be inserted by *clause 6*.

*Clause 15* amends section 85 by adding a *new subsection (2)*, which will enable a claimant, who is subject to the transitional arrangements of clause 52 of Schedule 1 (the relationship between weekly compensation and New Zealand superannuation), to continue to receive vocational rehabilitation. Currently, a claimant who loses entitlement to weekly compensation under clause 52 of Schedule 1 also loses entitlement to vocational rehabilitation.

*Clause 16* amends section 87 by inserting *new subsections (2A), (2B), and (2C)*. *New subsections (2A) and (2B)* enable the Corporation to use its discretion to extend the current 3-year limit on the provision of vocational rehabilitation. *New subsection (2C)* provides that the Corporation must not take into account any reduced costs of

entitlements where, because of *new subsection 85(2)*, a claimant may remain entitled to vocational rehabilitation but lose entitlement to weekly compensation.

*Clause 17* amends section 91 by inserting a *new subclause (1A)*, which requires the occupational assessor to take into account (among other things) the claimant's earnings immediately before the claimant's incapacity. This amendment refers to subsection (1)(b) and relates to the types of work that are available in New Zealand and suitable for the claimant.

*Clause 18* amends section 102(2)(a) by inserting a reference to nurse practitioner. This amendment takes account of the new definition of nurse practitioner, which is to be inserted in section 6(1) by *clause 4(1)*.

*Clause 19(1)* amends the heading to section 105 to reflect the inclusion of persons who are deemed, by *new clause 43 of Schedule 1*, to continue to be self-employed persons or shareholder-employees. *Clause 19(2)* amends section 105(1)(a) by inserting references to self-employed persons and shareholder-employees.

*Clause 20* repeals section 119, removing the prohibition on the Corporation providing any entitlement under the Act (other than treatment) if the personal injury or death, as the case may be, is wilfully inflicted by the claimant on himself or herself. However, *clause 20(2)* makes clear that any person who was disentitled under section 119(1) before this clause came into force, remains disentitled.

*Clause 21* amends section 168(3) by omitting the reference to 2 months and substituting a reference to 30 days. This amendment reduces the time, after the date of a notice advising an employer that a levy is payable, that the Corporation may specify as the due date for payment of the levy.

*Clause 22* amends section 168A(3) by omitting the reference to 2 months and substituting a reference to 30 days. This amendment reduces the time, after the date of a notice advising a private domestic worker that a levy is payable, that the Corporation may specify as the due date for payment of the levy.

*Clause 23* amends section 168B(3) by omitting the reference to 2 months and substituting a reference to 30 days. This amendment reduces the time, after the date of a notice advising a self-employed

person that a levy is payable, that the Corporation may specify as the due date for payment of the levy.

*Clause 24* amends section 223. *Clause 24(1)* amends section 223(3)(b) by removing the reference to 3 months. This amendment will mean that there is no minimum non-employment period in relation to persons wishing to purchase the right to receive weekly compensation under the Act. *Clause 24(2)* amends section 223(3)(c)(i) by omitting the reference to permanent employment. Section 223(3)(c)(i) will therefore apply to both permanent and non-permanent employment. *Clause 24(3)* repeals section 223(3)(c)(ii) and substitutes a *new section 223(3)(c)(ii) and (iia)*. *New subparagraphs (ii) and (iia)* clarify that the calculation, for the purposes of an application to purchase the right to receive weekly compensation under section 223, must be based on a period of incapacity exceeding 5 weeks. *Clause 24(4)* repeals and substitutes section 223(6) to take account of the repeal and substitution of section 223(3)(c)(ii).

*Clause 25* amends section 250 by changing the time limits relating to penalties and interest due in respect of unpaid levies, to reflect the changes made (by *clauses 21, 22, and 23*) to the due date provisions in sections 168(3), 168A(3), and 168B(3).

*Clause 26* amends section 265 by inserting a *new subsection (1A)*, which makes clear that a subsidiary of the Corporation may provide services—

- that are outside the Corporation's functions under section 262, provided that the services are consistent with the purposes of the Act;
- whether or not the services are provided to a person who would not otherwise have cover under the Act.

*Clause 27* amends section 274(3B) to change an incorrect reference to section 270(2) to section 115(2) of the Crown Entities Act 2004. Section 270 was repealed by the Crown Entities Act 2004, and the relevant reference in section 274(3B) should be to section 115(2) of that Act.

*Clause 28* repeals section 324(2) and substitutes a *new section 324(2)*, which enables the Minister to use his or her discretion in deciding, before making a recommendation to the Governor-General to make regulations relating to rehabilitation, with whom consultation should occur.



*Clause 29* inserts a *new section 324A*. *New section 324A* relates to regulations made under section 324, and requires the Corporation to conduct an annual review of treatment cost prices, to enable adjustments to be made to take account of the effects of general price increases.

*Clause 30* repeals section 336(1)(a) and substitutes a *new section 336(1)(a)*, which relates to *new section 30(3)*. *New section 336(1)(a)* reflects the wording of *new section 30(3)*.

*Clause 31* amends section 366(1)(b) to clarify that section 366 applies only to claimants entitled to compensation under the Accident Rehabilitation and Compensation Act 1992 or the Accident Insurance Act 1998.

*Clause 32* amends section 384 by adding a *new subsection (1A)*, which allows surviving spouses or de facto partners of deceased persons, who are entitled to compensation under the Accident Compensation Act 1972 or the Accident Compensation Act 1982, to choose to aggregate their compensation payments in accordance with clause 67 of Schedule 1.

## **Part 2**

### **Further amendments to principal Act and regulations**

*Clause 33* amends Schedule 1 of the principal Act in the manner set out in the *Schedule* of this Bill. The amendments include—

- the repeal of clauses 33, 35, and 36 of Schedule 1, and the substitution of *new clause 33* and the amendment of clause 34. *New clause 33* and the amendments to clause 34 replace the existing calculations for weekly earnings (which are different for permanent and non-permanent employment) with calculations that apply to both situations;
- the repeal and substitution of clause 42(3)(a)(i) and (b)(i) to reflect the changes made to the Minimum Wage Act 1983 by the Minimum Wage (New Entrants) Amendment Act 2007;
- the repeal and substitution of clause 43. *New clause 43* largely repeats the provisions of the existing clause 43 (which apply only to employees), and extends them to apply to employees, self-employed persons, and shareholder-employees. *New clause 43* also extends the relevant eligibility period to 28

days after the person has ceased to be in employment. The current eligibility period is 14 days:

- an amendment to clause 47(4). This amendment provides that a claimant's weekly earnings are deemed to be the amount of weekly earnings determined under clause 42(3) multiplied by 125%. The effect of this amendment is to enable a claimant to earn up to 25% of the amount of his or her weekly compensation before the clause 51(2) (as amended) abatement regime applies:
- amendments to clause 51, which—
  - repeal subclause (1), which currently provides an abatement regime under which the Corporation is required to reduce the amount of weekly compensation payable to a claimant. The amount of the reduction depends on the amount of earnings derived by the claimant; and
  - amend subclause (2), which will require the Corporation to reduce the amount of weekly compensation payable to ensure that the total of the claimant's weekly compensation and earnings do not exceed the amounts calculated under clauses 33 to 45 or 47:
- *new clauses 55A to 55D*, which enable certain persons to elect to receive lump sum compensation or independence allowance in respect of personal injury caused by a work-related gradual process, disease, or infection in the circumstances described in section 30(2). In certain situations, a person may make a further election.

*Clause 33(2) and (3)* provide that certain amendments to Schedule 1 of the principal Act apply, in relation to a person's incapacity or entitlement (as the case may be), only after the date on which these clauses become law.

*Clause 34* amends regulation 3(a) of the Injury Prevention, Rehabilitation, and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002 by inserting a reference to 30 days from the date on which payment is due. This amendment relates to the changes to sections 168(3), 168A(3), 168B(3), and 250.

## Regulatory impact statement

### *Executive summary*

The overall purpose of this Bill is to continue the Government's commitment to a fair and sustainable ACC scheme for reducing the incidence and impact of personal injury, by proposing amendments to cover for work-related personal injuries, changes in weekly compensation eligibility and entitlement, and changes in entitlement and processes around vocational rehabilitation and independence. The Bill includes amendments in relation to other policy issues and also some technical changes.

The Bill makes substantive changes in 4 areas of policy—

- weekly compensation:
- cover for mental injury caused by a work-related traumatic event:
- cover for work-related gradual process, disease, or infection:
- vocational rehabilitation.

While there are a number of other changes introduced in the Bill, these are of a minor and technical nature, and consequently are not discussed in this statement.

### *Adequacy statement*

The Department of Labour confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis (the **RIA**) requirements, including the consultation RIA requirements, have been complied with. A regulatory impact statement was prepared and the Department of Labour considers it to be adequate.

### *Status quo and problem (cover for work-related gradual process, disease, or infection)*

Under the Injury Prevention, Rehabilitation, and Compensation Act 2001 (the **Act**), work-related gradual process, disease, or infection is covered if it meets specific criteria. First, there must be a personal injury as defined in section 26. Secondly, a causal link must be established between the personal injury and the person's employment. Some diseases receive cover under Schedule 2, which provides a streamlined cover process for diseases with a strong link to occupation. However, the majority of work-related gradual process,

disease, or infection claims must meet the three-step test of causation set out in section 30(2) of the Act before being covered. This requires that—

- the employment task or environment has a property or characteristic that causes or contributes to the cause of the condition (although the property need not have been present throughout the whole of the claimant's employment). This is often referred to as the causative agent:
- the causative agent is not found to any material extent in the claimant's non-work activities or environment:
- the risk of suffering this form of personal injury is significantly greater for people who are employed in this type of employment task or work in that environment than for people who are employed in occupations that do not involve those tasks or that environment.

The Ministerial Advisory Panel on Work-Related Gradual Process, Disease, or Infection highlighted the three-part test as a barrier for cover for claimants with a work-related gradual process, disease, or infection. The Panel noted that the burden of proof rested with the claimant and could be hard to meet.

### *Objectives*

To provide greater certainty of cover for claimants with a work-related gradual process, disease, or infection.

### *Alternative options*

While some operational solutions are being considered, the problems around legislative barriers and lack of clarity for claimants regarding cover cannot solely be fixed through operational means.

Aside from the status quo, a number of options for amending the three-part test were identified. The preferred option incorporates elements of 3 of the 4 options developed. A further option, which was to remove section 30(2)(c) of the three-part test altogether, was rejected on the grounds that it removed the safety net for determining whether an injury is work-related, if the first 2 tests are inconclusive.

### *Preferred option*

It is proposed that 3 amendments be made to the three-part test set out in section 30(2)—

- an amendment to clarify that the responsibility and cost for investigating a claim rests with ACC;
- an amendment to the three-part test to clarify the threshold of allowable non-work exposure. Under this change, if a person has both work and non-work exposure to the cause of the injury, the person will receive cover if the work exposure was the more likely cause;
- an amendment to the section so that, if a person otherwise meets the requirements of section 30(2), a claim could be declined only if ACC proves that the work task or work environment places the claimant at no significantly greater risk of developing that personal injury.

### ***Costs and benefits***

ACC has estimated the central cost of the proposal to be \$11,835,015 (excluding GST). The major cost impact will be from claims that would have been declined but will instead be accepted. Claims that have previously been declined are not likely to have an impact as the reasons for declinature will not have changed.

The proposed changes will result in one-off increased administrative costs for ACC and accredited employers during the period in which the changes are implemented. It should also be noted that any increase in costs for workplaces would result in a commensurate decrease in the burden on workers who suffer from a work-related gradual process, disease, or infection.

The proposed changes would provide greater clarity for claimants and ACC around responsibilities for investigating claims, as well as removing some of the barriers to cover.

### ***Status quo and problem (cover for mental injury caused by work-related traumatic event)***

The Act covers mental injury in 2 situations: mental injury suffered because of the claimant's physical injuries, and mental injury suffered as a result of certain types of sexual abuse or assault. No cover is currently available for mental injury caused by exposure to a sudden traumatic event in the course of employment (for example, witnessing a colleague being shot in a bank robbery, or a train driver hitting someone on the tracks).

### *Objectives*

To ensure that people who suffer a mental injury caused by exposure to a sudden traumatic event during the course of employment receive cover under the ACC scheme in the same way that other work injuries receive cover.

### *Alternative options*

Aside from the status quo, 3 other options in addition to the preferred option were identified. Elements of some of these options were included in the preferred option. These options were to provide cover for a more limited range of conditions (ie, post traumatic stress disorder only) or to specify that the event could not be a normally or reasonably expected part of employment. These options were rejected on the grounds that they were unreasonably restrictive.

### *Preferred option*

The Bill provides cover for mental injury (a clinically significant behavioural, cognitive, or psychological dysfunction) caused by exposure to a sudden traumatic event during the course of employment. It is not intended that mental injuries caused by a non-work exposure be covered.

### *Costs and benefits*

ACC has estimated the central cost of this option is \$22.6 million per annum. The cost range is estimated to be between \$7.6 million and \$72.2 million per annum. This would mean an increase to levy rates of 3.8 cents per \$100 of liable earnings based on the central estimate cost. The cost range estimate translates to a potential increase in levies of between 1.3 cents and 12.1 cents of liable earnings per \$100 of earnings. The costs would be funded solely from the Work Account.

The proposed amendment will address the gap in cover for people who suffer a mental injury as a result of exposure to a traumatic event in the course of their employment, and ensure that people who are harmed in this way receive cover. Providing cover will ensure appropriate treatment, rehabilitation, and help to facilitate an early and sustainable return to work in cases where the claimant has had to take time off.

### ***Status quo and problem (changes to weekly compensation)***

In general, weekly compensation is paid to eligible claimants at 80% of pre-injury earnings and is intended to provide earnings-related compensation so that claimants can meet their everyday expenses and focus on recovery. Weekly compensation is paid to eligible claimants regardless of whether a worker's injury occurs at work or elsewhere.

The Strategic Review of ACC Weekly Compensation was commissioned in response to concerns that seasonal workers were being disadvantaged by the current rules for calculating weekly compensation. The review found that the rules for assessing weekly compensation continue to meet the needs of people in standard work. However, nearly a quarter of today's workforce is in non-standard work. They may be in part-time work, self-employment, undertake casual or seasonal work, or regularly move in and out of employment.

### ***Objectives***

To ensure that claimants receive certain and reasonable weekly compensation that is easy to understand.

### ***Alternative options***

Two alternative packages of proposals were also developed.

The first package improved access and assessment, while retaining the remaining features of the weekly compensation framework. The full-funded cost per year of the package was between \$6.1 million and \$9.1 million. This package addressed the 2 issues that instigated the review: access to compensation for claimants injured while not working and under-compensation for non-permanent employees (ie, seasonal or casual workers). However, the package did not make the assessment easier for claimants to understand. Therefore, this option was not favoured.

The second package was a comprehensive package of options that dealt with all the issues through legislative change. The indicative full-funded cost per year of the package was between \$63 million and \$138.6 million. The comprehensive package had the highest overall net benefits compared to the other options, given that it addressed all the issues identified in the most comprehensive fashion. However, a number of the proposals went beyond what could be

considered reasonable compensation, which could create disincentives for returning to work. The magnitude of the proposals resulted in a package that was 3 times more expensive than the next option, which would have a significant impact on ACC levies. Therefore, the option was not favoured.

### ***Preferred option***

The preferred option provides a package of policies, the key elements of which are—

- improving access to weekly compensation for people who are injured while temporarily between jobs: employees are currently eligible for weekly compensation if they are injured within 14 days of leaving paid employment and had arranged future work as an employee. The Act does not, however, allow access to weekly compensation for people who are injured in a period between moving from a self-employed, or a shareholder-employee, position to employment as an employee. The proposal extends the period of eligibility after leaving employment to 28 days and also allows self-employed people and shareholder-employees who are injured during a transition to employment as an employee to be eligible in the same way as employees. This addresses the issue of uncertainty for the majority of people who are between jobs:
- fairer and more straightforward weekly compensation for seasonal and casual employees: after the first 5 weeks of incapacity, compensation for non-permanent employees (eg, seasonal workers) is assessed against periods of earnings and non-earnings. Under this approach, some employees may receive compensation that does not reflect their lost earnings. To ensure that all claimants receive weekly compensation that is reflective of their lost earnings and is easily understood, it is proposed that the way that weekly compensation is calculated be changed. For short-term compensation, claimants' earnings (from employment held at the date of incapacity) in the 4 weeks before the incapacity will be divided by the full and part weeks worked in that period. For long-term compensation, claimants' earnings in the 52 weeks (from employment held at the date of incapacity) before the incapacity will be divided by the full and part weeks worked during that period:



- improved abatement conditions for partially incapacitated people who return to work part-time: abatement provides an incentive for claimants to return to work; however, the complexity of the current regime means that some claimants do not understand their weekly compensation, which can act as a barrier to a graduated return to work. A revised abatement regime is proposed, in which claimants are able to earn up to 100% of their weekly earnings (as calculated under the Act) before weekly compensation is abated and that, as per the status quo, abatement is dollar for dollar above that level. This assessment provides a greater incentive for claimants to make an initial return to work as well as making the assessment easier to understand:
- increases for people receiving minimum weekly compensation from the second week of incapacity onwards: weekly compensation increases to the minimum full-time earner rate only after an employee is incapacitated for more than 5 weeks. In order to minimise the financial hardship faced by low income claimants, it is proposed to allow full-time workers to increase their weekly compensation to the minimum rate after the first week of incapacity:
- increases in loss of potential earnings (LOPE) compensation for young people: injured claimants who are under 18, or over 18 and who have been in continuous full-time study since the age of 18, are eligible for compensation for LOPE. Weekly compensation is based on the greater of the minimum wage or 125% of the invalid's benefit, and is payable at 80% of the greater rate. Currently, the level of compensation does not adequately reflect an average life-long pattern of earnings. As a step towards acknowledging a person's real potential earnings, this option allows eligible claimants to receive weekly compensation at 100% of the greater of the minimum wage or 125% of the invalid's benefit.

### ***Costs and benefits***

The estimated total full-funded cost per year of the package is between \$25.8 million and \$40.2 million. An increase in appropriations of approximately \$1.5 million (from 2008/09) for the Non-Earners' Account is required to fund the proposed changes for loss of potential earnings compensation. Costs would also be funded from the Work, Motor Vehicle, and Earners' Accounts.

The proposed changes will give injured workers greater certainty of access to reasonable weekly compensation that is easier to understand and allows claimants to focus on rehabilitation free from any financial burden.

### *Status quo and problem (vocational rehabilitation)*

The ACC scheme entitles certain claimants who are incapacitated to vocational rehabilitation in order to restore the claimant to employability as far as practicable. Legislative provisions for vocational rehabilitation for claimants could be enhanced to provide better outcomes.

### *Objectives*

To ensure that injured people are restored to employability as far as practicable and are able to contribute to the economy. A secondary objective is to ensure that the vocational rehabilitation provisions in the Act are sufficiently flexible to allow ACC to deliver the most appropriate rehabilitation in most cases.

### *Alternative options*

#### *Three-year limit*

At present claimants are only eligible for a maximum of 3 years in total of vocational rehabilitation. There are some claimants who need more vocational rehabilitation such as those who are seriously injured and need ongoing assistance to stay in the work force.

Two other options were identified. The first was removal of the maximum time limit. This was not pursued as it risked unnecessary vocational rehabilitation being given with a potential high cost. The second option was removal of the maximum time limit for claimants who meet specific criteria. This was not pursued as it was likely to be of a high cost and might not capture all claimants.

#### *Upper age limit*

Vocational rehabilitation is currently linked to weekly compensation. Entitlement to weekly compensation is affected by the transitional arrangements between weekly compensation and New Zealand superannuation.

Two other options were identified. The first was simplified transitional arrangements to allow people over 65 to have at least 2 years of vocational rehabilitation. This was not pursued because it does not address limits to vocational rehabilitation for people affected by the transitional arrangements. The second option, providing a discretionary extension of the eligibility period, was not considered suitable because of the increased complexity and associated risks.

### ***Pre-incapacity earnings***

Occupational assessors are not currently obliged to take into account a claimant's pre-incapacity earnings during any occupational assessment.

Two other options were identified. The first, maintaining the current provisions with operational changes, was not pursued because it would not provide a clear legislative requirement and assessors might not consider the pre-incapacity earnings. The second option was a legislative amendment providing that the Occupational Assessor could consider pre-injury earnings if appropriate. This option was not pursued as it did not place a requirement on assessors and would be likely to result in a higher risk of reviews and appeals.

### ***Preferred options***

#### *Discretionary extension of the 3-year limit on vocational rehabilitation*

The Bill provides ACC with discretion to extend the 3-year limit on vocational rehabilitation, where appropriate.

#### *Removal of upper age limit for vocational rehabilitation*

The Bill removes the upper age limit so that eligibility for vocational rehabilitation may continue despite the transitional arrangements between weekly compensation and superannuation. Eligibility for vocational rehabilitation will not be affected by loss of entitlement to weekly compensation if the reason for the loss of entitlement is that claimants have reached, or are over, the qualifying age for New Zealand superannuation. Additional vocational rehabilitation can be delivered where this is appropriate to return claimants aged at or over the New Zealand superannuation qualification age to work.

#### *Requirement for occupational assessors to take into account pre-incapacity earnings*

The Bill requires that occupational assessors consider a claimant's pre-incapacity earnings when identifying suitable work-types in occupational assessments. This will help to ensure that jobs identified for claimants during assessments reflect a claimant's previous earnings, where this is possible.

### *Costs and benefits*

The policies mostly contributing to the cost increases are the 3-year limit and the upper age limit. The estimated central cost for the 3-year limit policy is \$1,721,127 (excluding GST). The estimated central cost for the upper age limit policy is \$1,170,572 (excluding GST). It is expected that most costs for these proposals will be met from ACC levies (with most costs being met from the Earners' and Work Accounts, and smaller impacts on the Motor Vehicle and Residual Claims Accounts). There are small costs attributed to the Non-Earners' Account for potential earners, and an increase in appropriations of approximately \$25,000 (for 2008/09) is required. The costs for the earnings rate proposal are minimal.

The proposals will allow ACC greater flexibility to deliver appropriate rehabilitation and help to ensure that injured people are restored to employment or employability.

### *Implementation and review*

The proposed changes will be implemented through the Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 2). If implemented, the changes in the Bill will be subject to monitoring and evaluation by ACC and the Department of Labour.

### *Consultation*

ACC and the Treasury were consulted on this statement.

The following government agencies and organisations were consulted on the various policies contained in the Injury Prevention, Rehabilitation, and Compensation Bill (No 2): the Departments of Labour, and the Prime Minister and Cabinet, the Ministries of Social Development, Justice, Pacific Island Affairs, Women's Affairs, and Health, the Office of Disability Issues, ACC, the Treasury, Te Puni Kōkiri, New Zealand Defence Force, and New Zealand Police.

In addition, a range of external stakeholders were consulted on some of the policies contained in the Bill, including the ACC Ministerial

Advisory Group, the New Zealand Council of Trade Unions, and  
Business New Zealand.

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*Hon Maryan Street*

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

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) **2007**.
- 2 Commencement**  
(1) **Section 4(4)** comes into force on a date to be appointed by the Governor-General by Order in Council. 5

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

<b>3</b>	<b>Principal Act amended</b>	<b>5</b>
	This Act amends the Injury Prevention, Rehabilitation, and Compensation Act 2001.	

## **Part 1**

### **Amendments to principal Act**

<b>4</b>	<b>Interpretation</b>	<b>10</b>
(1)	Section 6(1) is amended by inserting the following definition in its appropriate alphabetical order: “ <b>nurse practitioner</b> means a health practitioner who— “(a) is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of nurse practitioner functions; and “(b) holds a current practising certificate”.	<b>15</b>
(2)	The definition of <b>registered health professional</b> in section 6(1) is amended by inserting “nurse practitioner,” after “nurse,”.	<b>20</b>
(3)	The definition of <b>treatment provider</b> in section 6(1) is amended by inserting “nurse practitioner,” after “nurse,”.	<b>25</b>
(4)	The definition of <b>nurse practitioner</b> in section 6(1) is repealed and the following definition substituted: “ <b>nurse practitioner</b> has the meaning given to it in regulations made under this Act”.	
<b>5</b>	<b>Cover for personal injury suffered in New Zealand (except mental injury caused by certain criminal acts)</b>	<b>30</b>
(1)	The heading to section 20 is amended by inserting “ <b>or work-related mental injury</b> ” after “ <b>criminal acts</b> ”.	
(2)	Section 20(3)(b) is amended by omitting “(2)(d)” and substituting “(2)(e)”.	<b>35</b>



**6 New section 21B inserted**

The following section is inserted after section 21A:

**“21B Cover for work-related mental injury**

- “(1) A person has cover for a personal injury that is a mental injury if— 5
- “(a) he or she suffers the mental injury inside or outside New Zealand on or after the date that **section 6** of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) **2007** came into force; and
  - “(b) the mental injury is caused by a single event of a type to which **subsection (2)** applies. 10
- “(2) **Subsection (1)(b)** applies to an event that—
- “(a) the person experiences, sees, or hears in the circumstances described in section 28(1); and
  - “(b) is sudden; and 15
  - “(c) is an event that could reasonably be expected to cause mental injury; and
  - “(d) is experienced, seen, or heard by the person directly; and
  - “(e) occurs— 20
    - “(i) in New Zealand; or
    - “(ii) outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs.
- “(3) For the purposes of this section, it is irrelevant whether or not the person is ordinarily resident in New Zealand on the date on which he or she suffers the mental injury. 25
- “(4) Section 36(1) describes how the date referred to in subsection (3) is determined.
- “(5) In this section, a person experiences, sees, or hears an event directly if that person— 30
- “(a) is involved in or witnesses the event himself or herself; and
  - “(b) is in close physical proximity to the event at the time of the event. 35
- “(6) To avoid doubt, a person does not experience, see, or hear an event directly if that person experiences, sees, or hears an event through a secondary source, for example, by—
- “(a) seeing the event on television (including closed circuit television): 40

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“(b) seeing pictures of, or reading about, the event in news media:	
“(c) hearing the event on radio or by telephone:	
“(d) hearing about the event from radio, telephone, or another person.”	5
<b>7 Cover for personal injury suffered outside New Zealand (except mental injury caused by certain criminal acts)</b>	
(1) The heading to section 22 is amended by inserting “ <b>or work-related mental injury</b> ” after “ <b>criminal acts</b> ”.	
(2) Section 22 is amended by adding the following subsection:	10
“(7) A person who suffers personal injury that is work-related mental injury in circumstances described in <b>section 21B</b> has cover under <b>section 21B</b> , but not under this section.”	
<b>8 Personal injury</b>	
Section 26(1) is amended by inserting the following paragraph after paragraph (d):	15
“(da) work-related mental injury that is suffered by a person in the circumstances described in <b>section 21B</b> ; or”.	
<b>9 Work-related personal injury</b>	
Section 28 is amended by inserting the following subsection after subsection (4):	20
“(4A) <b>Work-related personal injury</b> includes work-related mental injury that is suffered in the circumstances described in <b>section 21B</b> .”	
<b>10 Personal injury caused by work-related gradual process, disease, or infection</b>	25
(1) Section 30 is amended by inserting the following subsection after subsection (1):	
“(1A) Subsection (1)(c) is subject to <b>subsection (2A)</b> .”	
(2) Section 30(2)(b)(ii) is repealed.	30
(3) Section 30(2) is amended by repealing paragraph (c) and substituting the following paragraph:	
“(c) that, if the particular property or characteristic is present in both the person’s employment tasks or environment and non-employment activities or environment, it is	35

- more likely that the person's personal injury was caused as a result of the employment tasks or environment rather than the non-employment activities or environment."
- (4) Section 30 is amended by inserting the following subsection after subsection (2): 5
- “(2A) However, even if it is established that a claimant's personal injury was caused in the circumstances described in subsection (2), the Corporation may decline the claim if the Corporation establishes that the risk of suffering the personal injury is not significantly greater for persons who— 10
- “(a) perform the employment task than it is for persons who do not perform it; or
- “(b) are employed in that type of environment than it is for persons who are not.” 15
- (5) Section 30 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) **Personal injury caused by a work-related gradual process, disease, or infection** includes personal injury that is— 20
- “(a) of a type described in Schedule 2; and
- “(b) suffered by a person who is or has been in employment—
- “(i) that involves exposure, or the prescribed level or extent of exposure, to agents, dusts, compounds, substances, radiation, or things (as the case may be) described in that schedule in relation to that type of personal injury; or 25
- “(ii) in an occupation, industry, or process described in that schedule in relation to that type of personal injury.” 30
- (6) Section 30 is amended by inserting the following subsection after subsection (3):
- “(3A) To avoid doubt, where a claim is lodged for cover for a work-related gradual process, disease, or infection, section 57 applies to require, among other things, the Corporation to investigate the claim at its own expense.” 35
- (7) The amendments made by this section do not apply in respect of claims that have been—
- (a) lodged before the commencement of this section; or

- (b) decided before, and resubmitted on or after, the commencement of this section.
- (8) Claims referred to in **subsection (7)** must be determined in accordance with section 30 as it was immediately before the commencement of this section. 5
- 11 Motor vehicle injury**  
Section 35 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) Motor vehicle injury—**
- “(a) means—** 10
- “(i) a personal injury suffered because of the movement of a motor vehicle; or**
- “(ii) a personal injury suffered because of a stationary motor vehicle being struck by another motor vehicle or some other means of conveyance; but** 15
- “(b) does not include a personal injury that is a work-related mental injury.”**
- 12 Date on which person is to be regarded as suffering mental injury**  
Section 36(1) is amended by inserting “or **21B**” after “section 21”. 20
- 13 Date on which person is to be regarded as suffering personal injury caused by work-related gradual process, disease, or infection**  
Section 37(1)(a) is amended by inserting “or nurse practitioner” after “medical practitioner”. 25
- 14 Steps Corporation takes to action complicated claims for cover**  
Section 57(1)(a) is amended by inserting “or **21B**” after “section 21”. 30
- 15 Corporation liable to provide vocational rehabilitation**  
Section 85 is amended by adding the following subsection as subsection (2):
- “(2) Despite subsection (1)(b)(i), the Corporation is liable to provide vocational rehabilitation to a person who was entitled to** 35

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

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

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

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

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

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

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

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

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

**17 Conduct of initial occupational assessment**

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

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

- 18 Procedure in determining incapacity under section 103 or section 105**  
Section 102(2)(a) is amended by inserting “or nurse practitioner” after “medical practitioner”.
- 19 Corporation to determine incapacity of claimant who, at time of incapacity, had ceased to be employee, was potential earner, or had purchased weekly compensation under section 223** 5
- (1) Section 105 is amended by omitting the heading and substituting the following heading: “**Corporation to determine incapacity of certain claimants who, at time of incapacity, had ceased to be in employment, were potential earners, or had purchased weekly compensation under section 223**”. 10
- (2) Section 105(1)(a) is amended by inserting “, a self-employed person, or a shareholder-employee, as the case may be” after “employee”. 15
- 20 Disentitlement for wilfully self-inflicted personal injuries and suicide**
- (1) Section 119 is repealed.
- (2) To avoid doubt, any claimant who was, at any time before this section came into force, disentitled under section 119(1) remains disentitled. 20
- 21 Employers to pay levies**  
Section 168(3) is amended by omitting “2 months” and substituting “30 days”. 25
- 22 Private domestic workers to pay levies**  
Section 168A(3) is amended by omitting “2 months” and substituting “30 days”.
- 23 Self-employed persons to pay levies**  
Section 168B(3) is amended by omitting “2 months” and substituting “30 days”. 30
- 24 Persons eligible to purchase weekly compensation**
- (1) Section 223(3)(b) is amended by omitting “less than 3 months nor”.

- (2) Section 223(3)(c)(i) is amended by omitting “permanent”.
- (3) Section 223(3)(c) is amended by repealing subparagraph (ii) and substituting the following subparagraphs:
- “(ii) the person had an incapacity that commenced on the last full day of the employment referred to in subsection (2)(a) and that resulted from a personal injury for which he or she had cover; and
- “(iia) the weekly earnings were to be calculated for a period of incapacity after the first 5 weeks of incapacity; and”.
- (4) Section 223 is amended by repealing subsection (6) and substituting the following subsection:
- “(6) A person who is on parental leave within the meaning of the Parental Leave and Employment Protection Act 1987, or who has had an application for parental leave approved under that Act, is regarded as being still in employment for the purposes of subsection (2) and, for the purposes of subsection (3)(c), the person’s weekly earnings are to be calculated as if the period of incapacity was before the commencement of the person’s parental leave.”
- 25 Penalties and interest due to Corporation in respect of unpaid levies**
- (1) Section 250(1) is amended by inserting “that is 30 days” after “unpaid on the day”.
- (2) Section 250(2) is amended by omitting “2 months” and substituting “30 days”.
- (3) Section 250(4) is amended by—
- (a) omitting “6 months after the due date” and substituting “210 days after the due date”; and
- (b) omitting “every 6 months” and substituting “every 180 days”; and
- (c) omitting “first 6-month period” and substituting “210-day period”.
- 26 Ancillary powers of Corporation**
- Section 265 is amended by inserting the following subsection after subsection (1):

- “(1A) To avoid doubt, the Corporation may provide services under subsection (1)—
- “(a) that are outside the functions of the Corporation under section 262, provided that the services are consistent with the purposes of the Act: 5
  - “(b) whether or not the services are provided to a person who would not otherwise have cover under this Act.”
- 27 Management of Accounts**  
Section 274(3B) is amended by omitting “section 270(2)” and substituting “section 115(2) of the Crown Entities Act 2004”. 10
- 28 Regulations relating to rehabilitation**  
Section 324 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) The Minister must not make any recommendation under subsection (1) without first receiving a recommendation from the Corporation and consulting the persons or organisations the Minister considers appropriate, having regard to the subject-matter of the proposed regulations.” 15
- 29 New section 324A inserted** 20  
The following section is inserted after section 324:
- “324A Annual review of amounts prescribed by regulations made under section 324**
- “(1) The Corporation must conduct an annual review of the amounts, prescribed by regulations made under section 324, that the Corporation is liable to pay for the entitlement of rehabilitation. 25
  - “(2) The purpose of the review is to assess whether adjustment to any of the amounts is required to take into account changes in costs of rehabilitation. 30
  - “(3) The Corporation must, by 1 December each year,—
    - “(a) provide a report on the results of the review to the Minister; and
    - “(b) include in that report any recommendations for change that it may have.” 35



**30 Amendment of Schedule 2 by Order in Council**

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

- “(a) adding or varying the description of a personal injury, together with the corresponding— 5
  - “(i) agents, dusts, compounds, substances, radiation, or things (as the case may be) and, if appropriate, the relevant level or extent of exposure to such agents, dusts, compounds, substances, radiation, or things; or 10
  - “(ii) occupations, industries, or processes; or”.

**31 Weekly earnings of certain claimants increased**

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

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

Section 384 is amended by inserting the following subsection after subsection (1): 20

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

**Part 2**

**Further amendment to principal Act and regulations**

**33 Schedule 1 amended** 30

- (1) Schedule 1 is amended in the manner set out in the **Schedule** of this Act.
- (2) The amendments set out in the **Schedule** that relate to **clauses 33 to 36 and clause 43 of Schedule 1 of the principal Act** apply only in respect of claimants whose incapacity commenced on or after the commencement of this section. 35

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- (3) The amendments set out in the **Schedule** that relate to **clauses 42(1)(c) and (2), 47(4), 49, and 51 of Schedule 1 of the principal Act** apply only in respect of—
- (a) claimants who are entitled to the relevant weekly compensation on or after the commencement of this section; 5  
and
  - (b) weekly compensation payable for a period beginning on or after the commencement of this section.
- 34 Amendment to Injury Prevention, Rehabilitation, and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002** 10
- (1) This section amends the Injury Prevention, Rehabilitation, and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002.
- (2) Regulation 3(a) is amended by inserting “that is 30 days after the date” after “from the date”. 15
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## Schedule Amendments to Schedule 1

### Clause 25

Insert after subclause (1):

“(1A) In considering the suitability of the types of work referred to in subclause (1)(c), the occupational assessor must take into account, among other things, the claimant’s earnings before the claimant’s incapacity.” 5

### Heading above clause 33

Omit “*in permanent employment*” and substitute “*claimant*”. 10

### Clause 33

Repeal and substitute:

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

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

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

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

“(2) If the claimant had employment with more than 1 employer at that time, the weekly earnings of the claimant, in respect of each employer he or she had at that time, are as calculated separately under clause 34 and aggregated under clause 41.” 20

### Clause 34

Heading to clause 34: omit “**in permanent employment**”. 25

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

Subclause (2): item a: omit “(from employment with that employer)” and substitute “(from the claimant’s employment immediately before the claimant’s incapacity commenced)”. 30

### Clause 35

Repeal.

### Clause 36

Repeal. 35

### Clause 38

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

**Clause 38**—*continued*

Add:

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

“(a) applies only to the calculation of weekly earnings for the purposes of weekly compensation that is payable for a period commencing on or after 1 July 2005; and 5

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

**Clause 39** 10

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

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

Subclause (5): omit “clauses 33 to 36” and substitute “clauses 33 and 34”. 15

Add:

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

“(a) applies only to the calculation of weekly earnings for the purposes of weekly compensation that is payable for a period commencing on or after 1 July 2005; and 20

“(b) does not authorise an increase to the rate of weekly compensation that is payable for a period before 1 July 2005.” 25

**Clause 41**

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

Subclause (3): omit “clauses 33 to 36” in each place where it appears and substitute in each case “clauses 33 and 34”. 30

Subclause (5): omit “or clause 36”.

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

**Clause 42**

Subclause (1)(b): omit “36”.

Subclause (1)(c): omit “5 weeks” and substitute “1 week”. 35

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

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

**Clause 42**—*continued*

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

Subclause (3)(b): omit “over 18 years of age” and substitute “18 years of age or over”. 5

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

“(i) the minimum weekly wage under the Minimum Wage Act 1983 for a person aged 18 years or older to whom section 4(1)(c) of that Act does not apply; or” 10

**Clause 43**

Repeal and substitute:

**“43 Weekly earnings if employment ended before commencement of incapacity**

“(1) **Subclause (2)** applies to a claimant who, before his or her incapacity commenced, has ceased to be in employment. 15

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

“(a) 28 days from the date he or she ceased to be in employment, if he or she— 20

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

“(ii) would have been an employee within the period specified in **subclause (3)** after the date on which his or her incapacity commenced, but for the incapacity; or 25

“(b) the period for which payments that the claimant is entitled to receive on ceasing employment and on which earner levy is payable constitute earnings under **subclause (4)**. 30

“(3) For the purposes of **subclause (2)(a)(ii)**, the period is,—

“(a) unless **paragraph (b)** applies, 3 months if the claimant had entered into an employment agreement, or had arranged to enter into an employment agreement, before the incapacity commenced; or 35

“(b) 12 months if—

**Clause 43**—*continued*

- “(i) the claimant was employed in seasonal employment with the same employer as he or she had been employed in the 2 seasons before the claimant’s incapacity commenced; and
- “(ii) the employer confirms that the claimant could reasonably have expected to be re-employed in the season after the claimant’s incapacity commenced. 5
- “(4) A claimant, who is deemed by **subclause (2)(b)** to continue to be in employment, is also deemed to be deriving earnings at the same rate as he or she derived earnings while in employment immediately before he or she ceased to be an employee, a self-employed person, or a shareholder-employee, as the case may be. 10
- “(5) For the purposes of calculating the claimant’s weekly earnings, the date his or her incapacity commenced is deemed to be the last date on which the claimant was in employment. 15
- “(6) Unless the personal injury is a motor vehicle injury, a work-related personal injury, or a treatment injury, payments under this clause come from the Earners’ Account.
- “(7) In this clause— 20
- “**employee** includes an employee who is on unpaid leave that is not unpaid parental leave
- “**employment** means employment as—
- “(a) an employee; or
- “(b) a self-employed person; or 25
- “(c) a shareholder-employee.”

**Clause 45(3)**

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

**Clause 47**

Insert after subclause (1): 30

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

- “(a) includes any full-time course or training leading to an educational or vocational qualification approved by the New Zealand Qualifications Authority that would be likely to enhance the employment prospects, either generally or in respect of any particular profession or 35

**Clause 47**—*continued*  
 occupation, of a person who has attained that qualification; but  
 “(b) does not include full-time study or training in living or social skills.”  
 Subclause 4: omit “claimant is deemed to have the amount of minimum weekly earnings determined under clause 42(3)” and substitute “claimant’s weekly earnings are deemed to be the amount of weekly earnings determined under clause 42(3) multiplied by 125%”. 5

**Clause 49**  
 Subclause (1): repeal. 10  
 Subclause (2): repeal.  
 Subclause (3): repeal and substitute:  
 “(3) In clause 51(2), **earnings** does not include any payment made on the termination of employment in respect of leave entitlements.” 15  
 Subclause (4): omit “51(1) and (2)” and substitute “51(2)”.

**Clause 51**  
 Subclause (1): repeal.  
 Subclause (2): omit “The Corporation must also reduce the amount of weekly compensation paid” and substitute “In calculating weekly compensation under this Part, the Corporation must reduce the amount of weekly compensation paid to a claimant”. 20  
 Subclause (3): repeal.

**Clause 55**  
 Add: 25  
 “(6) Subclauses (2), (4), and (5) apply subject to clauses 55A to 55D.”

**New clauses 55A to 55D**  
 Insert after clause 55:  
**“55A Certain persons may elect to receive either lump sum compensation or independence allowance: assessment, notification, and election** 30  
 “(1) The Corporation must, to enable a person to make an election under subclause (4), determine whether the person meets the criteria for entitlement to both lump sum compensation (under clauses 57 to 60) and an independence allowance (under 35

**New clauses 55A to 55D**—*continued*

clauses 58 to 60 of Schedule 1 of the Accident Insurance Act 1998).

- “(2) However, a determination under subclause (1) is required only if the person—
- “(a) suffered a personal injury caused by a work-related gradual process, disease, or infection in the circumstances described in section 30(2); and 5
  - “(b) last performed the task or was employed in the environment in those circumstances before 1 April 2002; and
  - “(c) suffered the personal injury on or after the date on which **section 31** of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) **2007** came into force. 10
- “(3) The Corporation must, after complying with **subclause (1)**,—
- “(a) make a decision (which, to avoid doubt, is to be treated as a single decision) as to whether the person has, for the purposes of an election under subclause (4), an entitlement to both lump sum compensation and an independence allowance; and 15
  - “(b) notify the person of its decision, in accordance with section 64, and include with that notification information about— 20
    - “(i) the Corporation’s assessment of the person’s degree of whole-person impairment; and
    - “(ii) the amounts of lump sum compensation and independence allowance that the person would, if he or she elected to receive that compensation or allowance, be entitled to receive; and 25
    - “(iii) the Corporation’s estimate of the period for which the person would need to receive an independence allowance for that allowance to equal the value of the lump sum compensation that would be payable to the person, calculated using appropriate actuarial methodology; and 30
  - “(c) inform the person—
    - “(i) that he or she is entitled to elect which of the entitlements he or she wishes to receive; and 35
    - “(ii) of the matters specified in subclause (4).
- “(4) A person who is assessed as having an entitlement to either lump sum compensation or an independence allowance—



**New clauses 55A to 55D—continued**

- “(a) may, within 60 days of being given notification in accordance with section 64, elect which entitlement he or she wishes to receive; or
  - “(b) is, if no election is made within 60 days, deemed to have elected to receive an independence allowance.
  - “(5) An election under subclause (4)(a) must be made in writing to the Corporation. 5
  - “(6) Section 37 applies for the purposes of subclause (2)(c).
  - “(7) Section 64 applies to a notification by the Corporation under this clause as if the notification were a notice of a decision on a claim. 10
- “55B Certain persons may elect to receive either lump sum compensation or independence allowance: persons not entitled to make election under clause 55A**
- “(1) If the result of the Corporation’s determination under **clause 55A(1)** is that the person does not meet the criteria for entitlement to both lump sum compensation and an independence allowance, the following provisions apply: 15
    - “(a) if the person meets the criteria for entitlement to lump sum compensation but not an independence allowance, the person may not exercise the right of election under **clause 55A(4)** but is entitled to receive lump sum compensation: 20
    - “(b) if the person meets the criteria for entitlement to an independence allowance but not lump sum compensation, the person may not exercise the right of election under **clause 55A(4)** but is entitled to receive an independence allowance: 25
    - “(c) if the person does not meet the criteria for entitlement to lump sum compensation or an independence allowance, the person may not exercise the right of election under **clause 55A(4)** and the Corporation must decline the person’s claims to those entitlements. 30
  - “(2) However, the Corporation must again comply with **clause 55A(1)** in relation to a person if— 35
    - “(a) the person has been reassessed under clause 61 of Schedule 1 of the Accident Insurance Act 1998, and the

**New clauses 55A to 55D**—*continued*

- reassessment indicates that the person’s degree of whole-person impairment has changed; or
- “(b) a review of the Corporation’s decision (under section 134), or an appeal (under section 149), has resulted in a change to the assessment of the person’s degree of whole-person impairment. 5
- “55C Certain persons may elect to receive either lump sum compensation or independence allowance: reassessment, notification, and further election**
- “(1) A person may make a further election if— 10
- “(a) the person has elected, or is deemed to have elected, to receive (or continue to receive) an independence allowance; and
- “(b) either of the situations in **subclause (2)** apply.
- “(2) The situations are that— 15
- “(a) the person has been reassessed under clause 61 of Schedule 1 of the Accident Insurance Act 1998, and the reassessment indicates that the person’s degree of whole-person impairment has changed:
- “(b) a review of the Corporation’s decision (under section 134), or an appeal (under section 149), has resulted in a change to the assessment of the person’s degree of whole-person impairment. 20
- “(3) If either of the situations in **subclause (2)** apply, the Corporation must— 25
- “(a) provide the person with the information specified in **clause 55A(3)(b)**, updated to take account of the change in circumstances; and
- “(b) inform the person— 30
- “(i) that he or she is entitled to make a further election, in light of the reassessment, as to which of the entitlements he or she wishes to receive; and
- “(ii) of the matters specified in **subclause (4)**.
- “(4) A person to whom either of the situations in **subclause (2)** applies— 35
- “(a) may, within 60 days of being given the information specified in **subclause (3)**, make a further election as to which entitlement he or she wishes to receive; or

**New clauses 55A to 55D—continued**

- “(b) is, if no election is made within 60 days, deemed to have elected to continue to receive an independence allowance.
- “(5) An election under **subclause (4)(a)** must be made in writing to the Corporation.
- “**55D Certain persons may elect to receive either lump sum compensation or independence allowance: general** 5
- “(1) The information referred to in **clause 55C(3)(a)** must, in relation to the amount of lump sum compensation payable, take into account any amount of independence allowance paid to the person following his or her initial election, or deemed election, as the case may be, under **clause 55A(4) or 55C(4)**. 10
- “(2) If a claimant makes a further election, in accordance with **clause 55C(4)(a)**, in which he or she elects to receive lump sum compensation, the amount of lump sum compensation payable must be reduced by any amount of independence allowance paid to the person— 15
- “(a) following his or her initial election, or deemed election, as the case may be, under **clause 55A(4) or 55C(4)**;
- “(b) in accordance with **clause 55B(1)(b)**.
- “(3) A person is not entitled to receive both a lump sum payment and an independence allowance in respect of the same personal injury. 20
- “(4) However, **subclause (3)** does not apply to a person who has received—
- “(a) both entitlements (at different times) as a result of a further election made in accordance with **clause 55C**: 25
- “(b) an independence allowance before any right to election arose.
- “(5) Part 4 of Schedule 1 of the Accident Insurance Act 1998 applies for the purposes of deciding whether a person has an entitlement to an independence allowance for the purposes of **clauses 55A and 55C**.” 30

**Clause 66(5)(c)**

Omit “were” and substitute “is”.