

CABINET LEGISLATION COMMITTEE

**INJURY PREVENTION, REHABILITATION, AND COMPENSATION
AMENDMENT BILL 2009**

Proposal

- 1 It is proposed that the Cabinet Legislation Committee approve for introduction the Injury Prevention, Rehabilitation, and Compensation Amendment Bill 2009 (the Bill) subject to final approval of government caucuses. Cabinet approved the policy matters on 17 August 2009 [CAB Min (09) 29/8]. I also propose not to amend the work-related mental injury provisions and seek Cabinet's approval for this.

Executive summary

- 2 The primary purpose of this Bill is to improve flexibility in the ACC Scheme, facilitate cost containment, provide for closer working relationships between government agencies and ACC, and to improve financial reporting and accountability.
- 3 The key areas of change in the Bill are:
 - a changing the ACC full-funding regime to extend the final date for full-funding and to merge the residual and main accounts
 - b allowing collection of the Motor Vehicle Residual Levy from the motor spirit (petrol) levy
 - c enabling incentives to reduce injuries including experience rating and risk sharing for the Work and Motor Vehicle Accounts
 - d removing amendments made by the previous government relating to cover for work-related gradual process, disease, or infection and workplace mental injury
 - e removing amendments made previously to weekly compensation and vocational independence requirements to reduce costs
 - f reintroducing disentitlement of claimants who self-injure or commit suicide
 - g strengthening the disentitlement of criminals injured while committing a crime
 - h removing statutory panels
 - i setting a threshold for cover for hearing loss
 - j requiring provision of a report by ACC to the Minister on the financial condition of the Corporation
- 4 The Bill also makes a number of minor technical changes to the IPRC Act.

Policy

- 5 The Bill makes 21 amendments to the Injury Prevention, Rehabilitation, and Compensation Act 2001. I have reconsidered the need to repeal the provision for workplace mental injury and seek Cabinet's agreement to remove this amendment. Funding ACC's residual liabilities.
- 6 The Bill:
 - a sets the fully funded date when the estimated residual liabilities must be paid off at 31 March 2019

- b sets the figure for the residual liabilities as estimated on 30 June 2009
- c folds the Residual Claims Account into the Work Account, and the residual liabilities into the Motor Vehicle and Earners' Accounts; and
- d requires the Minister for ACC to set the portion of the levies to be allocated to the residual liabilities in regulations each year.

Allow the Motor Vehicle Account Residual Levy to include funding from the Motor Spirit Levy

- 7 This proposal will amend the IPRC Act to allow both the licence fee and the motor spirit levy to be used as sources of funding for the Motor Vehicle Account Residual levy.

Enable experience rating and risk sharing in the Work Account

- 8 The Bill:
- a enables the establishment by regulations of experience rating and risk sharing of levy payers in relation to levy rates, which could include no-claim bonuses, higher or lower levies, and claim thresholds
 - b allows all of the current ACC workplace programmes to be retained (with some modifications) alongside any new process for experience rating and risk sharing.

Enable risk rating in the Motor Vehicle Account for both vehicles and vehicle owners

- 9 The Bill enables the establishment by regulations of risk rating for:
- a motor vehicles
 - b registered owners of motor vehicles
 - c persons who hold trade licences under section 34(1) of the Transport (vehicle and Driver Registration and Licensing) Act 1986.

These categories are consistent with section 216 of the IPRC Act.

Technical amendment improving access to Cover-Plus Extra for shareholder employees

- 10 The Bill contains a technical amendment that clarifies ACC's ability to enter into an agreement to supply an agreed level of weekly compensation to shareholder employees who are not able to demonstrate taxable earnings as a shareholder employee.

Reinstate the former calculations for long-term (after four weeks) weekly compensation for non-permanent employees

- 11 The Bill reinstates the previous long-term weekly compensation calculation for non-permanent workers that was in force before the 2008 amendment

Replace the Vocational Independence threshold from capacity to work for 35 hours per week to capacity to work for 30 hours per week

- 12 Under the current Act a claimant is required to be able to work for at least 35 hours per week to achieve Vocational Independence which measures the claimant's capacity to engage in work. The Bill reduces this requirement to 30 hours per week.

Return increasing weekly compensation to the minimum weekly earnings rate from the fifth week of incapacity, instead of the second week

- 13 The Bill increases weekly compensation to the minimum weekly earnings rate after the fifth week of incapacity as occurred before 2008, rather than after the first week of incapacity.

Reduce Loss of Potential Earnings (LoPE) compensation for young people back to 80% of minimum weekly earnings

- 14 The Bill reduces the LoPE rate from 100% of adult minimum weekly earnings to 80%, which is the same rate as for other low income claimants.

Repeal changes made in 2008 to the test for causation for workplace gradual process, disease, or infection

- 15 The Bill reinstates the three-part test for workplace gradual process, disease, or infection that applied before the 2008 amendment.

Disentitlement for wilfully self-inflicted injury and suicide

- 16 The Bill reinstates the pre-2001 provision that disentitled claimants with cover for injury that was self-inflicted. This provision will:
- disentitle, except for treatment, claimants with wilfully self-inflicted injuries or suicides
 - exclude from disentitlement those with a mental injury covered by ACC; i.e. a mental injury suffered as a result of a physical injury or those with a mental injury as a result of certain criminal acts (sensitive claims).
- 17 If you agree to rescind the decision on work-related mental injury, work-related mental injury will also be excluded from disentitlement

Abatement of holiday pay – return to the provision that claimants' leave entitlements after their employment ends are considered as part of weekly earnings when calculating weekly compensation

- 18 The Bill requires that if a claimant receives holiday pay on the termination of employment while receiving weekly compensation, ACC must abate weekly compensation for a period equivalent to the amount of leave paid.

Make it optional for occupational assessors to consider pre-incapacity earnings when undertaking initial and Vocational Independence assessments

- 19 The Bill makes it optional for the occupational assessor, during an initial or vocational occupational assessment, to consider the claimant's earnings before the claimant's incapacity.

Remove Ministerial Advisory Panels

- 20 The Bill removes two ministerial advisory panels:
- a the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection (WRGPDI), which was provided for in the IPRC Act to advise the Minister for ACC on matters relating to WRGPDI
 - b the Injury Surveillance Ministerial Advisory Panel (ISMADP), which was intended to oversee the function of the Information Manager

Hearing loss claims – cover and entitlements

- 21 The Bill requires that a person's injury-related hearing loss must reach a 6% threshold before they can be considered for ACC cover.

Strengthening the disentitlement provision for claimants for whom it would be repugnant to justice to provide entitlements

- 22 The Bill provides for automatic disentitlement if a claim meets the following criteria:
- a a person was injured while committing the crime for which s/he was imprisoned
 - b the person was imprisoned for this crime
 - c the person has cover under ACC and is eligible for entitlements for this injury
 - d the person committed a crime that is punishable with a sentence of a maximum of two years or more imprisonment.
- 23 The Bill also provides that the Minister for ACC may exercise his or her discretion in cases where exceptional circumstances apply. Claimants in this group will be entitled only to treatment, and their entitlement to surgery would be limited to that which is necessary to restore function to allow a claimant to return to work.

Information sharing –enable ongoing information sharing between IRD and ACC to ensure good customer service. Consequential amendment to the Tax Administration Act 1994 required.

- 24 The Bill amends the IPRC Act and the Tax Administration Act 1994 to allow Inland Revenue to provide the following information to ACC upon request and will apply on and from 1 April 2002:
- a the agent's name and contact details, if the taxpayer has a tax agent, and
 - b the date of death, and the address of estate administrator, for a deceased taxpayer.

Enable ACC to provide non-ACC related government services or entitlements to ACC claimants

- 25 The Bill provides that, where there is a government policy decision that ACC should provide non-ACC related additional government services or entitlements in relation to ACC claimants, ACC can do so without having to do it via one of its subsidiaries and without having to do so on a commercial basis and, where appropriate, for the funding of these services or entitlements to be accounted for separately, rather than through the Accounts.

Require ACC to table in Parliament annually ACC's actuarial report on liabilities

- 26 The Bill requires ACC to present a report on the Corporation's financial condition each year to its responsible Minister no later than the requirements for presenting annual reports under the Crown Entities Act 2004. The responsible Minister is required to present ACC's financial condition report to Parliament annually.

Remove cover for work-related mental injury (mental injury caused by direct exposure to a sudden and traumatic event during the course of a person's employment)

- 27 On 17 August 2009 Cabinet agreed [CAB Min (09) 29/8] to "remove cover for work-related mental injury (mental injury that has been caused by direct exposure to a sudden and traumatic event during the course of a person's employment)".

- 28 The IPRC Act currently provides cover for work-related mental injury, that is, mental injury caused wholly or substantially by direct experience of a sudden traumatic event during the course of employment (for example a train driver hitting someone on the tracks, or a bank teller witnessing a colleague get shot in a bank robbery).
- 29 The provisions exclude mental injuries caused by:
- non-work exposure, and
 - exposure to gradual onset workplace stress.
- 30 Cover for work-related mental injury is limited because the IPRC Act defines mental injury as a clinically significant behavioural, cognitive, or psychological dysfunction. Cover is further limited by this provision applying only to people who were exposed to an event that is sudden, severe, and directly experienced by the claimant.
- 31 At present the Bill repeals the provision enacted in 2008 to provide cover for work-related mental injury as agreed by Cabinet. Savings were expected to be:

Estimated savings (fully funded)

Year Impact (\$000)	2010/2011	2011/2012	2012/2013	2013/2014
Work Account	5,000	5,300	5,600	6,000

Proposal

- 32 I propose that the Cabinet decision be rescinded and the provision removed from the Bill. Since these provisions came into force (October 2008), 75 claims have been made, of which 57 have been declined, 16 are under investigation, and two have received cover.
- 33 In view of the relatively small financial impact of this enhancement to workplace cover but the greater impact on workers, I propose that this item is dropped from the Bill. If the provision proves to be problematic after further experience we can reassess the need for it. The Ministry of Justice is concerned that if this proposal is not rescinded there will be additional legal aid costs. The Ministries of Health and Social Development support rescinding this decision.

Regulatory impact statement

- 34 A regulatory impact statement was prepared in accordance with the necessary requirements, and was submitted at Cabinet and Cabinet Social Policy Committee when approval of the policy relating to the Bill was sought [CAB Min (09) 29/8 refers].

Compliance

- 35 The Bill complies with each of the following:
- a the principles of the Treaty of Waitangi;
 - b relevant international standards and obligations; and
 - c the Legislation Advisory Committee Guidelines, *Guidelines on Process and Content of Legislation*
 - d financial implications have been considered previously.
- 36 The proposals contained in this paper appear to raise issues of consistency under the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. In particular, the proposals to remove cover for work related mental injury and disentitlement for wilful self inflicted injury and suicide will impact on the right to be free from discrimination (section 19(1) of the **Bill** of Rights Act). The proposals

relating to disentanglement for repugnant to justice will impact on the right to natural justice (section 27(1) of the Bill of Rights Act). Ministry of Justice officials note that the legislation remains subject to modification following consideration of this paper and will provide a final assessment of **the consistency of the proposals with the Bill of Rights Act** when the **draft** legislation has been finalised.

Consultation

- 37 ACC and the Treasury were consulted on this paper. The Ministries of Health, Economic Development, Justice, and Social Development, Te Puni Kokiri, and the Privacy Commissioner have been consulted on this paper. Inland Revenue, the State Services Commission and the Department of the Prime Minister and Cabinet have been informed.
- 38 There has been no opportunity for consultation with external stakeholders on many of the proposals because of time constraints. The Select Committee considering the Bill often seeks submissions from stakeholders during its consideration of bills amending ACC legislation.

Binding on the Crown

- 39 The Bill amends the IPRC Act, which is binding on the Crown.

Associated regulations

- 40 Regulations will be needed to bring into force the provisions relating experience rating and risk rating in the Work and Motor Vehicle Accounts.

Deemed regulations

- 41 The proposed Bill does not include any provision empowering the making of deemed regulations.

Commencement of legislation

- 42 The following provisions come into force on 1 July 2010:
- a Clauses 4(3), 6-8, 9-11, 13-19, 24, 38, 44 and 45, 47, 49, 54A-61, Parts 1 and 2 of Schedule 1 (except the amendments relating to clauses 16(b) and 18 to 20 of Schedule 4 of the Principal Act), clauses 50 and 51 and Schedule 2 (except the amendment relating to the Health and Safety in Employment Act 1992).
- 43 The remainder of the Bill comes into force on the day after the date on which Royal Assent is received.

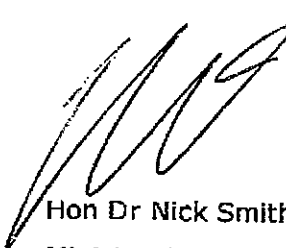
Parliamentary stages

- 44 I request that this Bill be introduced on Monday 12 October 2009.
- 45 It is proposed that the Bill be referred to the Transport and Industrial Relations Select Committee for consideration.

Recommendations

I recommend that the Committee:

- 1 **Note** that the Injury Prevention, Rehabilitation, and Compensation Amendment Bill 2009 holds priority three on the legislation programme (to be passed if possible in 2009);
- 2 **Note** that the Bill:
 - 2.1 changes the ACC full-funding regime to extend the final date for full-funding and to merge the residual and main Accounts;
 - 2.2 allows collection of the Motor Vehicle Residual Levy from the Motor Spirit Levy;
 - 2.3 enables experience rating and risk sharing for the Work and Motor Vehicle Accounts;
 - 2.4 removes amendments made by the previous government relating to cover for work-related gradual process disease or infection, weekly compensation and vocational independence;
 - 2.5 reintroduces disentitlement of claimants who self-injure or commit suicide;
 - 2.6 strengthens disentitlement of criminals injured while committing a crime and imprisoned;
 - 2.7 removes statutory panels;
 - 2.8 sets a threshold for cover for hearing loss; and
 - 2.9 requires preparation of a financial condition report by ACC which must be tabled in the House.
- 3 **Note** that on 17 August 2009 Cabinet agreed to remove cover for work-related mental injury (mental injury that has been caused by direct exposure to a sudden and traumatic event during the course of a person's employment) [CAB Min 29/8];
- 4 **Rescind** the decision referred to in recommendation 3 because the financial impact of this provision is small but the effect on workers could be significant;
- 5 **Approve** for introduction the Injury Prevention, Rehabilitation, and Compensation Amendment Bill 2009, subject to the decisions referred to in recommendations 3 and 4 and to final approval of government caucuses;
- 6 **Agree** that the Bill be introduced on 12 October 2009;
- 7 **Agree** that the government propose that the Bill be:
 - 7.1 referred to the Transport and Industrial Relations Select Committee for consideration;
 - 7.2 enacted by 28 February 2010.



Hon Dr Nick Smith
Minister for ACC

23 / 9 / 2009
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