

## **TWO OPTIONS TO IMPROVE THE WORKPLACE ACCIDENT COMPENSATION SCHEME**

### **Proposal**

- 1 This paper proposes that legislative amendments be drafted on two possible approaches to improve the workplace accident compensation scheme.
- 2 The two options are:
  - extending the Accredited Employers Programme (AEP) and increasing risk-sharing outside the AEP, and
  - giving employers, self-employed, and private domestic workers a choice of purchasing work-related personal injury insurance from the Accident Compensation Corporation (ACC) or from a private insurer.
- 3 Public consultation on both proposals took place from 1 June to 15 July 2011. I made it clear that reform will be carried out in a careful and considered way and that final policy decisions will not be made until necessary detail has been refined and the Government has received an electoral mandate to proceed.
- 4 Appendix 1 and Appendix 2 set out the design elements of each option that can be used at this stage as a basis for detailed drafting.
- 5 I will then report back to the Economic Growth and Infrastructure Committee early next year with feedback from public consultation, analysis of the merits of each option, a regulatory impact statement, and the draft Bills to give effect to the proposals set out below. This will enable a final decision on which option should proceed and ensure that whatever option is chosen, it can be quickly implemented.
- 6 At the same time I will report back on the results of a scoping study on introducing competitive delivery to other ACC Accounts.

### **Background**

- 7 On 1 November 2010 Cabinet agreed in principle to introduce competition to the delivery of the ACC Work Account [CAB Min (10) 39/10 refers].
- 8 On 16 May 2011 Cabinet agreed [CAB Min (11) 19/7 refers] to the release of a discussion document *Increasing choice in workplace accident compensation*, which set out proposals covering the following two options:
  - expanding the AEP, and increasing risk sharing outside the AEP, and
  - introducing private underwriting to the ACC Work Account but retaining ACC in its current organisational form.
- 9 The Department of Labour (the Department) was directed to report back to the Cabinet Economic Growth and Infrastructure Committee (EGI) by 17 August 2011 with detailed advice on the preferred policy option, including any capital requirements, and on all fiscal and financial implications and risks.

- 10 I now propose to provide this advice early next year so that final policy decisions can be made then. At this point I wish to leave the options open so they can be implemented quickly once decisions are taken.

### **Consultation**

- 11 Submissions on the discussion document were invited over a six-week period, concluding on 15 July 2011. The Department received 112 submissions.
- 12 Where submitters' views have prompted some refinement of the original proposals, they are noted in the appendices. The decision paper that I propose to submit to EGI in the New Year will include more comprehensive information on the issues raised during the consultation process.

### **Rationale for change**

- 13 The costs of workplace injuries are significant in personal, social, and economic terms. The financial cost to the New Zealand economy was \$4.9 billion or 3.4 percent of GDP in 2004/05.
- 14 Over its history, the accident compensation scheme has repeatedly got into financial difficulty. Most recently, ACC accumulated huge deficits in 2007/08 and 2008/09. ACC is now back on to a sound financial footing, but my concern is whether this performance will be sustained into the future.
- 15 To improve the delivery of the accident compensation scheme there is scope to make changes so that treatment, rehabilitation and compensation are managed as efficiently as possible and the number of injuries is reduced.

### **Extensions to the AEP and increasing risk-sharing outside the AEP**

- 16 The first option that I propose be drafted involves extensions to the existing AEP and increasing risk-sharing outside the AEP.
- 17 The AEP currently allows employers to take on a high degree of self-insurance along with self-management of workplace injury claims.
- 18 The proposals to expand the AEP and introduce risk sharing are focussed on reducing barriers to participation in the AEP by providing a greater range of risk-sharing arrangements, reducing compliance costs, allowing private insurers to offer high-cost claims cover and stop-loss cover; and giving employers, particularly small employers, options for risk-sharing outside the AEP (i.e. by paying excesses on claims).
- 19 AEP and risk-sharing changes would offer businesses increased flexibility in the level of risk they take on and the levy they pay. The AEP introduces some element of contestability to injury claims management because it is expected that medium-sized employers who opt in to an extended AEP would generally outsource claims management to third-party administrators (TPAs).
- 20 More detailed elements of the proposal, to be developed further, are set out in Appendix 1.

### **Increasing Choice in workplace accident compensation**

- 21 Under the second proposal to be drafted, from 1 April 2013 all employers, the self-employed, and private domestic workers would be able to choose to purchase their

- work-related personal injury cover either from a private insurer or from ACC, for workplace injuries suffered on or after that date.
- 22 ACC would continue to participate in the market in its current organisational form as a Crown Agent. Choice would be on an opt-out basis, with ACC as the default insurer: that is, employers, private domestic workers, and self-employed people who wished to obtain private insurance cover would be able to do so, but those without a private insurance contract would automatically be covered by ACC.
  - 23 ACC would be required to compete with private insurers, and to enable it to do so, its pricing for Work Account cover would be deregulated. That is, its prices and most features of its products would no longer be set by Ministers or subject to the public consultation requirements that apply to the current levy-setting process.
  - 24 As a Crown Agent, ACC would continue to be exempt from paying business income tax and from general insurance prudential requirements, but would be required to have a funding policy that includes similar approaches to private insurers in terms of matters such as funding horizons, risk margins, and discount rates.
  - 25 Regulatory safeguards on ACC's pricing would include:
    - requiring ACC to price prudently by incorporating a surplus margin into prices (according to principles and/or methods that may be specified in regulations)
    - requiring ACC to maintain a minimum solvency (to be incorporated into prices so that reserves build up over time), to be specified in regulations
    - requiring ACC to report regularly to the Government on solvency
    - enabling the Crown to require that net surplus be distributed to the Crown.
  - 26 A market regulator would be responsible for monitoring and enforcing employer and insurer compliance with legal requirements.
  - 27 More detailed elements of this proposal, to be developed further, are set out in Appendix 2.

### **Scoping competitive delivery in other ACC Accounts**

- 28 On 1 November 2010 Cabinet directed the Department, in consultation with ACC, the Ministry of Economic Development, the State Services Commission, the Treasury, and other departments as appropriate, to undertake a scoping study on introducing competitive delivery to other appropriate Accounts, including key issues that would need to be addressed, and report back to EGI by 29 June 2011 [CAB Min (10) 39/10 Amended Minute refers].
- 29 On 11 May 2011 EGI:
  - agreed to extend the reporting date for the scoping study to 17 August 2011, to coincide with detailed advice on the preferred policy option for increasing Choice in the Work Account, and
  - directed the Department to include consideration of residual claims, including the involvement of accredited and other employers in the management of residual claims, in the wider work to scope competition in other Accounts [EGI 11 (9/6) refers].
- 30 The Department is also working with the Ministry of Transport on the implications of competitive provision of the Motor Vehicle Account.

- 31 It would be more appropriate to defer this report back until after the general election, so it coincides with final decisions on introducing Choice to the Work Account or extending the Accredited Employers Programme. I therefore propose to report back to EGI by 29 February 2012.

### **Consultation with other agencies**

- 32 The Department is working with other Government agencies in the development of the two options set out in this paper and appendices. Agencies' comments on the two options will be included in the decision paper that I propose to submit to EGI by 29 February 2012.

### **Financial implications**

- 33 Information on financial implications of the two options will be included in the decision paper that I propose to submit to EGI by 29 February 2012.

### **Human rights**

- 34 When proposals are submitted to Cabinet for final decisions, further consideration will be given to any possible inconsistencies with the Human Rights Act 1993 that may arise. The Department is working with the Ministry of Justice to resolve any inconsistencies.
- 35 The development of a new competitive workplace insurance model, including the creation and maintenance of a database of claims information (data pool), to which insurers would have access, gives rise to privacy issues. The Department has engaged a privacy specialist and is consulting with the Privacy Commissioner to address these issues. The Department intends to prepare a Privacy Impact Assessment as part of this engagement.

### **Legislative implications**

- 36 Amendments to the Accident Compensation Act 2001 would be required for either option. Supporting regulations would be needed, and consequential amendments to other Acts may also be needed.

### **Regulatory impact analysis**

- 37 A regulatory impact statement will be attached to the decision paper that I propose to submit to EGI by 29 February 2012.

### **Gender implications and disability perspective**

- 38 The decision paper that I propose to submit to EGI by 29 February 2012 will include analysis of gender implications and a disability perspective.


### **Publicity**

- 39 I propose to make a public statement at an appropriate time to inform those involved in the consultation process about the outcome of that process.
- 40 After final decisions are taken in the New Year I intend to direct the Department to publicly release a submissions analysis report.

## Recommendations

I recommend that the Cabinet Economic Growth and Infrastructure Committee:

- 1 **agree** that legislative amendments be drafted to give effect to two possible approaches to improve the workplace accident compensation scheme, contained in the public discussion document *Increasing choice in workplace accident compensation*:
  - extending the Accredited Employers Programme (AEP) and increasing risk-sharing outside the AEP, from 1 April 2013 [see Appendix 1]; and
  - giving employers, self-employed and private domestic workers a choice of purchasing work-related personal injury insurance from ACC or from a private insurer, from 1 April 2013 [see Appendix 2];
- 2 **approve** the design elements of each option, set out in Appendices 1 and 2 to this paper, as a basis for further refinement and legislative drafting;
- 3 **note** the Ministers of Finance, Health, ACC, Transport, and Associate ACC will consider minor and technical issues that might arise in the course of drafting;
- 4 **invite** the Minister for ACC to report to the Committee by 29 February 2012 with:
  - a decision paper including feedback from public consultation and analysis of the merits of each option;
  - a regulatory impact statement; and
  - draft Bills to give effect to the above proposals;
- 5 **invite** the Minister for ACC to issue drafting instructions to the Parliamentary Counsel Office to give effect to the two options, consistent with the detailed design elements set out in Appendices 1 and 2.



Hon Dr Nick Smith  
Minister for ACC

29 / 9 / 2011  
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## **Appendix 1**

### **EXTENSIONS TO THE ACCREDITED EMPLOYERS PROGRAMME (AEP) AND INCREASING RISK-SHARING OUTSIDE THE AEP**

#### **Proposal**

- 1 This appendix sets out the detailed elements to give effect to the proposal to extend the Accredited Employers Programme (AEP), and increase risk-sharing outside the AEP, to allow legislative drafting to begin. Design decisions are sought on these elements so that drafting can proceed, but a policy decision on whether to proceed with this option will not be made until the New Year.
- 2 I propose that we proceed with drafting all but one of the proposals that were included in the discussion document.

#### **Background**

##### ***About the AEP***

- 3 The AEP offers significantly lower ACC levies to employers who take responsibility for the management of their workers' work-related injuries and the related direct costs. Employers must meet certain criteria to participate in the AEP. The current criteria include:
  - having experience in managing occupational health and safety,
  - having appropriate claims management policies and procedures in place,
  - being financially sound, and
  - consulting with employees and their representatives.
- 4 Some accredited employers engage third-party claims administrators (TPAs) to manage claims on their behalf, but the employer remains responsible for the costs. The accredited employer and ACC enter into an agreement that specifies what the employer is responsible for, the levies they will pay, and other related matters.
- 5 There are two types of arrangement under the AEP - Partnership Discount Plan (PDP) and Full Self Cover (FSC).
- 6 PDP employers manage and meet the costs of claims in the cover year and the following year (PDP1) or two years (PDP2). If an injured person still has an open claim at the end of this claims management period, both claims management and financial responsibility are handed back to ACC. The employer may request that ACC take responsibility for managing especially severe claims earlier than this, although the employer remains financially liable for costs incurred during the claims management period.
- 7 Employers receive a discount on the standard levy broadly equivalent to what ACC would expect to pay over the chosen injury management period for employers in that industry group. This means that employers will gain if they achieve lower numbers and severity of injuries than the average for their industry group. Current discounts average 50% for PDP1 and 58% for PDP2.

- 8 In the FSC option, employers effectively assume full financial responsibility for claims for the life of the claim, but management of the claim passes to ACC at the end of the agreed claims management period (either 24, 36, or 48 months after the end of the claims year). Ongoing claims are handed back to ACC at an actuarially determined price. FSC employers receive a greater levy reduction than the discount given in the PDP.

### **Description of the option**

- 9 The specific elements are as follows:

#### *Reducing barriers to participation in the AEP by providing a greater range of risk-sharing arrangements*

- allowing a greater range of claims management periods,
- making the claims management period a set time rather than dependent on when the injury occurred in the levy year,
- allowing higher and lower levels of high-cost claims cover and stop-loss cover,
- incorporating claims history in PDP pricing,
- requiring ACC to take over claims management at the AEP employer's request,
- allowing full and final settlement of liabilities at the end of claim management periods,
- allowing groups of businesses (e.g. franchises, cooperatives) to participate in the AEP,

#### *Reducing compliance costs*

- allowing ACC to consider financial instruments when considering an employer's financial situation,
- changes to the injury management practices audit,
- tailoring injury management audit requirements to an employer's track record,
- changes to the health and safety audit,
- introducing competitive provision of high-cost claims cover and stop-loss cover,

#### *Options for risk-sharing outside the AEP*

- allowing ACC to offer employers a range of claims excess options: weekly compensation, medical only, or all costs excess.

### **Suggested change to the discussion document proposals**

- 10 In order to keep options open for a final decision in the New Year, I propose that we proceed with drafting all but one of the proposals that were consulted on.
- 11 The discussion document proposed making health and safety audits voluntary, but submitters favoured retaining health and safety audits in some form. In response, I propose that ACC should require that an acceptable health and safety audit is undertaken<sup>1</sup>, but not prescribe the form of the audit. The audit would need to be

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<sup>1</sup> ACC requires an audit of health and safety practices on entry and ongoing while the employer is in the AEP.

acceptable to ACC based on the eligibility requirements set out in section 185 of the Accident Compensation Act 2001 (the AC Act).

### **Design elements**

- 12 Legislative amendments to the Accident Compensation Act 2001 (AC Act) would:
  - allow private insurers to offer stop-loss and high-cost claims cover;
  - require that, if requested by an employer, ACC take over any claim (according to principles setting out the process and how ACC is to price the claim);
  - allow ACC to consider financial instruments or forms of security, as evidence of an employer meeting the financial criteria for the AEP;
  - provide for minimum AEP claims management periods of 6 months, with no maximum period;
  - include a penalty regime to deter under-reporting and suppression of claims;
- 13 Changes to regulations would:
  - allow other recognised audit programmes in place of the Injury management practices audit;
  - tailor the approach and frequency of audits to individual employers so that employers who have superior injury management practices are subject to less frequent external audits;
  - require that employers undertake an acceptable health and safety audit approved by ACC based on the audit providing sufficient evidence to satisfy ACC that the requirements set out in section 185 of the AC Act have been, and continue to be, met;
  - combined with reduced audits, permit self-assessment or internal audits and Director/Executive Officer declarations for those employers who have already demonstrated a history of above average performance in injury management practices;
  - give employers the choice of whether the length of claims management period is measured from the end of the cover period or from the date of injury;
  - in order to allow higher and lower levels of high-cost claims cover and stop-loss cover, prescribe that minimum stop-loss be set at 100% of the risk, and that the maximum stop-loss be determined by ACC based on the financial strength of the employer;
  - set the minimum high-cost claims cover at \$50,000;
  - allow full and final settlement of liabilities at the end of claim management periods under the FSC option;
- 14 Other changes would include:
  - amending the injury management practices audit to align audit standards with legal requirements and remove unnecessary criteria, so that the focus is on results rather than processes;
  - ACC tailoring the financial requirements to the type and size of business and give employers more clarity about what requirements they will have to meet;

- the Department of Labour and ACC developing the details of how the levies for Partnership Discount Plan (PDP) employers would be modified to take account of claims experience;
  - the Department of Labour and ACC developing the details of risk-sharing options outside the AEP (claims excesses);
  - during drafting, officials considering a provision for regulation-making powers for specifying the claims transit function for the AEP; with those regulations providing for a system specified between stakeholders - the health sector, accredited employers, and ACC - and allowing for consultation to finalise such regulations.
- 15 Conditional on policy decisions in the New Year, the changes would take effect on 1 April 2013.

## Appendix 2

### INCREASING CHOICE IN WORKPLACE ACCIDENT COMPENSATION

#### Proposal

- 1 This appendix sets out the detailed elements of the proposal to increase Choice in workplace accident compensation, to allow legislative drafting to begin. Design decisions are sought on these elements so that drafting can proceed, but a policy decision on whether to proceed with this option will not be made until the New Year.

#### Further development of the option

- 2 The discussion document *Increasing choice in workplace accident compensation* signalled that under Choice, ACC would be subject to regulatory safeguards to ensure it sets prices responsibly. To give effect to this I propose that the draft legislation include safeguards on ACC's pricing as follows:
  - requiring ACC to price prudently by incorporating a surplus margin into prices (according to principles and/or methods that may be specified in regulations)
  - requiring ACC to maintain a minimum level of solvency (to be incorporated into prices so that reserves build up over time), to be specified in regulations
  - requiring ACC to report regularly on solvency
  - enabling the Crown to require that net surplus assets be distributed to the Crown, to avoid build-up of excess reserves that could reduce financial disciplines or be used by ACC to reduce its prices (which would make it difficult for insurers to compete).
- 3 The discussion document proposed first extending the AEP, then introducing Choice into the delivery of the Work Account.
- 4 If Choice is introduced the AEP would be deregulated, but as a transitional measure the AEP would be maintained for current members on a temporary basis. Over time a greater range of risk-sharing products for employers would emerge as both ACC and insurers develop new products to meet employer needs. I note that to protect claimants, insurers would have a legislated obligation to deliver the statutory minimum entitlements to claimants, and insurers would be liable regardless of the nature of any risk-sharing arrangements with employers.
- 5 Lastly, if these proposals proceed, I propose to delay the start date for the new market from 1 October 2012 to 1 April 2013. This is more realistic if final decisions are to be taken in early 2012. It also aligns with the start of the levy year and so would be simpler to implement.

#### Design elements

- 6 Amendments to the Accident Compensation Act 2001 (AC Act) would:
  - ensure that employers are able to choose either to continue to purchase workplace accident insurance cover from ACC or to purchase workplace accident insurance from a private insurer, from 1 April 2013;
  - ensure that all self-employed and those shareholder-employees who do not pay PAYE would be required to purchase bundled workplace and non-workplace injury cover for personal injury from private insurers or ACC;

- ensure that those shareholder-employees and private domestic workers who pay PAYE would not be permitted to purchase non-workplace cover from private insurers/ACC (that would continue to be dealt with by levies collected with PAYE) but be required to purchase workplace personal injury insurance cover from private insurers/ACC;
- ensure that ACC is the default provider for employers, private domestic workers, and self-employed people who do not obtain private cover;

*Infrastructure to support the market*

- provide for a new market regulator, located as a separate business unit in the Department of Labour, to carry out the following regulatory functions:
  - establishment and oversight of a register of private cover and a claims data pool, including setting out purposes for collection of information and access to it, and specifying that data in the data pool will be anonymised;
  - facilitating establishment of a claims transit function;
  - monitoring and enforcing employer and insurer compliance, including compliance with requirements to provide information (notifications) to the register of private cover and data for the central data pool;
  - collecting contributions for Public Health Acute Services (PHAS) and bulk funding of emergency ambulance communications centres from private insurers and paying these to the Crown
  - monitoring and reporting on market operation and performance;
  - overseeing the transfer of cover in the event of insurer insolvency, and administering an insolvency levy on insurers in the event of unfunded claims of an insolvent insurer; and
  - setting and administering any other levy, for example to cover the operating costs of the regulator;
- provide for the costs of the market supporting infrastructure, including the market regulator and the claims transit function, to be recovered through a levy on insurers including ACC;
- include the list of new offences and penalties for insurers, employers, and treatment providers set out in Annex 1;

*Interface with the health sector*

- allow for measures to facilitate the interface with the health sector, as follows:
  - establishment of a central claims transit function unit to ensure that all initial claims are allocated quickly and effectively to the correct insurer;
  - a provision that insurers cannot purchase Public Health Acute Services (PHAS) direct from DHBs;
  - a provision requiring insurers to contribute PHAS costs and bulk funding of emergency ambulance communications centres via levies to be collected by the regulator;
  - including payment by insurers in current provisions in the AC Act that allow for payments for treatment to be made via regulations (that prescribe minimum entitlements), contracts, and at an agreed cost;

### *Insurer regulation*

- provide that any private insurer wishing to participate in the market for workplace accident insurance must be:
  - fully licensed under the Insurance (Prudential Supervision) Act 2010,
  - locally and separately incorporated;
- to ensure continuity of entitlements for injuries across time such as gradual process, disease, or infection claims, provide that the insurer at the time the injury manifests manages the claim;
- provide that where there are two or more injuries that are sustained by the same injured person in the same time period, where different managing insurers are involved:
  - those managing insurers will agree who the lead managing insurer is within 21 days of the most recent injury to that injured person, or
  - after 21 days if no such agreement has been made, then the injured person will choose the lead managing insurer;
- provide that the managing insurer can recover costs from other contributing insurers;
- include principles that provide clear accountability for cover, entitlements and costs;
- provide that insurers be able to ask ACC to take over management of the serious injury at an agreed price, such as happens now with accredited employers;
- include a provision to allow dispute resolution schemes approved under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) to provide independent reviews for workplace personal injury insurers (and self-employed non-workplace insurance), if they are both:
  - approved by the Minister of Consumer Affairs under the FSP Act (that is, they would have to meet all the relevant FSP Act requirements); and
  - able to meet the the additional capacity and capability requirements relevant to undertaking this type of dispute resolution (as set out in the criteria for approval), and are formally approved to do so by the Minister of Consumer Affairs;
- set out the criteria for approval of workplace personal injury insurance dispute resolution schemes;
- include provision for a reserve personal injury dispute resolution scheme and for that scheme to be named by Order in Council;

### *Role of ACC*

- require ACC to keep its competitive and non-competitive activities financially separate by setting up a new competitive work account and a new residual work account;
- require ACC to allocate costs to the new competitive work account in accordance with an approved cost allocation methodology, the application of

which would be subject to regular independent audit, backed by penalties if the methodology is not followed;

- remove the existing levy regulation-making provisions and process for the new competitive work account, including the consultation requirements, and instead give the ACC Board the power to set ACC's prices, within high-level constraints;
- require ACC to incorporate a surplus margin into its work account pricing (according to principles and/or methods that may be specified in regulations);
- require ACC to maintain a minimum level of solvency (that is, minimum level of net assets to liabilities), to be specified in regulations;
- enable the Crown to require that net surplus be distributed to the Crown;
- require ACC to report regularly on solvency;
- provide for the Crown to bear the funding risk (both downside and upside) associated with the new 1974-2013 residual work account;
- provide for a residual levy to be collected by insurers on behalf of ACC, along with the existing Health and Safety in Employment levy;

*Other matters*

- include regulation-making powers that will authorise the making of regulations, including for the following general purposes:
  - specifying conditions relating to ACC's price setting and prescribing the cost/revenue allocation methodology to be applied by ACC;
  - to include provision for imposing levies to fund aspects of the new regime, including the claims transit function, insurers' contributions to PHAS, funding for the market regulator, and an insolvency levy on insurers in the event of unfunded claims of an insolvent insurer;
  - specifying matters of detail relating to the market regulator's functions and powers, including requirements for notifications and returns, and the form of those notifications and returns;
  - to deal with the establishment and operation of a claims transit function and a register of claims, including an ability to specify the requirements relating to the manner of lodging claims, the information to be provided, the person responsible for providing the information, access to the register, prescribing forms, and the method of allocating claims to insurers;
  - to deal with the establishment and operation of an ACC claims data pool (comprising ACC claims information), including what information must be provided, the form in which the information must be provided, when the information is to be provided, the person responsible for providing the information, requirements relating to updating the data, and access to the claims data pool;
  - to specify requirements relating to insurance contracts, including matters that must be specifically included in contracts, and requirements relating to plain wording and disclosure of information;

- o to enable the appointment of an ACC Reserve Scheme, and relating to other ACC dispute resolution schemes, including matters relating to the ongoing operation of the schemes (noting that the Parliamentary Counsel Office (PCO) is to be consulted as to whether such provision should properly be included as a consequential amendment to the FSP Act);
  - o providing for the incorporation requirements for ACC workplace insurers;
  - o to deal with transitional matters and savings relating to the new regime coming into force (and providing for the expiry of that regulation-making power);
  - o to provide for any other minor or technical matters, not specifically dealt with above, but for which a need for regulations is identified during drafting;
- include requirements to consult with interested persons (including the Privacy Commissioner and private insurers), as appropriate, when making regulations;
  - include a power (to expire after 3 years) for the Minister for ACC to direct ACC to take or not take any action that the Minister considers necessary or desirable to facilitate the full implementation of Choice;
  - a provision repealing the AEP three years after the start date of Choice (so that existing members who want to continue in the scheme may do so on a temporary basis);
  - include a time-bound provision to allow ACC to secure working capital and funding for set-up costs for its new account by borrowing from on an arm's-length basis from its other accounts, with a commercial cost of borrowing being paid;
- 7 Amendments to regulations would:
- prescribe an agreed formula and methodology for allocation of PHAS costs (Insurers' Payment for PHAS);
- 8 Other work would include:
- engagement with the Office of the Privacy Commissioner during the drafting process to ensure that privacy issues are addressed;
  - development of managing/receiving insurer protocols to ensure that the receiving insurer manages the claim (for the claimant) and payments are made to treatment providers even though the correct managing insurer is yet to be found; and
  - development of specific pricing and funding parameters using further actuarial modelling and market analysis.

## Annex 1 to Appendix 2: Proposed offences and penalties

### Insurers

Offence	Proposed penalty
Failure to provide claimant with statutory entitlements	Fine of up to \$500,000
Failure to provide notification of cover to insured within statutory timeframe	Fine of up to \$50,000
Offering retrospective contract	Fine of up to \$50,000
Failure to provide written notice of decision to insured within statutory timeframe	Fine of up to \$50,000
Knowingly or willingly providing false or misleading information to the regulator	Fine of up to \$50,000
Failure to pay any levies set by the regulator within specified timeframe	Fine of up to \$25,000 (first offence) or up to \$50,000 (subsequent offences)
Failure to comply with duties to assist regulator in its use of powers of inspection	Fine of up to \$50,000
Information relating to statutory entitlements not specified separately from other insurance arrangements in contract	Fine of up to \$50,000
Failure to provide information to the regulator, including notification of cover or termination of cover, and information returns for the purposes of the regulated data pool, within statutory timeframes	Fine of up to \$50,000

To ensure insurers are treated equally, all of the above offences would apply to ACC, except, in situations where ACC is acting in its capacity as default insurer:

- offering a retrospective contract
- failure to provide notification of cover or termination of cover within statutory timeframes.

### Employers

Offence	Proposed penalty
Failure to disclose details of insurance contract to employees	Fine of up to \$15,000
Failure to notify employees of proposed entering or termination of insurance contract	Fine of up to \$15,000
Offence to require contributions from employees	Fine of up to \$15,000
Offence to not co-operate with regulator exercising their powers to inspect employers' workplace accident insurance claims and search premises	Fine of up to \$50,000
Offence to mislead insurer. <i>Offence provision to clarify that this cover misdirection or suppression of a workplace claim</i>	Fine of up to \$50,000
Offence not to provide requested information to insurer	Fine of up to \$5,000
Offence not to provide earnings information to insurer (NB applies to person receive weekly compensation of employer)	Fine of up to \$5,000
General penalty for offence, for which no penalty is provided in the Act	Fine of up to \$2,000

All of the above offences would apply to ACC insofar as its role as an employer.

### Treatment providers

Offence	Proposed penalty
Offence not to use the claims transit function after that claims transit function has been notified by the Regulator	Fine of up to \$5,000