

Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 3)

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 3) and recommends by majority that it be passed with the amendments shown.

Introduction

This commentary focuses on the major issues we examined, and discusses the amendments we recommend to the bill. Not covered by this commentary are some technical amendments, including changes to reflect our recommendation that the commencement date of most of the provisions in the bill be 1 April 2005.

Background

The Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 3) amends the Injury Prevention, Rehabilitation, and Compensation Act 2001 (the principal Act).

This bill is a third step in implementing reforms to the Accident Compensation Corporation (the Corporation) scheme; the Accident Insurance Amendment Act 2000 and the Accident Insurance (Transitional Provisions) Act 2000 constituted the first step in returning the provision of workplace accident insurance to the Corporation. The second step, the Injury Prevention, Rehabilitation, and Compensation Act 2001, provides for injury prevention to be the primary

goal of the scheme, and also ensures that where injuries occur, the focus is on rehabilitation and compensation.

This bill removes fault from the scheme's medical misadventure provision, aiming to make the scheme simpler, fairer, and more efficient. It also proposes operational improvements to the scheme as a result of a consultative policy development process, and some technical changes.

Removal of extended definition of acupuncturist

We considered deleting the provision in the bill that extends the definition of acupuncturist to include some members of the New Zealand Acupuncture Standards Authority Incorporated but by majority decided against this. Some of us are concerned that this may undermine the Health Practitioners Competence Assurance Act 2003 process. The Green Party member is concerned that this could mean that there are effectively two scopes of practice for acupuncturists.

Acupuncture is not a profession covered by the Health Practitioners Competence Assurance Act, but we are hopeful that it will be. We are aware that acupuncturists are seeking to come under the Health Practitioners Competence Assurance Act.

We note that the Ministry of Health has been working closely with acupuncturists to facilitate the preparation of a consensus application for acupuncture to come under the Health Practitioners Competence Assurance Act. We are pleased to see acupuncturists working together to resolve issues between acupuncture groups.

We are concerned that the names of the New Zealand Acupuncture Standards Authority and the New Zealand Register of Acupuncturists imply an official status that they do not have. Both are incorporated societies with no statutory or official regulatory authority.

Treatment injury

We recommend clarifying the term "treatment injury" by replacing the dual phrase "personal injury caused by treatment or treatment injury" with the single term "treatment injury". We consider that this change will prevent any misapprehension that there are two types of cover (for injuries caused by treatment or those caused by

treatment injury). This change affects a number of provisions in the bill.

We recommend a drafting change to clarify the way the exclusion provisions for treatment injury cover operate. In particular, this includes clarification that “treatment injury” does not provide cover for injuries that are a necessary part of treatment, such as surgical incisions, or injuries that were ordinary consequences of the treatment. It also clarifies the exclusion where an injury is “wholly or substantially” caused by an underlying health condition.

We recommend a number of clarifications to the definition of treatment. To bring the provisions for consent into line with other legislation, we recommend adding “or other person legally entitled to consent on their behalf” to the list of people permitted to consent on a patient’s behalf. We also recommend clarifying that “fair wear and tear” applies only to prostheses and implants, and that “support systems” are those that directly support treatment.

We recommend clarifying to whom the existing medical misadventure provisions will continue to apply, once the new treatment injury provisions take effect. The existing criteria will apply only to people who have lodged claims for medical misadventure prior to 1 April 2005, or who have had their claims declined and have resubmitted them on the same grounds.

Some of us are concerned about the increased costs that will result from the change of definition from the current medical misadventure provisions using the “rarity and severity” definitions to that of “treatment injury”. The Department of Labour has calculated that costs will increase by \$8.69 million annually and there will be a one-off transitional cost of \$12 million. The Department also commented that it had been difficult to obtain data upon which to base claim number predictions and costings. Some of us are concerned that these costings are a conservative estimate only of what the real costs may be. Others of us think the estimation of costs is fair.

Complaints resolution within individual health professions

We encourage individual health professions to have a robust process for dealing with complaints at a lower level. We are pleased that the change from a medical misadventure approach to a treatment injury approach means that the accident compensation process is more clearly separated from the complaints process.

Resource allocation

We were concerned about proposed new section 32(2)(c), which provides that a treatment injury does not include an injury caused solely by the resource allocation decisions of an organisation. This exclusion currently applies to medical error claims under the existing medical misadventure provisions. Our advisers assured us that the word “solely” suitably addresses concerns that this exclusion would not prevent consideration of cover for an injury caused by a resource allocation decision in conjunction with other factors.

Some of us remain concerned that this exemption is too sweeping and consider that failure to provide treatment solely because of a resource allocation decision should be considered a treatment injury.

Entitlements to restart after periods of non-compliance

The bill provides for entitlements to restart after a period of non-compliance and also gives the Corporation the discretion to pay for the period of non-compliance if exceptional circumstances exist or if it is considered equitable. We recommend clarifying that the Corporation cannot rely on this clause to avoid backdating an entitlement when it is found that the Corporation’s original decision to stop the entitlement was incorrect.

Timeframes for lodging a treatment injury claim

We recommend clarifying the time limit for claim lodgement. It will be calculated from the date when a health professional first considers the personal injury to be a treatment injury, rather than when it was diagnosed as a treatment injury.

Our advisers assured us that any person who had suffered a treatment injury at a date earlier than the commencement of this bill would be able to lodge an application for cover with the Corporation, as long as it has not been previously lodged. Following enactment of the bill, an application for cover may be lodged upon an appropriately qualified health practitioner certifying the original injury as a treatment injury.

An individual who has not previously submitted a claim under the existing rules will be able to do so under the new treatment injury provisions. This is irrespective of the year when the accident occurred.

The fully funded cost of applying the new provisions retrospectively has been estimated at around \$12 million. This amount was derived from looking at the historical delay between the date on which medical misadventure injuries occurred and the claim lodgement date, and also at the increased acceptance rate under the treatment injury provisions. This is a one-off cost and will occur only in the first year of implementation.

Some of us are concerned about the cost implications of including claims that pre-date the bill. Others of us expect these costs may be significantly offset by the removal of the review and appeal process under the medical misadventure provisions, which is costly for both claimants and the Corporation.

Alternative disputes resolution

We recommend clarifying that regulations may prescribe different timeframes for lodging applications for review where alternative disputes resolution procedures relate to a reviewable matter. This change will ensure that if a matter goes through the alternative dispute resolution process, existing review rights available under the principal Act are preserved.

Reporting requirements

The bill changes the requirements for the Corporation to report on treatment injury claims, to take account of the fact that fault no longer has to be established. Clause 38 inserts a new requirement for the Corporation to report where there is a risk of harm to the public. We recommend changing the reporting requirement specifications so the Corporation reports only to the authority responsible for patient safety, rather than a “person”. We consider that this makes it clear that a health professional’s employer would not be approached about such matters.

Definitions in line with Health Practitioners Competence Assurance Act 2003

We recommend changes that ensure consistency between the principal Act and the Health Practitioners Competence Assurance Act. The bill repeals definitions of those health professions that are now covered by the Health Practitioners Competence Assurance Act and provides for the inclusion of these definitions in regulations made

under the principal Act. Our proposed amendment repeals two other health professional definitions, health practitioner and medical practitioner, which were overlooked in the bill as introduced.

Calculation of compensation for seasonal workers

We sought clarification about appropriate ways of calculating compensation for seasonal workers. The Minister for ACC has requested that a comprehensive review of the framework for calculating weekly earnings for seasonal workers be conducted. Officials are to report to the Minister by March 2005 with a plan for the review, from which we would expect to see legislation developed.

Transitional limits on eligibility for lump sum entitlements

Some of us are concerned that proposed new clause 55(2)(c) of Schedule 1 of the principal Act could be used adversely against claimants seeking lump sum compensation for Schedule 2 diseases. We were assured by our advisers that this clause in no way affects the part of clause 55(c) which enabled Mr Lehmann (in *ACC v Estate of Lehmann*, 11 August 2004, Ongley DCJ, decision no. 225/04) to be awarded a lump sum.

New Zealand National minority view

New Zealand National agrees that the present status of “medical mishap” and “medical error” are unsatisfactory. We are mindful that in an environment of a state monopoly insurer where there is no right to sue (except for gross negligence), that by removing medical error, there falls a greater responsibility on health professionals to ensure they put in place the highest possible standards of quality assurance, peer review and accreditation.

We also believe that reporting systems for “treatment injury” must be transparent, efficient and effective, so that lessons can be learnt by failure, and that mechanisms can be put in place to protect the public. The changes made by this legislation carry with them the danger that “treatment injuries” are not adequately reported.

New Zealand National is very concerned that the costs associated with this legislation have been understated and are likely to be far greater than the Government has estimated.

New Zealand National considers that ACC and the Ministry of Health should make greater efforts to ensure all treatments that are taxpayer funded are subject to evidenced-based proof of efficacy. We understand that ACC is aware the literature relating to the efficacy of acupuncture is not clear. The acupuncture groups in New Zealand have not been able to agree on a unified professional body to represent their ongoing professional standards. New Zealand National believes ACC should do everything possible to ensure this happens.

ACT New Zealand minority view

ACT New Zealand is opposing the passage of the Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 3). The division of treatment and its funding depending on whether a condition is due to injury or illness is problematic. This bill further confuses that boundary without any indication of principle.

We are concerned about the increased cost that will result from the removal of the “rarity and severity” definitions in relation to medical misadventure and the likely increase in levies for the Earners and Non-Earners accounts. The Department of Labour has admitted it will be difficult to predict the increase in numbers of claims and their costs. The new definition of “treatment injury” could stimulate a large increase in the number of claims after 1 April 2005 including unlimited retrospective claims for “treatment injury” as long as a previous claim has not been lodged with ACC. We believe claims will be made for conditions that are not foreseeable and are not the fault of any party involved but rather the unintended but statistically predictable consequence of normal treatment.

We are not arguing that ACC coverage should depend on fault. But when the scheme is operating at the boundary between sickness and accident it will be vulnerable. It will be in the interests of patients and health providers to classify complaints as treatment injury. The removal of the disciplines could mean that the boundary will, in practice, depend on highly subjective decisions, or even collusion, with a loss in the integrity of the scheme.

Although the intention of the bill is to remove the necessity to prove fault it is possible that these changes may result in a proliferation of complaints against medical professionals for reasonable but unintended consequences of treatment.

Green Party minority view

In general, the Green Party supports the intention of the bill to remove fault from ACC's medical misadventure provisions, and to simplify the scheme and make it more efficient.

The Green Party strongly supports acupuncturists having one scope of practice and coming under the Health Practitioners Competence Assurance Act and is concerned that the amendment to the definition of acupuncture in this bill to include the New Zealand Acupuncture Standards Authority may undermine progress in this regard.

The Green Party believes that it is inappropriate to amend the definition of acupuncturist in a bill about ACC. We are concerned that this changed definition effectively creates two scopes of practice for acupuncturists and is therefore contrary to the spirit of the Health Practitioners Competence Assurance Act.

We are concerned that there was no consultation over the new definition with the acupuncture profession or its professional bodies. We are also concerned that the New Zealand Acupuncture Standards Authority offers only a local diploma, not one that is national in scope. We heard evidence that although the New Zealand Acupuncture Standards Authority course is offered at the Auckland University of Technology, no students have enrolled in the course since 2001, and that there is no clinical training component required in the actual course of study.

For all of these reasons we oppose the new definition of acupuncture in the bill.

The Green Party is opposed, however, to the provision in the Bill which excludes a personal injury that is solely attributable to a resource allocation decision from the definition of treatment injury, and therefore from cover and compensation under the Act.

We believe that injury caused by the failure to treat a person, for whatever reasons, should be considered as a treatment injury and be covered by ACC.

To give one example of what this could mean, a patient who develops a metastatic cancer because of treatment delays caused by the failure to diagnose a primary cancer would be covered. However, a patient who develops a metastatic cancer because appropriate treatment is unavailable due to a shortage of radiation therapists would not.

We are extremely concerned that an amendment to Schedule 1 (clause 55(2)) will mean that anyone who has suffered a gradual process injury before April 2002 will not be entitled to lump sum compensation, no matter how clear-cut or apparently justified their claim is. Given that gradual process injuries normally have a long period of latency, we believe it is totally unfair to set an arbitrary cut-off date before which such injuries will not be covered.

Finally, the Green Party opposes the new subsection 134(1A) to be implemented by clause 24 on the basis that it raises serious concerns about access to justice. We do not consider it is in the interests of justice that any of ACC's decisions be excluded from review or appeal under the Act, thereby forcing dissatisfied claimants to embark on the expensive process of a judicial review in the High Court to challenge such decisions.

Appendix

Committee process

The Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 3) was referred to the committee on 5 August 2004. The closing date for submissions was 24 September 2004. We received and considered 163 submissions from interested groups and individuals. We heard 38 submissions. Hearing of evidence took 10 hours and 2 minutes and consideration took 6 hours and 28 minutes.

We received advice from the Department of Labour.

Committee membership

Steve Chadwick (Chairperson)

Sue Kedgley (Deputy Chairperson)

Judith Collins

Darren Hughes

Dr Paul Hutchison

Nanaia Mahuta

Mark Peck

Heather Roy

Barbara Stewart

Judy Turner

Dianne Yates

On 10 August 2004, Judith Collins replaced Dr Lynda Scott as a permanent member of the committee.

**Injury Prevention, Rehabilitation, and
Compensation Amendment (No 3)**

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

~~<Subject to this Act,>~~

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon Ruth Dyson

Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 3)

Government Bill

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**Injury Prevention, Rehabilitation, and
Compensation Amendment (No 3)**

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 3) **2004**.
- (2) In this Act, the Injury Prevention, Rehabilitation, and Compensation Act 2001¹ is called “the principal Act”.

¹ 2001 No 49

2 Commencement

Struck out (majority)

- (1) **Sections 3(3) and (4), 6, 7, 9, 11, 13 to 19, 24(2), 25, 26, 31, 33 to 35, 38, 39, 43(2), and 51(3) and (4)** come into force on 1 February 2005.
- (2) **Sections 4, 5, 10, 12, 20, 23, 24(1), 27, 28, 30, 32, 36, 37, 40, 46, 47, 50, and 51(1) and (2) and Schedule 1** come into force on 1 April 2005.

New (majority)

- (1) **Sections 3(3), (4), and (5A), 4, 5, 6, 7, 9 to 20, 23 to 28, 30 to 40, 43(2), 46, 47, 50, and 51(1) to (4) and (6), Schedule 1, and Part 2 of Schedule 2** come into force on 1 April 2005.
- (3) **Sections 3(2), (5), and (6), 43(1), and 44** come into force on a date to be appointed by the Governor-General by Order in Council.
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Substantive amendments to principal Act

3 Interpretation

- (1) Section 6(1) of the principal Act is amended by repealing the definition of **acupuncturist**, and substituting the following definition:
 - “**acupuncturist** means—
 - “(a) a member of the New Zealand Register of Acupuncturists Incorporated; or
 - “(b) a member of the New Zealand Acupuncture Standards Authority Incorporated who—
 - “(i) is a qualified health professional registered to practise in some other medical discipline in New Zealand who holds a recognised postgraduate qualification in acupuncture of a minimum of 120 credits (1 year full time) at Level 8 or above on

- the New Zealand Register of Quality Assured Qualifications; or
- “(ii) holds a National Diploma in Acupuncture (Level 7) or equivalent according to the criteria for the New Zealand Register of Quality Assured Qualifications”.
- (2) Section 6(1) of the principal Act is amended by repealing the definitions of **acupuncturist**, **audiologist**, **chiropractor**, **clinical dental technician**, **dental technician**, **dentist**, ~~health practitioner,~~ **medical laboratory technologist**, ~~medical practitioner,~~ **medical radiation technologist**, **midwife**, **nurse**, **occupational therapist**, **optometrist**, **osteopath**, **pharmacist**, **physiotherapist**, **podiatrist**, **registered health professional**, and **speech therapist**.
- (3) Section 6(1) of the principal Act is amended by repealing the definitions of **medical error** and **medical mishap**.

Struck out (majority)

- (4) Section 6(1) of the principal Act is amended by repealing the definition of **personal injury caused by medical misadventure**, and substituting the following definition:
- “**personal injury caused by treatment or treatment injury** has the meaning set out in **section 32**”.

New (majority)

- (4) Section 6(1) of the principal Act is amended by repealing the definition of **personal injury caused by medical misadventure**.
- (5) Section 6(1) of the principal Act is amended by repealing the definition of **registered health professional**, and substituting the following definition:
- “**registered health professional** means a registered health professional of a type defined in regulations made under this Act”.

New (majority)

- (5A) Section 6(1) of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:
“**treatment injury** has the meaning set out in **section 32**”.
- (6) Section 6(1) of the principal Act is amended by repealing the definition of **treatment provider**, and substituting the following definition: 5
“**treatment provider** means a treatment provider of a type defined in regulations made under this Act”.
- 4 Earnings as an employee: what it does not include** 10
Section 11(1) of the principal Act is amended by adding the word “; or” and adding the following paragraph:
“(h) any pension that is paid in the circumstances set out in any of the following provisions:
“(i) section DF 4 of the Income Tax Act 1994 or section DC 2 of the Income Tax Act 2004: 15
“(ii) section DF 8A or section DF 8B of the Income Tax Act 1994 or section DC 3 of the Income Tax Act 2004:
“(iii) section FF 17 of the Income Tax Act 1994.”
- 5 New section 13 substituted** 20
The principal Act is amended by repealing section 13, and substituting the following section:
“**13 Earnings of private domestic workers**
The Corporation must treat the earnings of a private domestic worker as earnings as an employee.” 25
- 6 New section 19 substituted**
The principal Act is amended by repealing section 19, and substituting the following section:
“**19 Key terms in this Part**
This Part uses and defines the following key terms: 30
“**accident** (which is defined in section 25)
“**mental injury** (which is defined in section 27)

“**motor vehicle injury** (which is defined in sections 29(2) and 35)

“**personal injury** (which is defined in section 26)

“**personal injury caused by a work-related gradual process, disease, or infection** (which is defined in section 30)

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Struck out (majority)

“**personal injury caused by treatment or treatment injury** (which are defined in **section 32**)

New (majority)

“**treatment injury** (which is defined in **section 32**)

“**work-related personal injury** (which is defined in sections 28 and 29(1)).”

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7 Cover for personal injury suffered in New Zealand (except mental injury caused by certain criminal acts)

Struck out (majority)

- (1) Section 20(2) of the principal Act is amended by omitting from paragraphs (b), (f), and (i) the words “medical misadventure suffered by”, and substituting in each case the words “treatment given to”.

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New (majority)

- (1) Section 20(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
“(b) personal injury that is treatment injury suffered by the person:”.

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- (2) Section 20(2) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:
“(c) treatment injury in circumstances described in **section 32(7)**:”.

- (3) Section 20(2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:
- “(d) personal injury that is a consequence of treatment given to the person for another personal injury for which the person has cover:”.

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New (majority)

- (4) Section 20(2) of the principal Act is amended by repealing paragraph (f), and substituting the following paragraph:
- “(f) personal injury caused by a gradual process, disease, or infection that is treatment injury suffered by the person:”.
- (5) Section 20(2) of the principal Act is amended by repealing paragraph (i), and substituting the following paragraph:
- “(i) personal injury that is a cardio-vascular or cerebro-vascular episode that is treatment injury suffered by the person:”.

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8 New section 21A inserted

The principal Act is amended by inserting, after section 21, the following section:

“21A Cover under Accident Rehabilitation and Compensation Insurance Act 1992 for mental injury caused by certain criminal acts

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“(1) This section applies to persons who suffered personal injury that is mental or nervous shock suffered as an outcome of any act of any other person, which act—

“(a) was performed on, with, or in relation to the claimant (but not on, with, or in relation to any other person); and

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“(b) was within the description of any offence listed in the First Schedule of the Accident Rehabilitation and Compensation Insurance Act 1992 (the **1992 Act**); and

“(c) was performed before 1 July 1992 (including before 1 April 1974) and was performed—

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“(i) in New Zealand; or

- “(ii) outside New Zealand, and the claimant was ordinarily resident in New Zealand within the meaning of the 1992 Act when the act was actually performed.
- “(2) For the purpose of **subsection (1)**,— 5
- “(a) the personal injury is deemed to have been suffered on the date of the first treatment that the claimant received for that personal injury as that personal injury; and
- “(b) that first treatment must have been received on or after 1 July 1992 and before 1 July 1999; and 10
- “(c) the treatment must have been of a kind for which the Corporation was required or permitted to make payments either directly under regulations made under the 1992 Act or under an agreement or contract or arrangement under section 29A of the 1992 Act, irrespective of whether or not it made any payment in the particular case. 15
- “(3) For the purposes of **subsection (1)**, it is irrelevant—
- “(a) that no person can be, or has been, charged with or convicted of the offence; or 20
- “(b) that the alleged offender is incapable of forming criminal intent; or
- “(c) whether or not the person who suffered the personal injury was ordinarily resident in New Zealand within the meaning of the 1992 Act when the personal injury is deemed to have been suffered. 25
- “(4) Persons to whom this section applies are deemed to have had cover under the 1992 Act for the personal injury described in **subsection (1)**, and the following provisions apply:
- “(a) payments made by or through the Corporation (or a subsidiary of the Corporation) or the Department of Labour to those persons for a personal injury described in **subsection (1)**, whether made before or after the commencement of this section, are deemed to be entitlements paid under the 1992 Act to the extent that the correct amounts were paid: 30
- “(b) for the purpose of **paragraph (a)**, it does not matter whether or not the payment is a payment made in the belief that section 8(3) of the 1992 Act provided cover: 35

- “(c) entitlements available as a result of cover deemed by this section are subject to Part 13 of the Accident Insurance Act 1998 and Part 11 of the Injury Prevention, Rehabilitation, and Compensation Act 2001:
- “(d) Part 5 applies to decisions made by or on behalf of the Corporation between 15 July 2003 and the commencement of this section on claims made under section 8(3) of the 1992 Act for which cover is deemed by this section, and Part 5 applies as if those decisions had been made on the date of the commencement of this section.
- “(5) However, the following provisions apply to civil proceedings brought before or after the commencement of this section seeking general damages for mental or nervous shock suffered by a person as an outcome of any act described in **subsection (1) (the proceedings)**:
- “(a) if the plaintiff received judgment in the proceedings, in his or her favour, before the commencement of this section, the plaintiff does not have cover under this section for the injury or injuries to which the proceedings relate:
- “(b) if the proceedings were filed, but not heard, before the date of introduction of the Injury Prevention, Rehabilitation, and Compensation Amendment Bill **(No 3) 2004**, nothing in this section prevents the proceedings from being heard or prevents a court from awarding the plaintiff general damages for the mental or nervous shock:
- “(c) if the plaintiff continues the proceedings, the plaintiff must declare to the court any payments and entitlements received from the Corporation for the personal injury for which damages are sought, and the court must take those payments and entitlements into account in awarding the plaintiff any damages:
- “(d) on the date judgment is given in the proceedings, the plaintiff—
- “(i) does not have cover under this section for the injury or injuries to which the proceedings relate; and
- “(ii) must advise the Corporation of the judgment:
- “(e) if the plaintiff loses cover by virtue of **paragraph (a) or paragraph (d)**, the Corporation may not recover any part

of an amount that is deemed by **subsection (4)(a)** to be an entitlement paid to the plaintiff under the 1992 Act.”

- 9 Cover for personal injury suffered outside New Zealand (except mental injury caused by certain criminal acts)**
- (1) Section 22 of the principal Act is amended by repealing subsection (3), and substituting the following subsection: 5
- “(3) A person has cover for treatment injury if he or she suffers the personal injury on or after 1 ~~February~~ April 2005 as a result of treatment given to him or her while outside New Zealand, but only if the circumstances described in subsection (4) exist.” 10
- (2) Section 22(4)(b) of the principal Act is amended by omitting the words “medical misadventure”, and substituting the word “treatment”.
- (3) Section 22 of the principal Act is amended by repealing subsection (5), and substituting the following subsection: 15
- “(5) Section 38 describes how the date on which the person suffers the personal injury referred to in subsection (4)(c) is determined.”
- 10 Accident** 20
- (1) Section 25(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:
- “(a) a specific event or a series of events, other than a gradual process, that—
- “(i) involves the application of a force (including gravity), or resistance, external to the human body; or 25
- “(ii) involves the sudden movement of the body to avoid a force (including gravity), or resistance, external to the body; or 30
- “(iii) involves a twisting movement of the body:”.
- (2) Section 25(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:
- “(b) the inhalation of any solid, liquid, gas, or foreign object on a specific occasion, which kind of occurrence does 35

not include the inhalation of a virus, bacterium, protozoan, or fungus, unless that inhalation is the result of the criminal act of a person other than the injured person:

“(ba) the oral ingestion of any solid, liquid, gas, fungus, or foreign object on a specific occasion, which kind of occurrence does not include the ingestion of a virus, bacterium, or protozoan, unless that ingestion is the result of the criminal act of a person other than the injured person:”.

- 11 Work-related personal injury** 10
Section 28(5) of the principal Act is amended by omitting the words “personal injury caused by medical misadventure”, and substituting the words “treatment injury as defined in **section 32**”.
- 12 Personal injury caused by work-related gradual process, disease, or infection** 15
Section 30 of the principal Act is amended by inserting, after subsection (4), the following subsection:
“(4A) This Act covers personal injury caused by a work-related gradual process, disease, or infection only if— 20
“(a) the exposure to the gradual process, disease, or infection actually occurred in New Zealand; or
“(b) the person concerned was ordinarily resident in New Zealand when the exposure actually occurred.”
- 13 New sections 32 to 34 substituted** 25
The principal Act is amended by repealing sections 32 to 34, and substituting the following sections:
“32 <Personal> <Treatment> injury <caused by treatment (treatment injury)>
“(1) <Personal injury caused by treatment or treatment injury> <Treatment injury> means personal injury that is— 30
“(a) suffered by a person—
“(i) seeking treatment from 1 or more registered health professionals; or
“(ii) receiving treatment from, or at the direction of, 35
1 or more registered health professionals; or
“(iii) referred to in **subsection (7)**; and

“(b) caused by treatment; and

New (majority)

“(c) not a necessary part, or ordinary consequence, of the treatment, taking into account all the circumstances of the treatment, including—

“(i) the person’s underlying health condition at the time of the treatment; and 5

“(ii) the clinical knowledge at the time of the treatment.

“(2) *<Personal injury caused by treatment or treatment injury>* *<Treatment injury>* does not include the following kinds of personal injury: 10

“(a) personal injury that is *<wholly or substantially>* caused by *<, or attributable to,>* a person’s underlying health condition:

Struck out (majority)

“(b) personal injury that is an anticipated part, or consequence, of the treatment, taking into account all the circumstances of the treatment, including— 15

“(i) the person’s underlying health condition; and

“(ii) the treatment environment; and

“(iii) the circumstances in which the treatment was provided; and 20

“(iv) the treatment required; and

“(v) the treatment provided; and

“(vi) the consequences of that treatment; and

“(vii) the clinical knowledge at the time of the treatment: 25

“(c) personal injury that is solely attributable to a resource allocation decision:

“(d) personal injury that is a result of a person *<unreasonably>* withholding or delaying their consent to undergo treatment. 30

“(3) The fact that the treatment did not achieve a desired result does not, of itself, constitute *<personal injury caused by treatment or>* *treatment injury*.

- “(4) *⟨Personal injury caused by treatment or treatment injury⟩* *⟨Treatment injury⟩* includes personal injury suffered by a person as a result of treatment given as part of a clinical trial, in the circumstances described in **subsection (5) or subsection (6)**.
- “(5) One of the circumstances referred to in **subsection (4)** is where the claimant did not agree, in writing, to participate in the trial. 5
- “(6) The other circumstance referred to in **subsection (4)** is where—
- “(a) an ethics committee—
- “(i) approved the trial; and
- “(ii) *⟨certified that it⟩* was satisfied that the trial was not to be conducted principally for the benefit of the manufacturer or distributor of the medicine or item being trialled; and 10
- “(b) the ethics committee was approved by the Health Research Council of New Zealand or the Director-General of Health at the time it gave its approval *⟨and certificate⟩*. 15
- “(7) If a person (**person A**) suffers an infection that is a *⟨personal injury caused by⟩* treatment *⟨injury⟩*, cover for that personal injury extends to— 20
- “(a) person A’s spouse, if person A has passed the infection on directly to the spouse:
- “(b) person A’s child, if person A has passed the infection on directly to the child:
- “(c) any other third party, if person A has passed the infection on directly to that third party: 25
- “(d) person A’s child or any other third party, if—
- “(i) person A has passed the infection directly to his or her spouse; and
- “(ii) person A’s spouse has then passed the infection directly to the child or third party. 30
- “33 **Treatment**
- “(1) For the purposes of determining whether a treatment injury has occurred, or when that injury occurred, **treatment** includes— 35
- “(a) the giving of treatment:
- “(b) a diagnosis of a person’s medical condition:
- “(c) a decision on the treatment to be provided (including a decision not to provide treatment):

- “(d) a failure to provide treatment, or to provide treatment in a timely manner:
- “(e) obtaining, or failing to obtain, a person’s consent to undergo treatment, including any information provided to the person (or *<that person’s parent, legal guardian, or welfare guardian, as appropriate,>* <other person legally entitled to consent on their behalf> if the person does not have legal capacity) to enable the person to make an informed decision on whether to accept treatment: 5 10
- “(f) the provision of prophylaxis:
- “(g) the failure of any equipment, device, or tool used as part of the treatment process, including the failure of any implant or prosthesis (except *<failure>* <where the failure of the implant or prosthesis is> caused by an intervening act or by fair wear and tear), whether at the time of giving treatment or subsequently: 15

Struck out (majority)

- “(h) the application of any support systems used by the organisation responsible for providing the treatment, including policies, processes, practices, and administrative systems. 20

New (majority)

- “(h) the application of any support systems, including policies, processes, practices, and administrative systems, that—
 - “(i) are used by the organisation or person providing the treatment; and
 - “(ii) directly support the treatment. 25
- “(2) **Subsection (1)** does not affect the application of the definition of **treatment** in section 6(1) for purposes other than those stated in **subsection (1)**. 30
- “(3) **Subsection (2)** is for the avoidance of doubt.

“34 **Cover for personal injury caused by medical
misadventure before 1 *February* *April* 2005**

“(1) This section applies to—

“(a) claims for cover for personal injury caused by medical
misadventure that were lodged with the Corporation 5
before 1 *February* *April* 2005, but have not been
determined; and

“(b) claims for cover for personal injury caused by medical
misadventure that were declined by the Corporation 10
before 1 *February* *April* 2005, but are lodged
again on or after that date as claims for cover for treat-
ment injury (and not lodged as claims referred to in
subsection *(4)(b)* *(4)*).

“(2) Claims lodged in the circumstances described in **subsection (1)**
must be determined under the relevant provisions in force 15
immediately before 1 *February* *April* 2005.

“(3) Reviews and appeals must be dealt with under the relevant
provisions of Part 5 in force immediately before 1 *February*
April 2005, if the decision being reviewed or appealed—

“(a) was made before 1 *February* *April* 2005; or 20

“(b) is one to which **subsection (2)** applies.

“(4) *This section also applies* **Subsection (1)(b)** does not apply
in relation to a claimant if,—

“(a) before 1 *February* *April* 2005, the Corporation
declined the claimant’s claim for cover for personal 25
injury caused by medical misadventure because there
was no personal injury; and

“(b) on or after 1 *February* *April* 2005, the claimant
lodges a claim for cover for treatment injury *in respect*
of a personal injury that— 30

“(i) occurred after the decision to decline the earlier
claim (whether before or after 1 *February*
April 2005); and

“(ii) arises out of the circumstances on which the ear-
lier claim was based.” 35

Struck out (majority)

“(5) This section also applies if a person suffers personal injury
caused by medical misadventure before 1 February 2005, but

Struck out (majority)

has not lodged a claim for cover for the personal injury before 1 February 2005.

“(6) All matters under this section other than those to which **subsection (2) or subsection (3)** applies must be dealt with under the relevant provisions of this Act for the time being in force.”

5

14 New section 38 substituted

The principal Act is amended by repealing section 38, and substituting the following section:

“38 Date on which person is to be regarded as suffering treatment injury

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“(1) The date on which a person suffers a treatment injury is the date on which the person first seeks or receives treatment for the symptoms of that personal injury.

“(2) **Subsection (1)** applies even if it was not known, at the time the treatment was first sought or received for the symptoms, that previous treatment was the cause of the symptoms.

15

“(3) In **subsection (1), treatment** (where that term appears for the second time) means treatment of a type that the person is entitled to under this Act or a former Act.

“(4) This section is subject to **clause 55(3) of Schedule 1** (which relates to the entitlement to lump sum compensation for treatment injuries in the circumstances described in that provision).”

20

15 Responsibilities of Corporation after claim lodged

Section 50 of the principal Act is amended by inserting, as subsection (2), the following subsection:

25

“(2) If the claim is for cover for a treatment injury, the Corporation must provide the claimant with information on the role of the Health and Disability Commissioner *<in investigating complaints regarding actions that are or appear to the Commissioner to be in breach of>* <under> the Code of Health and Disability Services Consumers’ Rights.”

30

16 Time for making claim

Section 53 of the principal Act is amended by adding the following subsection:

- “(4) Despite subsection (3), if a claim is for a treatment injury, a person must lodge the claim under section 48—
- “(a) in the case of a claim for cover, within 12 months after the later of—
- “(i) the date that the personal injury was *⟨diagnosed as being⟩* ⟨first considered by a registered health professional to be⟩ a treatment injury; or 5
- “(ii) the date that the person suffered the treatment injury (as determined under **section 38**):
- “(b) in the case of a claim for an entitlement, within 12 months after the later of— 10
- “(i) the date on which the need for the entitlement arose; or
- “(ii) if the need for entitlement arose before the injury was diagnosed as being a treatment injury, and a claim for cover for that injury has been lodged with the Corporation, the date on which the Corporation accepted the claim for cover.” 15
- 17 Steps Corporation takes to action complicated claims for cover** 20
- Section 57(1)(c) of the principal Act is amended by omitting the words “medical misadventure”, and substituting the word “treatment”.
- 18 New section 62 substituted** 25
- The principal Act is amended by repealing section 62, and substituting the following section:
- “62 Decision on claim for treatment injury**
- “(1) When investigating a claim for cover for a treatment injury, the Corporation may seek clinical advice if the Corporation considers the advice will assist it in determining the claim. 30
- “(2) **Subsection (1)** does not prevent the Corporation from seeking advice in other situations.
- “(3) **Subsection (2)** is for the avoidance of doubt.”
- 19 Corporation must give notice of decisions** 35
- Section 64 of the principal Act is amended by repealing subsection (3).

- 20 New section 68 substituted**
The principal Act is amended by repealing section 68, and substituting the following section:
- “68 Corporation provides entitlements in accordance with this Act** 5
- “(1) The Corporation provides entitlements to claimants in accordance with this Act.
- “(2) If any provision of this Act requires the Corporation to provide an entitlement (regardless of how that requirement is expressed), the Corporation is required to provide the entitlement only to the extent required by this Act. 10
- “(3) However, the Corporation may, at its own discretion, provide an entitlement or a payment to a claimant if it is satisfied that—
- “(a) the entitlement or payment could be provided but for a requirement in section 127(4) or section 129 or section 379(2), or in any of clauses 4, 13, 15, 17, 19(3)(e), 19(3)(i), 19(3)(j), 22(1), 22(2)(b), 22(2)(c), 22(2)(e), or 22(2)(f) of Schedule 1; and 15
- “(b) the provision of the entitlement or payment would be consistent with the purpose of this Act. 20
- “(4) The exercise of a discretion under **subsection (3)** is subject to **section 134(1A).**”
- 21 Corporation to determine incapacity of claimant who, at time of incapacity, was earner** 25
- (1) The heading to section 103 of the principal Act is amended by omitting the words “**at time of incapacity, was earner**”, and substituting the words “**at time of personal injury, was earner or on unpaid parental leave**”.
- (2) Section 103 of the principal Act is amended by adding the following subsections: 30
- “(4) The references in subsections (1) and (2) to a personal injury are references to a personal injury for which the person has cover under this Act.
- “(5) **Subsection (4)** is for the avoidance of doubt.” 35

22 Corporation to determine incapacity of claimant who, at time of incapacity, had ceased to be an employee, was a potential earner, or had purchased weekly compensation under section 223

Section 105 of the principal Act is amended by adding the following subsections: 5

“(3) The references in subsection (2) to a personal injury are references to a personal injury for which the person has cover under this Act.

“(4) **Subsection (3)** is for the avoidance of doubt.” 10

New (majority)

22A When claimant’s vocational independence to be assessed

Section 109(2)(b) of the principal Act is amended by omitting the words “since the previous determination”, and substituting the words “due to the injuries that were assessed in the previous vocational independence or capacity for work assessment”. 15

23 Corporation may suspend, cancel, or decline entitlements

Section 117 of the principal Act is amended by inserting, after subsection (3), the following subsections: 20

“(3A) If the Corporation declines, under subsection (3), to provide an entitlement for any period, the Corporation must start providing the entitlement again if satisfied that—

“(a) subsection (3) no longer applies to the claimant; and
“(b) the claimant is eligible to the entitlement. 25

“(3B) The Corporation is not required to make any payment of the entitlement for the period during which it was declined under subsection (3), even though it may have started providing the entitlement again under **subsection (3A)**. However, the Corporation may make such payment if the Corporation believes that— 30

“(a) exceptional circumstances exist; and
“(b) it would be inequitable to refuse to do so.

New (majority)

“(3C) An entitlement that has been declined for any period under subsection (3) must be provided by the Corporation, with effect from the beginning of that period, if—

“(a) the Corporation’s decision to decline to provide the entitlement for that period is—

“(i) revised under section 65; or

“(ii) quashed on review or appeal; and

“(b) the claimant was otherwise entitled to receive the entitlement for that period.”

5

24 Who may apply for review

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(1) Section 134 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) However, a decision of the Corporation regarding the exercise of discretion under **section 68(3)** is not reviewable under Part 5.”

15

(2) Section 134 of the principal Act is amended by repealing subsection (4) (which relates to review applications by registered health professionals or organisations).

New (majority)**24A How to apply for review**

Section 135(3) of the principal Act is amended by inserting, after the words “subsection (2)(f) and (g)”, the words “and any timeframe prescribed in regulations made under **section 328A** for the lodgement of a review application”.

20

24B New section 135A inserted

The principal Act is amended by inserting, after section 135, the following section:

25

“135A **Timeframe for lodging review application where alternative dispute resolution conducted about same matter**

“(1) This section applies to a review application about a matter if an alternative dispute resolution procedure is conducted about the same matter.

30

New (majority)

“(2) A review application to which this section applies must be lodged within the relevant timeframe stated in section 135(2) unless regulations made under **section 328A** prescribe otherwise.”

- 25 Persons entitled to be present and heard at hearing** 5
Section 142 of the principal Act is amended by repealing paragraphs (b) and (c) (which relate to the rights of registered health professionals or organisations at review hearings).
- 26 Who may appeal against review decision** 10
Section 149 of the principal Act is amended by repealing subsection (5) (which relates to the right of appeal to a District Court of registered health professionals or organisations).
- 27 New section 168A inserted** 15
The principal Act is amended by inserting, after section 168, the following section:
- “168A Private domestic workers to pay levies**
- “(1) A private domestic worker must pay, in accordance with this Act and regulations made under this Act, levies to fund the Employers’ Account.
- “(2) A levy must relate to a prescribed period. 20
- “(3) A private domestic worker must pay the levy by the date specified for payment, whether in an invoice or another appropriate document given to the private domestic worker by the Corporation or an agent of the Corporation, being a date not less than 2 months after the date of the invoice or other appropriate document. 25
- “(4) Levies are to be paid under this section at a rate or rates prescribed in regulations made under this Act, and must be related, in whole or in part, to the amount of earnings received for that period as a private domestic worker or deemed by regulations made under this Act to have been received for that period as a private domestic worker. 30
- “(5) Nothing in this Act requires a private domestic worker to pay an employer levy on his or her relevant earnings that exceed

the specified maximum. For the purpose of this subsection, the relevant earnings are the person’s earnings as a private domestic worker together with his or her earnings as an employee (other than as a private domestic worker).

“(6) Sections 170, 171, and 173 apply to private domestic workers as if they are both the employer and the employee, and references to section 168 in those sections must, in relation to private domestic workers, be read as references to this section.” 5

28 Employer levy not payable on earnings over specified maximum 10

Section 172(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) each employer may apply in writing to the Corporation for a pro rata refund of the excess levy paid, to be calculated according to the following formula: 15

$$\frac{a}{b} \times c$$

where— 20

a is the total earnings on which the levy is paid by the employer in respect of that employee

b is the total earnings on which the levy is paid by all employers in respect of that employee

c is the total excess levy paid by all employers in respect of that employee.” 25

29 Liability to pay Residual Claims levy

The principal Act is amended by repealing section 193(9)(b) (which relates to Residual Claims levies payable by shearing contractors). 30

30 Effect of agreement

(1) Section 210 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) A person who purchases weekly compensation under section 209, suffers personal injury in a particular cover period for which there is an agreement under section 209, and then, when that agreement no longer has effect, suffers incapacity or subsequent incapacity arising from that personal 35

injury, is entitled to receive the following amount of weekly compensation for loss of earnings:

“(a) the amount specified in an agreement made under section 209 that is in force at the time the incapacity commences; or

5

“(b) the amount calculated under Schedule 1, if no agreement under section 209 exists at the time the incapacity commences.”

(2) **Subsection (3)** applies to persons who,—

(a) before the commencement of this section suffered personal injury in a particular cover period for which there was an agreement under section 209 of the principal Act and then, in a different cover period, suffered incapacity or subsequent incapacity arising from that personal injury; and

10

(b) immediately before the commencement of this section were receiving weekly compensation for that incapacity or subsequent incapacity.

15

(3) Persons to whom this section applies are entitled to continue receiving weekly compensation as if **subsection (1)** had not been enacted.

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31 Application and source of funds

Struck out (majority)

Section 218(1)(d) of the principal Act is amended by omitting the words “medical misadventure”, and substituting the word “treatment”.

25

New (majority)

Section 218(1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) a treatment injury.”

32 Persons eligible to purchase weekly compensation

Section 223 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

30

- “(2) The application may be made only by a person who—
 “(a) makes the application while still in employment or within 1 month after ceasing employment; and
 “(b) pays the levy when required to do so.”
- 33 Application and source of funds** 5
 Section 227 of the principal Act is amended by omitting from subsections (1) and (3)(a) the words “medical misadventure”, and substituting in each case the word “treatment”.
- 34 Application and source of funds**
 (1) Section 228 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 10
 “(1) The purpose of the Medical Misadventure Account is to finance entitlements provided under this Act in respect of—
 “(a) treatment injury (other than the excluded kind of injury specified in **subsection (3)**); or 15
 “(b) personal injury caused by medical misadventure for which cover was accepted before 1 *February* *April* 2005 or is accepted in accordance with **section 34.**”
- (2) Section 228 of the principal Act is amended by repealing subsection (3), and substituting the following subsection: 20
 “(3) The excluded kind of injury is treatment injury, where the treatment is provided for a work-related personal injury.”
- (3) Section 228(4) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph: 25
 “(a) entitlements in respect of persons who have cover for treatment injury (other than the excluded kind of injury specified in **subsection (3)**); and”.
- 35 Levy categories and rates**
 (1) Section 229(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph: 30
 “(a) prescribe levies in relation to treatment injury:”.
- (2) Section 229(4) of the principal Act is amended by omitting the words “medical misadventure”, and substituting the word “treatment”. 35

New (majority)

- 35A Residual claims levy and employer levy payable by employers on disposal or cessation of business or when ceasing to employ** 5
Section 232(2) of the principal Act is amended by omitting the word “Commissioner” wherever it appears, and substituting in each case the word “Corporation”.
- 35B Levies payable to Commissioner and Corporation by self-employed person or private domestic worker who ceases to derive earnings as such** 10
- (1) Section 233 of the principal Act is amended by omitting from the heading the words “**Commissioner and**”.
- (2) Section 233(1)(b) of the principal Act is amended by omitting the word “Commissioner”, and substituting the word “Corporation”.
- 36 New section 244 substituted** 15
The principal Act is amended by repealing section 244, and substituting the following section:
- “244 Amounts of levy exempt from payment**
- “(1) This section applies if—
- “(a) an invoice is issued for the purpose of this Act (whether or not only for that purpose or also for the purpose of any other enactment) that shows an amount payable under this Act for a single type of levy or for 2 or more different types of levy; and 20
- “(b) the amount invoiced for the purpose of this Act does not exceed the relevant exempt amount set by regulations made under this Act for the purpose of this section. 25
- “(2) If this section applies,—
- “(a) no person is liable to pay the amount of the levy or levies shown on the invoice for the purpose of this Act; and 30
- “(b) no person is liable to pay any penalties under this Act in respect of non-payment of the levy or levies.”

- 37 Disclosure of information by Corporation for benefit purposes**
Section 281(1) of the principal Act is amended by adding the following paragraph:
“(c) an allowance established by regulations made under section 303 of the Education Act 1989.” 5
- 38 New section 284 substituted**
The principal Act is amended by repealing section 284 and substituting the following section:
“284 **Reporting of risk of harm to public** 10
“(1) This section applies to information collected by the Corporation in the course of processing claims—
“(a) for treatment injury; or
“(b) for personal injury of a type described in **section 20(2)(d)**; or 15
“(c) for personal injury caused by medical misadventure; or
“(d) that are in the nature of claims for treatment injury, but are caused by a person who is not a registered health professional.
“(2) If the Corporation believes, from information referred to in **subsection (1)**, there is a risk of harm to the public, the Corporation must report the risk, and any other relevant information, to the *<person or>* authority responsible for patient safety in relation to the treatment that caused the personal injury.” 20
- 39 Section 285 repealed** 25
The principal Act is amended by repealing section 285 (which relates to personal injuries in the nature of medical misadventure).
- 40 New section 286 substituted**
The principal Act is amended by repealing section 286, and substituting the following section:
“286 **Corporation to provide information to Department of Labour**
“(1) The Corporation must provide to the chief executive of the Department of Labour any information held by the Corporation under this Act that— 35
“(a) relates to—

- “(i) employers; or
“(ii) workplaces; or
“(iii) claims for work-related personal injury; and
“(b) is of a type specified for the purpose of this section in an agreement between the Corporation and the chief executive. 5
- “(2) The chief executive may use the information only for 1 or more of the following purposes:
“(a) to support the Department of Labour in its administration of any provisions of the relevant Acts: 10
“(b) to support the department’s responsibilities for workforce development and employment creation:
“(c) to ensure appropriate co-ordination of activities with the Corporation and other relevant agencies.
- New (majority)**
- “(2A) The power conferred on the chief executive by **subsection (2)** includes (without limitation) power to provide information received under this section to any agency designated under section 28B of the Health and Safety in Employment Act 1992, but only for the purpose of supporting the agency’s functions under that Act. 15
20
- “(3) The Corporation must provide the information in accordance with the agreement with the chief executive.
- “(4) In **subsection (2), relevant Acts** means—
“(a) Disabled Persons Employment Promotion Act 1960:
“(b) Employment Relations Act 2000: 25
“(c) Equal Pay Act 1972:
“(d) Hazardous Substances and New Organisms Act 1996:
“(e) Health and Safety in Employment Act 1992:
“(f) Holidays Act 2003:
“(g) Immigration Act 1987: 30
“(h) Machinery Act 1950:
“(i) Minimum Wage Act 1983:
“(j) Parental Leave and Employment Protection Act 1987:
“(k) Volunteers Employment Protection Act 1973:
“(l) Wages Protection Act 1983.” 35

- 41 Service agreement for purchase of public health acute services and other health services**
- Section 301 of the principal Act is amended by adding the following subsections:
- “(4) The service agreement may also provide for the Crown to refund to the Corporation any amount overpaid by the Corporation in a previous financial year for public health acute services. 5
- “(5) **Subsection (4)** is for the avoidance of doubt.”
- 42 Proceedings for personal injury** 10
- Section 317(4) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
- “(b) any of sections 92B, 92E, 92R, 122, <122A, 122B,> 123, or 124 of the Human Rights Act 1993.”
- 43 Regulations relating to definitions** 15
- (1) Section 322(1) of the principal Act is amended by repealing paragraphs (e) and (f), and substituting the following paragraphs:
- “(e) defining a type or types of registered health professional for the purposes of this Act: 20
- “(f) defining a type or types of treatment provider for the purposes of this Act:
- “(fa) defining a health occupational group or part of a health occupational group for the purposes of this Act:”.
- (2) Section 322(1) of the principal Act is amended by repealing paragraph (g). 25
- (3) At any time before the commencement of **subsection (1)**, the Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations for 1 or more of the following purposes: 30
- (a) defining a type or types of registered health professional for the purposes of the principal Act:
- (b) defining a type or types of treatment provider for the purposes of the principal Act:
- (c) defining a health occupational group or part of a health occupational group for the purposes of the principal Act. 35

- (4) The Minister may not make any recommendation under **subsection (3)** without first consulting the persons or organisations the Minister considers appropriate, having regard to the subject-matter of the proposed regulations.
- (5) Any consultation undertaken by or on behalf of the Minister before the commencement of this subsection about the making of regulations for any purpose referred to in **subsection (3)** is to be treated as consultation for the purpose of **subsection (4)**. 5
- (6) On the commencement of **subsection (1)**, any regulations then in force under **subsection (3)** continue to have effect as if they were made under section 322(1) of the principal Act. 10
- 44 Section 322A repealed**
The principal Act is amended by repealing section 322A (which relates to the definition of **health practitioner**).
- 45 Regulations relating to rehabilitation** 15
Section 324(2)(a) of the principal Act is amended by repealing subparagraph (ii) (which relates to the provision of copies of draft regulations relating to rehabilitation).
- 46 New section 328A inserted** 20
The principal Act is amended by inserting, after section 328, the following section:
- “328A **Regulations relating to alternative dispute resolution**
“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for *<either or both>* *<1 or more>* of the following purposes: 25
- “(a) setting out a framework or rules (or both) governing the conduct of alternative dispute resolution:
- “(b) requiring the Corporation to pay costs to claimants at the appropriate rate or scale specified in the regulations, which costs may apply whether or not regulations are 30
for the time being in force under **paragraph (a)**;

New (majority)

“(c) prescribing the timeframes for the lodging of review applications about matters under Part 5 that undergo an alternative dispute resolution procedure, which timeframes may be longer (but not less) than those set out in section 135(2).”

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“(2) In the absence of regulations for the time being in force under **subsection (1)(a)**, the use of alternative dispute resolution and the manner in which it is to be conducted is a matter for agreement between the Corporation and the claimant.”

47 Regulations relating to levies

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(1) Section 329(b) of the principal Act is amended by omitting the words “sections 193 and 202”, and substituting the words “**sections 168A** and 193”.

(2) Section 329 of the principal Act is amended by adding the following paragraph:

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“(o) prescribing exempt amounts of levy for the purpose of **section 244**, which amounts may differ depending on whether the amount invoiced is for—

“(i) a single type of levy; or

“(ii) 2 or more different types of levies; or

“(iii) both.”

20

48 Consultation requirements for regulations relating to levy setting

Section 331(2)(a) of the principal Act is amended by repealing subparagraph (ii) (which relates to the provision of copies of draft regulations relating to levy setting).

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49 Cessation of weekly compensation under any former Act because of capacity for work

Section 369 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

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“(2) An assessment of capacity to work that was commenced under a former Act and not completed before the commencement of this Act may be completed under the former Act and have

effect as if it were an assessment of vocational independence under this Act.”

50 New section 377 substituted

The principal Act is amended by repealing section 377, and substituting the following section:

“377 Independence allowance for personal injury suffered before 1 July 1999

“(1) On the commencement of this section, sections 441 and 442 of the Accident Insurance Act 1998 cease to have effect.

“(2) A person who suffered personal injury before 1 July 1999 is entitled to be assessed for an independence allowance under Part 4 of Schedule 1 of the Accident Insurance Act 1998, irrespective of when the claim for cover for the personal injury was or is lodged, subject to the modifications set out in **subsection (3)**.

“(3) The modifications are that—

“(a) any assessment or reassessment must be done on the basis of whole-person impairment for the combined effect of all injuries suffered before 1 July 1999 for which the person has cover; and

“(b) the percentage of impairment for which any lump sum compensation was received under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982, or both, must be deducted from the percentage of combined whole-person impairment assessed in accordance with **paragraph (a)**; and

“(c) the independence allowance based on the first assessment is payable as from,—

“(i) in the case of a person who has received lump sum compensation under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982, or both, the date of the application for an independence allowance; or

“(ii) in any other case, the later of the date on which the claim for cover was lodged or 1 July 1992.”

51 Further amendments to principal Act

- (1) Schedule 1 of the principal Act is amended in the manner set out in **Schedule 1**.
- (2) The amendments set out in **Schedule 1** that relate to **clauses 38, 38A, 39, 40(2), and 41** of Schedule 1 of the principal Act apply only to claims for weekly compensation that—
- (a) are made on or after the date of commencement of **subsection (1)**; and
 - (b) relate to a period of incapacity that begins on or after that date.

New (majority)

(2A) Clause 36(4) of Schedule 1 of the principal Act is amended by inserting, after the word “or (b)”, the word “or (c)”.

- (3) Clause 44 of Schedule 1 of the principal Act is amended by repealing subclause (4), and substituting the following subclause:
- “(4) 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.”
- (4) Clause 55 of Schedule 1 of the principal Act is amended by repealing subclause (3) and substituting the following subclause:
- “(3) A person who suffers treatment injury or personal injury caused by medical misadventure is not entitled to lump sum compensation for permanent impairment under this schedule if the date of the treatment which caused the personal injury was before 1 April 2002.”
- (5) The principal Act is amended in the manner set out in **<Part 1 of> Schedule 2**.

New (majority)

(6) The principal Act is amended in the manner set out in **Part 2 of Schedule 2**.

Part 2

Miscellaneous provisions

- 52 References to At Work Insurance Limited**
- (1) The Income Tax Act 1994 is amended by omitting from Schedule 18 the item “At Work Insurance Limited”. 5
- (2) The Income Tax Act 2004 is amended by omitting from Schedule 18 the item “At Work Insurance Limited”.
- (3) The State-Owned Enterprises (At Work Insurance Limited) Order 1999 (SR 1999/64) is revoked.
- 53 New Zealand Superannuation Act 2001 amended** 10
- (1) Section 7(2) of the New Zealand Superannuation Act 2001 is amended by omitting the words “clauses 25, 68, or 72 of Schedule 1 of the Accident Insurance Act 1998”, and substituting the words “clause 52 or clause 68 or clause 72 of Schedule 1 of the Injury Prevention, Rehabilitation, and Compensation Act 2001”. 15
- (2) Section 15(1) of the New Zealand Superannuation Act 2001 is amended by repealing the definition of **earner premium**.
- (3) Section 16(a) of the New Zealand Superannuation Act 2001 is amended by omitting the words “earner premium”, and substituting the words “earner levies”. 20
- (4) Section 16 of the New Zealand Superannuation Act 2001 is amended by adding, as subsection (2), the following subsection:
- “(2) In this section, **earner levies** means the levies payable under section 219(1) and (2) of the Injury Prevention, Rehabilitation, and Compensation Act 2001.” 25
- 54 Revocation of spent regulations**
- The following regulations are revoked:
- (a) the Workers’ Compensation Order 1969 (SR 1969/13): 30
- (b) the Accident Rehabilitation and Compensation Insurance (Motor Spirits Excise Duty) Order 1998 (SR 1998/271).
-

s 51(1)

Schedule 1

Amendments to Schedule 1 of principal Act

Clause 4(1)

Omit the words “is not liable to” and substitute the words “is not required to”.

5

Clause 13

Omit from subclauses (2), (3), (4), and (5) the words “is not liable to” and substitute in each case the words “is not required to”.

Clause 15

Omit from subclauses (2), (3), and (4) the words “is not liable to” and substitute in each case the words “is not required to”.

10

Clause 17(2)

Omit the words “is not liable to” and substitute the words “is not required to”.

Clause 19(3)

Omit from paragraphs (e) and (i) the words “not liable to” and substitute in each case the words “not required to”.

15

Repeal paragraph (j) and substitute:

“(j) not required to repair or replace any home or modifications that are not insured and that are damaged.”

20

Clause 22

Omit from subclause (1) the words “is not liable to” and substitute the words “is not required to”.

Omit from subclause (2)(b) and (c) the words “not liable for” and substitute in each case the words “not required to meet”.

25

Omit from subclause (2)(e) and (f) the words “not liable to” and substitute in each case the words “not required to”.

Clause 38

Repeal and substitute:

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“38 Weekly earnings if earner had earnings as self-employed person immediately before incapacity commenced: calculations

“(1) The weekly earnings of an earner who had earnings as a self-employed person immediately before the incapacity commenced are,—

35

Clause 38—continued

- “(a) for the first 4 weeks after the first week of incapacity, the greater of the relevant amount calculated under **subclause (2)** or the amount under **subclause (3)**:
“(b) for any period of incapacity after the 4 weeks referred to in **paragraph (a)**, the relevant amount calculated under **subclause (2)**. 5

“(2) The amounts that apply under this subclause are,—

- “(a) for claimants who first commenced receiving earnings as self-employed persons in the income year in which the incapacity commenced, the amount calculated using the following formula: 10

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

where—

- a is the total of the claimant’s earnings as an employee in the 52 weeks immediately before the incapacity commenced 15
b is the number of full or part weeks during which the claimant earned those earnings as an employee: 20

- “(b) for claimants for whom the relevant year was the first year during which they received earnings as a self-employed person, the amount calculated using the following formula:

$$\frac{a + b}{c} \quad 25$$

where—

- a is the claimant’s total earnings as an employee in the 52 weeks immediately before his or her incapacity commenced 30
b is the claimant’s earnings as a self-employed person in the relevant year

Clause 38—continued

- c is the combined number of full or part weeks during which the claimant earned those earnings as an employee and the number of weeks that the Corporation considers fairly and reasonably represents the number of weeks or part weeks during which the claimant earned those earnings as a self-employed person in the relevant year, up to a combined maximum of 52 weeks <or the total number of weeks in the claimant’s relevant year if the relevant year is more than 52 weeks>: 5
- “(c) for all other claimants, the amount calculated using the following formula: 10
- $$\frac{a}{c} + \frac{b}{d} \quad 15$$
- where—
- a is the claimant’s <total> earnings as an employee in the 52 weeks immediately before his or her incapacity commenced 20
- b is the claimant’s earnings as a self-employed person in the relevant year
- c is 52
- d is the number of weeks in the relevant year.
- “(3) The amount that applies under this subclause is the amount of minimum weekly earnings as determined under **clause 42(3)**, if the claimant is an earner who is liable to pay the minimum levy set out in regulations made for the purposes of section 202. 25
- “(4) A claimant is eligible for the greater of— 30
- “(a) the amount calculated under **subclause (2)** with the inclusion of earnings as an employee in the calculation; and
- “(b) the amount calculated under **subclause (2)** with the exclusion of earnings as an employee from the calculation.
- “(5) If the claimant’s weekly earnings are calculated under **subclause (2)** with the inclusion of his or her earnings as an employee, the claimant is not also eligible to have his or her weekly earnings calculated under clauses 33 to 36. 35

Clause 38—continued

New (majority)

“(6) This clause applies only to claims for weekly compensation made, and to periods of incapacity starting, on or after 1 April 2005.

“38A **Weekly earnings if self-employed claimant had earnings as a shareholder-employee in the relevant year** 5

“(1) This clause applies if the claimant—

“(a) had earnings as a self-employed person immediately before the commencement of his or her incapacity; and

“(b) did not have earnings as a self-employed person in the relevant year; and 10

“(c) did have earnings as a shareholder-employee in the relevant year; and

“(d) had been employed continuously even though the claimant changed from receiving earnings as a shareholder-employee to receiving earnings as a self-employed person. 15

“(2) The claimant’s weekly earnings must be calculated under **clause 38(2)** using the claimant’s earnings as a shareholder-employee as if they were the claimant’s earnings as a self-employed person in the relevant year.” 20

Clause 39

Repeal and substitute:

“39 **Weekly earnings if claimant had earnings as shareholder-employee immediately before incapacity commenced** 25

“(1) The weekly earnings of a claimant who had earnings as a shareholder-employee immediately before his or her incapacity commenced are the higher of—

“(a) the relevant amount calculated under clause 34 or clause 36, whichever is applicable; and 30

“(b) the relevant amount calculated under **subclause (2)**.

“(2) The amounts to be calculated under this subclause are,—

“(a) for claimants who first commenced receiving earnings as a shareholder-employee in the income year in which 35

Clause 39—continued

the incapacity commenced, the amount calculated using the following formula:

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

where—

a is the total of the claimant's earnings as an employee in the 52 weeks immediately before the incapacity commenced

b is the number of full or part weeks during which the claimant earned those earnings as an employee:

“(b) for claimants for whom the relevant year was the first year during which they received earnings as a shareholder-employee, the amount calculated using the following formula:

$$\frac{a + b}{c}$$

where—

a is the claimant's <total> earnings as an employee in the 52 weeks immediately before his or her incapacity commenced

b is the claimant's earnings as a shareholder-employee in the relevant year

c is the combined number of full or part weeks during which the claimant earned those earnings as an employee and the number of weeks that the Corporation considers fairly and reasonably represents the number of weeks or part weeks during which the claimant earned those earnings as a shareholder-employee in the relevant year, up to a combined maximum of 52 weeks <or the total number of weeks in the claimant's relevant year if the relevant year is more than 52 weeks>:

“(c) for all other claimants, the amount calculated using the following formula:

$$\frac{a}{c} + \frac{b}{d}$$

where—

Clause 39—continued

- a is the claimant’s <total> earnings as an employee in the 52 weeks immediately before his or her incapacity commenced
 - b is the claimant’s earnings as a shareholder-employee in the relevant year 5
 - c is 52
 - d is the number of weeks in the relevant year.
- “(3) A claimant is eligible for the greater of—
- “(a) the amount calculated under **subclause (2)** with the inclusion of earnings as an employee in the calculation; and 10
 - “(b) the amount calculated under **subclause (2)** with the exclusion of earnings as an employee from the calculation.
- “(4) If the claimant’s weekly earnings are calculated under **subclause (2)** with the inclusion of their earnings as an employee, the claimant is not also eligible to have his or her weekly earnings calculated under clauses 33 to 36. 15

New (majority)

- “(5) If a claimant’s weekly earnings as a shareholder employee are calculated under **subclause (2)**, the same earnings cannot be used as earnings as an employee for the purposes of clauses 33 to 36. 20
- “(6) This clause applies only to claims for weekly compensation made, and to periods of incapacity starting, on or after 1 April 2005.”

Clause 40(2)

Repeal and substitute: 25

- “(2) The claimant’s weekly earnings must be calculated under <clause 39(3)> <clause 39(2)> using the claimant’s earnings as a self-employed person as if they were earnings as a shareholder-employee in the relevant year.”

Clause 41

Repeal and substitute: 30

“41 Calculations for multiple employment situations

- “(1) Claimants to whom **clause 38** applies, and to whom clauses 33 to 36 apply because they have earnings as an employee at the time their incapacity commences, may— 35

Clause 41—continued

- “(a) have their weekly earnings calculated under **clause 38** with the inclusion of their earnings as an employee; or
- “(b) have their weekly earnings calculated under **clause 38** excluding their earnings as an employee, but may also have their employee earnings calculated under clauses 33 to 36 and aggregated under **subclause (5)**.

5

Struck out (majority)

“(2) A claimant who chooses to have his or her weekly earnings calculated in accordance with **subclause (1)(a)** is not entitled to an amount calculated under clauses 33 to 36.

New (majority)

“(2) If a claimant’s weekly earnings are calculated in accordance with **subclause (1)(a)**, the same earnings cannot be used as earnings as an employee for the purposes of any other calculation of an amount of weekly earnings.

10

“(3) Claimants to whom **clause 39** applies, and to whom clauses 33 to 36 apply because they have earnings as an employee at the time their incapacity commences, may—

15

- “(a) have their weekly earnings calculated under **clause 39** with the inclusion of their earnings as an employee; or
- “(b) have their weekly earnings calculated under **clause 39** excluding their earnings as an employee, but may also have their employee earnings calculated under clauses 33 to 36 and aggregated under **subclause (5)**.

20

Struck out (majority)

“(4) A claimant who chooses to have his or her weekly earnings calculated in accordance with **subclause (3)(a)** is not entitled to have his or her weekly earnings calculated under clauses 33 to 36.

25

Clause 41—continued

New (majority)

- “(4) If a claimant’s weekly earnings are calculated in accordance with **subclause (3)(a)**, the same earnings cannot be used as earnings as an employee for the purposes of any other calculation of an amount of weekly earnings. 5
- “(5) If a claimant is not prohibited from doing so by **subclause (2) or subclause (4)**, and would have more than 1 amount of weekly earnings from different employment situations because of the operation of **clause 34 or clause 36 or clause 38 or clause 39**, the claimant’s weekly earnings are to be calculated by doing the relevant calculations under those clauses separately and then aggregating the results. 10
- “(6) However, a claimant’s weekly earnings calculated under clause 34 or clause 36 must not be aggregated with the claimant’s weekly earnings under **clause 39** if the claimant’s weekly earnings under **clause 39** are his or her earnings under clause 34 or clause 36.” 15

Clause 42

Repeal subclauses (3) to (6) and substitute:

- “(3) The minimum weekly earnings are— 20
- “(a) for a person under 18 years of age, the amount as at 1 July each year which is the greater of—
- “(i) the minimum weekly wage for a person under the age of 18 years under the Minimum Wage Act 1983; or 25
- “(ii) 125% of the rate for a single person under the age of 18 years of invalid’s benefit under the Social Security Act 1964; or
- “(iii) the higher of the amounts calculated under **subparagraphs (i) and (ii)** as at 1 July in the preceding year. 30
- “(b) for a person over 18 years of age, the amount as at 1 July each year which is the greater of—
- “(i) the minimum weekly wage for a person over the age of 18 years under the Minimum Wage Act 1983; or 35

Clause 42—continued

“(ii) 125% of the rate for a single person over the age of 18 years of invalid’s benefit under the Social Security Act 1964; or

“(iii) the higher of the amounts calculated under **subparagraphs (i) and (ii)** as at 1 July in the preceding year.”

5

Clause 43(3)

Repeal paragraph (a) and substitute:

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

10

Clause 52

Omit from subclause (1)(a) the word “is” and substitute the words “first becomes”.

15

Omit from subclause (1)(a) the word “immediately”.

Insert in subclause (3), before the words “becomes entitled”, the word “first”.

Insert in subclause (6), before the words “becomes entitled”, the word “first”.

20

Clause 55(2)

Add:

“(c) the date on which the personal injury first resulted in the person’s incapacity.”

Clause 67(5)

Omit the words “is not liable to” and substitute the words “must not”.

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s 51(5)<, (6)>

Schedule 2
Further amendments to principal Act

New (majority)

Part 1 Amendments that come into force on the day after the date of Royal assent	5
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Section 87

Repeal subsection (2) and substitute:

“(2) The Corporation must provide the vocational rehabilitation for the minimum period necessary to achieve its purpose, but must not provide any vocational rehabilitation for longer than 3 years (which need not be consecutive).” 10

Section 118(1)

Omit the words “is not liable to” and substitute the words “must not”.

Section 119(1)

Omit the words “is not liable to” and substitute the words “must not”. 15

Section 120(1)

Omit the words “is not liable to” and substitute the words “must not”. 20

Section 121(1)

Omit the words “is not liable to” and substitute the words “must not”.

Section 127

Omit from subsections (1), (2), and (3) the words “is not liable to” and substitute in each case the words “must not”. 25

Struck out (majority)

Omit from subsection (4) the words “is not liable to” and substitute the words “is not required to”.	
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Section 128

Omit the words “is not liable to” and substitute the words “must not”. 30

Part 1—*continued***Struck out (majority)****Section 129(2)**

Omit the words “is not liable to” and substitute the words “is not required to”.

Section 167

5

Insert in subsection (1), after the words “to employees”, the words “and private domestic workers”.

Omit from subsection (2)(a) the expression “section 168” and substitute the words “sections 168 and **168A**”.

Insert in subsection (3)(a), after the words “of employees”, the words “and private domestic workers”. 10

Section 169(2)

Omit the expression “section 168” and substitute the words “sections 168 and **168A**”.

Section 193

15

Repeal subsection (8).

Add to subsection (9) the word “; and” and also add:

“(d) a private domestic worker.”

Add:

“(10) Sections 195 and 196 apply to private domestic workers as if they were both the employer and the employee.” 20

Section 200

Insert, after subsection (1):

“(1A) Nothing in this Act requires a private domestic worker to pay a Residual Claims levy on his or her relevant earnings that exceed the specified maximum. For the purpose of this subsection, the relevant earnings are the person’s earnings as a private domestic worker together with his or her earnings as an employee (other than as a private domestic worker).” 25

Section 201

30

Repeal subsection (2)(b).

Repeal subsection (3)(b).

Section 233

Omit from the heading the words “or private domestic worker”.

Repeal subsection (3). 35

Part 1—*continued*

Section 235(1)

Insert in paragraph (a), after the words “self-employed persons”, the words “and from private domestic workers”.

Insert in paragraph (b), after the words “self-employed persons”, the words “, from private domestic workers,”.

5

Section 324(3)(d)(i)

Omit the words “is not liable to” and substitute the words “must not”.

Section 327

Repeal paragraph (e).

10

Section 329(b)

Omit the expression “193” and substitute the expression “**168A**”.

Section 379

Omit from subsection (1) the words “is not liable to” and substitute the words “must not”.

15

Struck out (majority)

Omit from subsection (2) the words “is not liable to” and substitute the words “is not required to”.

New (majority)

Part 2

Amendments that come into force on 1 April 2005

Section 127

Omit from subsection (4) the words “is not liable to” and substitute the words “is not required to”.

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Section 129(2)

Omit the words “is not liable to” and substitute the words “is not required to”.

25

Section 379(2)

Omit the words “is not liable to” and substitute the words “is not required to”.

Legislative history

2 August 2004

Introduction (Bill 165-1)

5 August 2004

First reading and referral to Health Committee

