

CABINET SOCIAL POLICY COMMITTEE

Proposals for the Injury Prevention, Rehabilitation, and Compensation (IPRC) Amendment Bill 2009

Proposal

- 1 This paper proposes amendments to the Injury Prevention, Rehabilitation, and Compensation (IPRC) Act 2001 comprising:
 - a amendments improving flexibility
 - b amendments repealing some changes to the IPRC Act made by the previous government that offer cost containment opportunities
 - c amendments to achieve other cost containment opportunities, and
 - d amendments facilitating ACC to work more closely with other government agencies, and
 - e an amendment requiring improved financial reporting and accountability.

Executive summary

- 2 The proposals in this paper are part of a set of actions to strengthen ACC's performance and control its costs. The changes to date include: a change of focus from welfare agency to injury risk manager, a stronger line against large levy increases, appointment of new Board members and a thorough internal value for money review being undertaken by ACC.
- 3 Changes are being made to physiotherapy purchasing. Savings from the new arrangement are estimated to be up to \$15-18 million in 2010/11 for the Non-Earners' Account and between \$32-39 million across the levy Accounts if all purchasing was under regulations. Changes have also been made to management of serious injury claims and service delivery.
- 4 The changes proposed in this paper will help to stabilise ACC's position, although they will not of themselves address the underlying cost drivers. I expect the forthcoming Stocktake of ACC Accounts will identify further measures that Ministers could consider next year.
- 5 The costs of the ACC Scheme are rising rapidly above the rate of inflation. ACC's estimated outstanding claim liabilities, including a risk margin, have increased from \$14.3 billion at 30 June 2006 to \$21.9 billion at 30 June 2009. Some of the increased costs and liabilities are due to expanded cover and entitlements available under the Scheme. Existing legislative provisions, such as the requirement to fully fund residual claims by 2014, are increasing pressure on the Scheme. Without the changes proposed here, the Motor Vehicle Levy, for example, would roughly double by the 2013/14 levy year. Other existing provisions, such as the inability to use the petrol levy to help fund residual claims, are inflexible.
- 6 This paper proposes legislative amendments that would improve the affordability and equity of the ACC scheme and would in particular improve:
 - a equity and transparency of levies
 - b incentives to prevent injuries
 - c incentives to encourage prompt rehabilitation and return to work

- d equity of entitlements
- e administrative efficiency.

7 The proposed amendments are listed in the table below.

No.	Amendment	Estimated Cost (000)
Amendments to improve flexibility		
1	Funding ACC's residual liabilities – move the residual claims full-funding date to 30 June 2019 <ul style="list-style-type: none"> • incorporate the Residual Claims Account into the Work Account and remove the separation of residual claims from current claims in the Earners' and Motor Vehicle Accounts • require a final valuation of the residual liabilities as at 30 June 2009, which would become the total amount to be paid by residual levy payers • allow the Minister for ACC to set in regulations the portion of the levies to be allocated to the residual portion for the relevant Accounts each year • set a final date of 2018/19 by which the estimated outstanding claim liability will be paid off. 	Not Applicable
2	Funding sources for Motor Vehicle Residual Levy. Allow the Motor Vehicle Account Residual Levy to be funded from the Motor Spirit Levy.	Not Applicable
3	Enable experience rating in the Work Account. An enabling provision to introduce experience rating and risk sharing into the Work Account.	Not Applicable
4	Enable risk rating in the Motor Vehicle Account. An enabling provision establishing regulations to allow risk rating for both vehicles and vehicle owners.	Not Applicable
5	Weekly compensation entitlement for shareholder employees. Enables non-PAYE shareholder employees to purchase an agreed level of weekly compensation despite having no taxable earnings but with the potential for future earnings.	Not Applicable
Amendments that rescind unfunded changes made by the previous government and present cost containment opportunities		
6	Remove cover for work-related mental injury. Remove cover for mental injury that has been caused by direct exposure to a sudden and traumatic event during the course of a person's employment.	5,000
7	Reinstate long-term weekly compensation calculations. Reinstate the pre-2008 calculations for long-term (after four weeks) weekly compensation for non-permanent employees.	13,000 (old estimate)
8	Change Vocational Independence threshold. Change the Vocational Independence threshold from capacity to work for 35 hours per week to capacity to work for 30 hours per week.	11,200
9	Change to payment of minimum weekly compensation. Return to weekly compensation being increased to the minimum weekly earnings rate from the fifth week of incapacity instead of the second week.	7,700
10	Reduce LoPE weekly compensation. Reduce weekly compensation for loss of potential earnings (LoPE) claimants from 100% to 80% of minimum weekly earnings.	7,530
11	Changes to cover for workplace gradual process, disease or infection. Repeal changes made in 2008 to the test for causation for workplace gradual process, disease or infection.	6,800
12	Disentitlement of wilfully self-inflicted injury and suicide claims.	6,200
13	Abate weekly compensation against holiday pay. Abatement of holiday pay - return to the provision that claimants' accrued annual leave entitlements, after their	1,110

Amendment		Estimated Cost
	employment ends, are considered earnings liable for the purpose of reducing (abating) weekly compensation	
14	Consideration of pre-Injury earnings. Make it optional for occupational assessors to consider pre-incapacity earnings when undertaking initial and vocational Independence assessments.	Not Available
15	Remove the Ministerial Advisory Panel on Workplace Gradual Process, Disease, and Infection. Panel presently required under legislation.	60
16	Remove the Injury Surveillance Ministerial Advisory Panel. Panel presently required under legislation.	23
Further cost-containment amendments.		
17	Hearing loss threshold. Sets an injury-related hearing loss threshold for cover of 6%.	10,300
18	Repugnant to justice disentitlement. Applies to criminals injured while committing crime. Claimant automatically disentitled if four criteria met: claimant is injured committing a crime; injury covered by ACC; claimant imprisoned for the crime; and the crime is punishable by a maximum of two years or more imprisonment. Ministerial discretion for exceptional cases. Not disentitled for treatment needed to restore physical function in order to allow a return to work.	Not Available
Amendments facilitating ACC to work more closely with other government agencies.		
<i>Withheld under s(9)(2)(f) of the Official Information Act 1982.</i>		
20	Facilitate Information sharing between ACC and IRD. A technical amendment to enable ongoing information sharing between IRD and ACC to ensure good customer service. Consequential amendment to the Tax Amendment Act 1994.	Not Applicable
21	Enable ACC to provide non-ACC related government-directed services. Enables ACC to provide non-ACC related government-directed services or entitlements to ACC claimants.	Not Applicable
Amendment to improve financial reporting and accountability.		
22	Require ACC to table in Parliament annually ACC's actuarial report on liabilities.	Not Applicable

8 Savings from amendments that have been costed are shown in the table below. All estimates of savings in this paper have been prepared by ACC and have not been externally verified. In this table, and throughout the paper, costings for the 2009/10 year are not included because of uncertainty around the timing of the date the provisions will come into force.

Fully-funded per Account (\$000)	2010/2011	2011/2012	2012/2013	2013/2014
Earners	15,920	16,570	17,140	17,770
Work	18,990	19,880	21,080	22,180
Motor Vehicle	6,070	6,110	6,150	6,300
Residual	11,100	11,100	11,300	11,200
Non-Earners	3,760	3,960	3,970	4,240
Total	55,840	57,620	59,640	61,690

- 9 In addition to the amounts in this table, savings of roughly \$13 million per annum for item 7, reinstating long-term weekly compensation calculations, can be expected across the levied Accounts. Item 7 has not been included in the figures in the table above because it has been calculated using different assumptions. The figure used is from the 2008 amendment when this provision came into force, and ACC has been unable to update its costings for this proposal.
- 10 There are likely to be costs to the Health and Welfare budgets as the result of some proposals (hearing loss, wilfully self-inflicted injury, and 'repugnant to justice' particularly). Some hearing loss costs have been paid fully by ACC when they should have been shared with Health. The Ministry of Health has estimated the 6% threshold proposal to cost them \$0.5M for the 2009/10 year, with costs rising rapidly as the population ages. Income support and ongoing rehabilitation services may be required for some claimants under the wilfully self-inflicted injuries and 'repugnant to justice' proposed provisions. Officials have not been able to quantify these costs but the cost is likely to be less than that paid currently by ACC because of lower benefit levels. In these areas, costs will be borne by the Crown accounts instead of levy accounts.
- 11 Comments from government departments have focused on the likely transfer of costs to the Health and Welfare budgets, as well as the likely effect on Māori and low earners.
- 12 Some of the proposals contained in this paper appear to raise issues under the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Officials will work with the Ministry of Justice on these issues during the drafting of the Bill. A final view on the consistency of these proposals with the above legislation will be possible once the Bill has been drafted.
- 13 There will be costs in implementing some proposals, including approximately \$700,000 in the Work and Earners' Accounts (and up to four months' implementation time) to reverse the changes to weekly compensation. Depending on the make-up of the final regulations the experience rating proposals are also likely to have implementation costs for the Work and Motor Vehicle Accounts. Implementation costs of other proposals will be small.
- 14 The following changes to appropriations will be required, as a result of legislative changes contained in the Injury Prevention, Rehabilitation, and Compensation Amendment Bill, with a corresponding impact on the operating balance (note that due to uncertainty around the timing of when the provisions would come into force the figure for the 2009/10 year has not been included. However, savings can be estimated based on a pro-rata of the below figures; that is, savings would be approximately \$300,000 per month. For example, if all provisions came in on 31 March, savings of \$900,000 would be expected):

Vote ACC Minister of ACC	2010/11 - 2013/14			
	2010/11	2011/12	2012/13	2013/14 Outyears
Benefits and unrequited expenses:				
Other compensation	(3.760)	(3.960)	(3.970)	(4.240)

- 15 There may be adverse publicity for some of the proposals that target specific groups of claimants. For example, disentanglement for self-inflicted injury and suicide claims may have effects on families and whānau that are contrary to the intent of the New Zealand Suicide Prevention Strategy.

- 16 Passage of the residual claims proposals is required in time for levy decisions to be made in November 2009.
- 17 The Injury Prevention, Rehabilitation, and Compensation Amendment Bill is listed in the 2009 Legislation Programme as category 3, to be passed if possible in 2009. It is anticipated that the Bill will be ready for introduction by September 2009.
- 18 I have requested a power to act for transitional and consequential issues arising from these proposals and for other minor issues. There may also be a need for another Cabinet paper if other major policy issues arise.

Background

- 19 These proposals are part of a set of actions to strengthen ACC's performance and control its costs. The changes made to date include: a change of focus from welfare agency to injury risk manager, a stronger line against large levy increases, appointment of new Board members, and a thorough internal value for money review being undertaken by ACC. The legislative changes proposed will help to stabilise ACC's position, although they will not of themselves address the underlying cost drivers. I expect that the forthcoming Stocktake of ACC Accounts will identify further measures that Ministers could consider next year.

Costs in the ACC Scheme

- 20 Costs in the ACC Scheme have increased because:
 - growth in claim numbers has been higher than population growth
 - legislation has expanded cover and entitlements
 - the rehabilitation rate has been dropping with a resulting increase in long term claims
 - the cost of entitlements per claimant has increased because of higher pricing in contracts with providers
 - costs in the rest of the health sector have increased, such as payments for home support services
 - government decisions, such as increases in the minimum wage
 - economic factors outside ACC's control such as interest rates and inflation rates.

ACC's estimated outstanding claim liability, including a risk margin, has increased from \$14.3 billion at 30 June 2006 to \$21.9 billion at 30 June 2009.

- 21 Enhanced cover and entitlements in the IPRC Act have added to costs. While many potential changes to the legislation could be made to reduce ACC costs, only those that repeal legislative changes made in 2008 and those that require little additional policy and drafting work are included in this Amendment Bill.

Stocktake of ACC Accounts

- 22 My main priority is to undertake a substantive Stocktake of the ACC Accounts, as outlined in our pre-election manifesto. This Committee considered the proposed terms of reference for the Stocktake on 22 July.

ACC management of the Scheme

- 23 As part of seeking cost savings, ACC is undertaking a value-for-money review of the Scheme and as a result has begun a number of initiatives to reduce costs. These initiatives include rationalisation of administration, and developing a new purchasing arrangement for physiotherapy services with estimated savings of up to \$47-58 million across all Accounts in 2010/11 if all purchasing was under regulations. ACC

Is also making changes to service delivery and claims handling, as well as implementing a National Serious Injury Service, which aims to improve outcomes and independence for serious injury claimants.

Proposed amendments

- 24 The proposed amendments to the IPRC Act are set out below. All amendments except for amendment number 20 (Information sharing between Inland Revenue and ACC) will apply from the date the Amendment Bill is passed. Transitional arrangements will apply to claimants who are affected by the changes and received entitlements while the provision was in force. For instance, claimants who received cover under the workplace gradual process, disease, or infection provision will continue to receive cover. Amendment numbers 6, 7, 9, 10, 11, 13 and 14 were introduced in legislation in 2008 and came into force either on 1 August or 1 October 2008. The effect of reversing these amendments is likely to be limited because of the short time period they were in force.
- 25 I am also proposing that Cabinet approve a provision in this Bill which requires ACC to table their actuarial report or financial statement annually in the House. Although the details of this proposal have yet to be worked out such a proposal would help to inform Parliament of the state of ACC's finances. Decisions on the detail can be made under the power to act by the Minister of Finance and me.

Amendments to improve flexibility

Item 1: Funding ACC's residual liabilities

Background

- 26 Residual liabilities in the levy Accounts refers to those claims incurred between 1 April 1974 and 1 July 1999 or for work-related gradual process and infection claims where the exposure occurred prior to 1 July 1999.
- 27 The IPRC Act requires levies to be calculated to achieve full-funding of residual liabilities by 30 June 2014 in the Residual Claims, Motor Vehicle, and Earners' Accounts but not the Non-Earners' Account. The decision was made during the development of the Accident Insurance Act 1998 to move from pay-as-you-go (PAYG) to full-funding of all levy Accounts to put the Scheme on more of an insurance basis, minimise future generations paying for the current costs of the Scheme (thereby creating a greater awareness of the Scheme's true costs and incentives for injury prevention), and to support the introduction of private provision in the Employers' and Self-employed Work Accounts.
- 28 The 2014 date was originally set in 1998 and needs to be revisited. Progress in fully-funding the residual accounts has not met expectations and, as 2014 approaches, a significant increase in levies will be required to achieve full funding. Without the proposed change levies will rise rapidly towards 2014, with the Motor Vehicle Levy of \$287.00 per vehicle in 2009/10 roughly doubling by 2014, the composite work (Work Account and Residual Claims Account) levy rising from \$1.26 to \$2.16 per \$100 of earnings in 2014, and Earners' Account levy rate rising from \$1.70 to \$4.00 per \$100 of earnings in 2014. The composite Work and Motor Vehicle Account levies will benefit most from the proposed change, with the Motor Vehicle Account levy predicted to be \$120 per vehicle lower in 2014 and the composite work levy at \$0.51 per \$100 of earnings lower in 2014. Large increases in levies will still be required even with this change, reflecting the predicted increases in Scheme liabilities.
- 29 There is likely to be an increase in volatility leading up to the full-funding cut-off date. The increase in volatility in residual levy rates that is predicted leading up to the fully-funded date is not due to any predicted increase in total volatility. Rather it

is based on the effects of the same level of volatility currently being experienced being squeezed into a shorter time period. This means the volatility will have a greater effect on residual levy rates as we get closer to the fully-funded date.

- 30 For example, if liabilities in the residual portion of the Motor Vehicle Account increase by \$500 million this year, the increase can be spread out over four years worth of rates, 2010/11 through to 2013/14 which would require an increase in levies of \$125 million per year. If liabilities increased by \$500 million in 2012 there would be only one year (2013/14) to make up this shortfall, which would require an increase in levies of \$500 million in one year.
- 31 If the fully-funded date were simply changed from 30 June 2014 to 30 June 2019, the issue of volatility leading up to this date would remain. Other measures are therefore also required.

Proposal

- 32 I propose that the IPRC Act be amended to:
- a fold the Residual Claims Account into the Work Account and remove the ring-fence around residual claims in the Earners' and Motor Vehicle Accounts
 - b require that a final valuation of the residual liabilities, as at 30 June 2009, be conducted, which would become the total amount to be paid by residual levy payers
 - c set a final date of 31 March 2019 by which the estimated outstanding claim liability (as at 30 June 2009) associated with residual claims must be paid off (the funding horizon)
 - d require the Minister for ACC to set in regulations each year the portion of the levies to be allocated to the residual portion for the relevant accounts.
- 33 The decision on setting the cut-off date is a trade-off between affordability and intergenerational equity (generations paying their own way or leaving costs to other generations). I recommend that the funding horizon be extended by five years to 2019. This date balances the Government's call for more affordable levy rates with the intergenerational equity issue of making future generations bear the cost of historic claims.
- 34 The amendment would reduce the effect of the Increasing residual levies on levy payers in the short to medium term. Current levy payers are paying for the remaining costs of past injuries. The amendment would transfer some of the liability on to future generations, meaning they would also be paying for these past injuries. Any inequity would be offset by the increased short- to medium-term affordability gains that would result.

Risks

- 35 There is a risk that the cost of 'residual claims' will increase beyond the amount assessed on 30 June 2009. With the amalgamation of the residual liabilities into the current account, the increase would be paid by levy payers of the amalgamated account.

Item 2: Allow the Motor Vehicle Account Residual Levy to include funding from the Motor Spirit Levy

Current provision

- 36 At present the IPRC Act provides that the funding of the Motor Vehicle Account Residual levy can be raised only from vehicle owners and people who hold trade licences, effectively meaning that the levy can be funded from licence fees only.

This situation differs from the funding of the Motor Vehicle Account for current claims, which is sourced from both licence fees and the motor spirit levy.

Proposal

- 37 It is proposed that the IPRC Act be amended 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.
- 38 The main advantage of the proposal is that it provides greater flexibility for Government decisions around the best source of funding for the Motor Vehicle Account Residual levy. The proposal would allow the Government to spread the costs and help reduce rises in licence fees.
- 39 Motor vehicle Injury residual costs have risen significantly, with the average Motor Vehicle levy per vehicle for residual claims rising from \$49.74 in 2000/01 to \$136.03 in 2008/09, and a 2009/10 rate of \$167.92 per vehicle.
- 40 Because licence fees are paid in a lump sum and are required within a set timeframe, some car owners have difficulty paying. Spreading the costs by enabling the motor spirit levy to be used as well would have the effect of reducing the size of future rises in licence fees.

Risks

- 41 The amendment would have the effect of additional risk rating being applied to motor vehicle injury claims made before 1999, when risk rating is not relevant to historic claims. This might be seen as unfair by levy payers today who did not incur these costs. However, there should be an equal likelihood of over- or under-funding. To be fair to both residual levy payers and levy payers of the amalgamated Accounts, an additional payment (risk margin) would compensate for the risk of taking on the liability.
- 42 If more of the Motor Vehicle Account Residual levy is funded from the levy on motor spirit, then the cost of motor spirit will rise. This is not a significant risk because the volatility of the petrol price means that the public are used to petrol price rises. Using the 2008/09 levy assumptions, a one-cent increase in motor spirit levy would decrease the licence fee for petrol vehicles by \$12.

Item 3: Enable experience rating and risk sharing in the Work Account

Problem

- 43 Businesses currently pay an ACC levy rate based on the industry classification they are assigned to. This is irrespective of their individual safety and claims record. This situation is seen as being unfair to individual businesses within an industry that have above, or below, average claims experience. It is also seen as providing little financial incentive to an individual business to improve workplace safety or ensure good rehabilitation after a personal injury.
- 44 The existing legislation allows an individual employer's levy to be adjusted downward based on safety audits, or upward based on a safety audit that is triggered by the number and severity of work-related injuries experienced by the employer. However, these mechanisms do not allow a quick and efficient response in terms of levy adjustments for an individual employer's claims experience.

Proposal

- 45 I propose a broad provision that will:

- a enable 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 allow all of the current ACC workplace programmes to be retained (with some modifications) alongside any new process for experience rating and risk sharing.
- 46 The proposal is both fair to businesses with good safety records and encourages injury prevention and rehabilitation of injured employees. This amendment would also enable employers and ACC to share in the costs of all or some components of workplace injury claims. This could range between the current Accredited Employers who undertake most of the management and costs of their workplace injuries, to self-employed people who could undertake to cover themselves for additional weekly compensation stand-down periods in exchange for lower levies.
- 47 It would not be appropriate to apply experience rating or risk sharing to the Residual Claims Account because this Account covers claims for injuries that happened before 1 July 1999 and businesses therefore have no incentive to improve behaviour and, given the time lapse, there are likely to be a number of businesses who would have claims liabilities but no longer exist, or have significantly changed in structure.
- 48 This enabling legislation will signal to the public the Government's commitment to linking safety initiatives to levy payments. Experience rating and risk sharing is strongly supported by business representatives such as Business NZ. Once enabling legislation is in place further policy work will need to be undertaken on any subsequent regulations. In particular, ACC, in conjunction with the Department of Labour, will need to develop a new pricing framework to incorporate an individual risk rating and risk sharing model (including experience rating).

Costs

- 49 There will be future costs for ACC related to the development and implementation of a new workplace pricing framework. Once experience rating and/or risk sharing is in place there will be higher administration costs and increased costs from expected greater numbers of disputes about levies and claims. Some businesses will face higher levy rates and other businesses will face lower levy rates.

Risks

- 50 In some cases there is not much difference between the factors involved in a "near miss" from injury and an expensive worker's compensation claim. Thus, those businesses that are "lucky" can have low claim rates, which may be seen as unfair. Also the ACC levy is only one of many factors that may influence workplace safety. Workplace culture, health and safety legislation, and societal factors including education and the economy are also strong influences on businesses' health and safety records and the treatment of injured employees.
- 51 Individual risk rating, such as experience rating, may provide perverse incentives for businesses to, for instance, increase the number of disputes about injury classification. Employers may discriminate against potential employees who have had previous personal injuries, or pressure injured employees to return to work before they are sufficiently recovered. Self-employed people may choose to, and employees may be pressured by employers to, claim that injuries are not work-related in order to keep levy rates down.
- 52 Experience rating and risk sharing moves more towards a user-pays system and is seen by some opponents as contrary to the ACC Scheme principle of "community responsibility" and is therefore unlikely to be supported by unions.

Item 4: Enable risk rating in the Motor Vehicle Account for both vehicles and vehicle owners

- 53 There is no existing mechanism to link safe behaviour on the road or the riskiness of a vehicle to the ACC levy a person pays.

Proposal

- 54 I propose an enabling provision that will enable 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.

- 55 This enabling legislation will signal to the public the Government's commitment to linking safety behaviour to payments, for example potentially offering no-claims bonuses for drivers, or allowing discounts for vehicles with high safety ratings.

Costs

- 56 There will be implementation costs should regulatory proposals proceed. Any future changes will require regulations and costings on each specific proposal would be made at the time regulations are proposed.

Risks

- 57 This amendment is enabling only. However, depending on the specific measures that may be proposed, risk rating vehicles may be seen as imposing a regressive tax for people who cannot afford the safest vehicles. Also, the ability to incentivise safer driving behaviour is limited because the Motor vehicle Account levy is associated with the registered owner, rather than the car driver

Item 5: Technical amendment improving access to Cover-Plus Extra for shareholder employees

- 58 Cover-plus Extra is an ACC product that enables self-employed people, and shareholder employees with earnings, to purchase an agreed level of weekly compensation from ACC. A shareholder employee means a person who is a shareholder in, and an employee of, a close (a private limited company with 5 directors or less) company. Cover-plus Extra only affects the level of weekly compensation, not other entitlements. This product allows ACC to collect a levy and provide weekly compensation at a level selected by the levy payer. This is especially valuable in situations where the earnings level of the self-employed person or shareholder-employee is too low (for example when a business is first starting up) or variable.

- 59 Cover-plus Extra was originally introduced for self-employed people and was expanded to shareholder employees in 2003. The intention was to cover both groups in the same way. However, while all self-employed people are eligible to apply for Cover-Plus Extra only shareholder employees with a record of earnings as a shareholder employee are able to apply. ACC has been interpreting the legislation to allow people with an expectation of earnings as a shareholder employee access to Cover-plus Extra. This interpretation especially applies to people with new businesses. ACC has had legal advice that this interpretation might be legally challenged.

Proposal

- 60 I propose that a technical amendment be made to enable ACC 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.

Amendments that rescind unfunded changes made by the previous government and present cost-containment opportunities

Item 6: 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)

Current provision

- 61 The IPRC Act 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).
- 62 The provisions exclude mental injuries caused by:
- non-work exposure, and
 - exposure to gradual onset workplace stress.
- 63 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.

Proposal

- 64 It is proposed that the provision enacted in 2008 to provide cover for work-related mental injury be repealed. Since these provisions came into force (October 2008), 39 claims have been made, of which 26 have been declined, 12 are under investigation, and one has received cover. It is difficult to say what impact this provision would have longer-term, but there is evidence that more claims for work-related mental injury are beginning to be made, with a likely impact on costs downstream.
- 65 Transitional arrangements will be required for this change. People who lodge claims for work-related mental injury from the time the legislation was in force in October 2008 until it is repealed and who meet the 2008 criteria will be granted cover.

Estimated savings (fully funded)

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

- 66 The cost savings for reversing work-related mental injury are based on the low volume of accepted claims to date. ACC has accepted just one claim since the provision came into force. The cost savings have been reduced from those expected previously.
- 67 The revised fully funded savings estimate is \$5m in the first year, taking into consideration the actual experience compared to what was originally expected, based on external sources of information.

- 68 Additionally, due to the fact that this provision has been in force for a relatively short timeframe (since 1 October 2008), a reversal at this point is anticipated to have a lesser impact than if awareness and use of entitlements had increased over a longer time period.

Risks

- 69 The cost of treating employees who suffer a mental injury in these circumstances is likely to return to the health and welfare systems, although officials are aware that many large employers (eg. NZ Police) already offer help, such as counselling and psychiatric help, to their employees in this situation. Because the number of claims under these provisions appears to be rising, the flow-on costs to Health are likely to increase but are hard to quantify as only one person has received cover for work-related mental injury since these provisions came into effect since October 2008.

Item 7: Reinstate the former calculations for long-term (after four weeks) weekly compensation for non-permanent employees

Current provision

- 70 The calculation for weekly compensation is determined as a short-term and a long-term rate. The short-term rate is calculated by taking the claimant's earnings over the four weeks prior to their incapacity and dividing it by the number of weeks or part weeks worked. The calculation for long-term (more than four weeks) weekly compensation for workers in non-standard employment is the same as for workers in permanent, standard employment. It is calculated by dividing the previous 52 weeks of earnings by the actual weeks worked.

Proposal

- 71 It is proposed that the previous long-term weekly compensation calculation for non-permanent workers in force before the 2008 amendment be reinstated, to reflect the average earnings of an employee over a 12 month period. The pre-2008 calculation divided the previous 52 weeks of earnings by 52 to derive a weekly earnings figure. The change would ensure that weekly compensation for non-permanent employees would be averaged to reflect the fact that, had it not been for the injury, they would have expected periods of earnings and non-earnings.
- 72 This amendment will make the calculation of weekly compensation more complex as it requires a separate calculation method for non-permanent workers. Some claimants may be under compensated if they have only worked for a short time and have no work history with other employers. It increases employers' compliance costs as ACC will have to seek details of earnings from previous employers in the 52 weeks prior to incapacity as occurred before the 2008 amendment. Employers will have to complete and return a signed and validated certificate of their employee's previous income.
- 73 Claimants who are undercompensated may be eligible for income support but we have been unable to identify how many would be affected. ACC considers that it is likely to be only a small number. However, it is likely that Māori will be more severely affected as more are low paid and are employed in casual work.

Estimated savings

- 74 For the 2008 amendment the change was estimated to cost \$13 million across levy accounts. Updated costs have not been able to be provided as access to the necessary data was not available.

Risks

- 75 With the present economic situation there are likely to be more people in the non-permanent work category who could be affected by this proposal.

Item 8: Replace the Vocational Independence threshold from capacity to work for 35 hours per week to capacity to work for 30 hours per week

Current provision

76 The provision for Vocational Independence was enacted in 2001 but the concept existed in the legislation as work capacity testing before that. Vocational Independence is defined as the claimant's capacity to engage in work for which he or she is suited by reason of experience, education, or training, or any combination of those things, and (since 2001) for 35 hours per week. The result of a declaration of Vocational Independence is that a claimant loses his or her weekly compensation three months after the declaration is made.

Proposal

77 It is proposed to change the 35 hours requirement to 30 hours. The current 35 hours component is a proxy for full-time employment. Statistics New Zealand defines full-time employment as working for 30 hours or more per week. Thirty hours per week is also consistent with the Ministry of Social Development's and Inland Revenue's definitions of full-time work. ACC estimates that reducing the hours required to achieve Vocational Independence will result in 200 more people a year obtaining Vocational Independence.

78 This change could result in increased numbers of claimants moving to benefit payments and therefore result in increased cost to the Crown, particularly if the claimant is unemployed and eligible for benefits when s/he loses weekly compensation. The risk of this situation occurring is higher in the present economic situation. It is unlikely that these claimants would need support other than income support from these agencies, as ACC will continue to provide them such entitlements as social rehabilitation.

Estimated savings

Fully-funded per Account (\$000)	2010/2011	2011/2012	2012/2013	2013/2014
Earners	3,700	3,800	3,800	3,900
Work	3,500	3,500	3,600	3,700
Motor Vehicle	1,600	1,600	1,600	1,700
Residual	2,200	2,200	2,200	2,200
Non-Earners	200	200	200	200
Total	11,200	11,300	11,400	11,700

Risks

79 The Vocational Independence process has been the subject of several reviews and negative publicity. Public interest has largely been linked to the medical and occupational assessments and the pre-incapacity earnings and not to the proxy for full-time work.

Item 9: Return increasing weekly compensation to the minimum weekly earnings rate from the fifth week of incapacity, instead of the second week

Current provision

80 Under the IPRC Act low income employees are entitled to have their weekly compensation increased to the minimum weekly earnings rate from the second week of injury if they are/were in full-time employment. Full-time employment is defined as employment for an average of at least 30 hours per week in the four weeks before incapacity, or fewer hours if expressly contained in an employee agreement. This provision applies to people who earn less than the minimum weekly wage because they work fewer than 40 hours a week or may be earning less

than the minimum hourly rate. . Minimum weekly compensation is calculated by using 80% of whichever of the following is greater:

- a **either** the adult minimum wage
- b **or** 125% of the Invalid's Benefit for the appropriate age group.

81 The adult minimum wage or 125% of the Invalid's Benefit is used in lieu of actual earnings to calculate minimum weekly compensation.

Proposal

82 It is proposed that weekly compensation be increased to the minimum weekly earnings rate from the fifth week of incapacity, as occurred before 2008. This change will exclude people who are on weekly compensation for four weeks or less from obtaining minimum weekly compensation if their weekly compensation is below this rate and they are in full-time employment.

83 There may be some cost shifting to the Ministry of Social Development if claimants need emergency assistance and are eligible for it. ACC estimates that there are likely to be a limited number of claimants in this situation. Such claimants will still receive 80% of their weekly earnings over the four weeks before the injury.

Estimated savings

Account	Fully-funded savings in \$'000			
	2010/11	2011/12	2012/13	2013/14
Motor vehicle	530	550	570	590
Non-Earners	70	70	70	80
Earners	5,300	5,500	5,700	5,920
Work	1,810	1,870	1,940	2,020
Total	7,700	7,990	8,290	8,600

Risks

84 This provision applies to people who are in very low paid full-time jobs. Their rehabilitation may be delayed as a result of insufficient income making it difficult for them in the period immediately following the incapacity. There is no process to ensure additional support will be available if needed, but the same situation existed before the change was made.

Item 10: Reduce Loss of Potential Earnings (LoPE) compensation for young people back to 80% of minimum weekly earnings

Current provision

85 ACC pays compensation for loss of potential earnings (LoPE) to people who have not had the opportunity to earn and are injured before turning 18 or if they have been in continuous full-time study from the age of 18. The payment is made from the time the claimant turns 18 if the claimant has been incapacitated for six months or more and is not in full-time study or training.

86 The current rate of LoPE compensation is 100% of the adult minimum weekly earnings, and is currently \$500.00 per 40 hour week before tax. It was changed from 80% of the adult minimum weekly earnings in 2008 to try to compensate partly for the claimant's loss of earnings over a lifetime.

Proposal

87 It is proposed that the LoPE rate be reduced to 80% of adult minimum weekly earnings, which is the same rate as for other low income claimants. At 80% of the minimum wage the payment would be \$400 per 40 hour week, pre-tax. This calculation is based on the minimum weekly wage as at 1 July 2009 (as required by

the IPRC Act). This was the calculation used to derive the rate that LoPE claimants received prior to the 2008 amendment.

Estimated savings

Account	Fully-funded savings in \$(000)			
	2010/11	2011/12	2012/13	2013/14
Motor vehicle	3,800	3,820	3,840	3,870
Non-Earners	2,990	3,090	3,200	3,360
Earners	740	750	750	760
Total	7,530	7,660	7,800	7,990

Risks

- 88 This change affects a very small, but high cost, group of claimants who usually are seriously injured. The change may not be viewed favourably by the potential earners who may never have the opportunity to earn an income. However, LoPE claimants currently, and will continue to, receive more entitlements than people with non-injury-related disabilities.

Item 11: Repeal changes made in 2008 to the test for causation for workplace gradual process, disease, or infection

Current provision

- 89 Section 30(2) of the IPRC Act sets out the circumstances in which a person with a personal injury caused by a work-related gradual process, disease, or infection (WRGPDI) can receive cover. This process is known as the three-part test and looks at the job, the environment, and whether it is more likely than not that a person's WRGPDI is caused by the job and/or the workplace environment.
- 90 Changes were made to the test in 2008 that ACC considers have made it more difficult to determine whether or not the gradual process injury was work-related and therefore adds to the number of people being covered by ACC. ACC was required to prove that the person did not have a WPGPDI in order to decline a claim.

Proposal

- 91 It is proposed to reinstate the test for workplace gradual process, disease, or infection that applied before the 2008 amendment. The previous test is easier to apply, whereas the new part of the test adds to ACC's costs and potentially to the number of people receiving cover. This proposal removes some of the onus on ACC to prove that a claimant did not have cover.
- 92 Most cases of WPGPDI are covered under Schedule 2 of the IPRC Act, which sets out diseases and infections which are covered. The three-part test only applies to claims which do not come under Schedule 2.
- 93 There may be an effect on low income people in high risk jobs, including Māori. Claimants who no longer receive cover may need treatment in the health system and require benefit support. However, since the provision came into force no claimant has been considered under this provision.

Estimated savings

- 94 ACC's estimated reduction in levies for the Work Account are outlined in the table below:

Fully-funded (\$000)	2010/2011	2011/2012	2012/2013	2013/2014
Work Account	6,800	7,200	7,700	8,100

Risks

- 95 There may be some adverse publicity from this change. There may also be flow-on costs to Health, but no estimates of these costs have yet been provided.

Item 12: Wilfully self-inflicted injury and suicide

Background

- 96 The Ministry of Health reports that approximately 500 people per year die by suicide. Suicide is the second most common cause of death for people in the 14-24 age group, and NZ has a high suicide rate for this age group compared to comparable jurisdictions. Eighty percent of suicides in New Zealand now occur in people aged 25 and over. Approximately three times more men than women die by suicide, although about twice as many women as men are hospitalised for intentional self harm. Māori have higher rates of suicide and hospitalisation than other ethnic groups. People living in deprived areas of New Zealand have higher rates of suicide than those in the least deprived areas.

Current provision

- 97 There were two changes made to this provision by the previous government. Before 2001 the provision disentitled all claimants who could be proved to have committed suicide or to have wilfully self-inflicted an injury, except for those with cover for mental injury under the IPRC Act. Those with cover for a mental injury under the IPRC Act were those with a mental injury (illness) as a result of a physical injury, or those with a mental injury as a result of certain criminal acts (sensitive claims).
- 98 In 2001, the cover was widened to entitle those claimants with a mental injury (a clinically significant behavioural, cognitive, or psychological dysfunction). The effect of this was that approximately 90% of the families of claimants who committed suicide received entitlements. Initially, the onus was on the claimants' family to prove that a mental injury caused a suicide before entitlements could be granted. In 2006 ACC changed their policy so that there was a presumption of mental injury unless there was evidence to the contrary. It was decided in 2008 to remove the disqualification provision completely because of the small number of claimants not receiving entitlements.
- 99 ACC currently accepts approximately 200 claims for suicide per year (there are estimated to be around 500 suicides per year) and pays \$1.8 million in entitlements for these claims. This is an average of \$9,000 per claim.
- 100 The maximum possible cost for a suicide claim is estimated to be \$1.9 million for a dependant spouse pregnant with twins, for example. Costs include a funeral grant, survivors' grants for the spouse and children, and weekly compensation for the spouse until the children turn 18 and to the children until the children are 18 or 21, depending on whether they are in full-time study.

Proposal

- 101 I propose to reinstate the pre-2001 provision that disentitled claimants with cover for injury that was self-inflicted. This provision would:
- disentitle, except for treatment, claimants with wilfully self-inflicted injuries or suicides
 - exclude from disqualification those with a mental injury as a result of a physical injury or those with a mental injury as a result of certain criminal acts (sensitive claims).

102 I consider that generally people should not receive compensation for self-inflicted injuries or suicide. If they have a mental illness there are other services available that can assist. Generally, people who self-inflict injuries or commit suicide would have been unlikely to succeed in any claim for personal injury under a tort system. People who have a terminal illness that is not injury related are not eligible for compensation or other ACC entitlements yet their illness has the same effects on families as does a suicide.

103 There will be a change in funding source from the Earners' levy to Crown funding. Most of the cost relates to support for people who attempt suicide and are left with serious residual injuries, and this cost may have to be borne by the welfare and health system. The cost to ACC for such claimants is \$60,000 per year ongoing, with an additional four claimants a year.

104 The cost to the health and benefit system will be less than the cost savings to ACC because of the lower level of benefits. For instance, income support is likely to be less as benefits are generally lower than weekly compensation. There will also be an ongoing health cost for social rehabilitation for seriously injured people who have other wilfully self-inflicted injuries. There will be no treatment costs incurred by the Health system as such claimants will still be eligible for treatment under the ACC Scheme.

Estimated savings

Low impact fully-funded (\$000)	2010/2011	2011/2012	2012/2013	2013/2014
Earners	5,500	5,800	6,100	6,400
Work	100	100	100	100
Motor Vehicle	100	100	100	100
Non-earners	500	600	500	600
Total	6,200	6,600	6,800	7,200

105 These cost savings are based on ACC's current claims of approximately 200 new suicide claims each year. If the number of claims were to rise to 500, the approximate number of reported suicides each year, ACC's fully-funded costs would rise by \$7.0 Million each year.

Risks

106 There is a risk that people who have self-inflicted injuries may not be readily identified and treated for their mental illness. ACC may have trouble identifying wilfully self-inflicted injuries and suicides. Some suicides will not be obvious, such as those deliberate crashing a motor vehicle, so those claimants will be treated differently. However, these are not new risks and have been an issue in the Scheme for some time.

107 This proposal will result in some flow-on costs to health, although the extent of these has not yet been fully assessed.

108 There is likely to be adverse publicity from this change. Disentitling these claimants is contrary to the intention of the New Zealand Suicide Prevention Strategy. One of the purposes of the Strategy is to reduce the harmful effects and impact associated with suicide on families, friends, and the wider community. Families would not receive entitlements under this proposal. Family members who have been bereaved by a suicide death are at higher risk of mental ill health and suicide themselves. Financial support can allay some of the stress which occurs with such a death. This proposal may not be regarded as equitable when families of other claimants who die as a result of other injuries are not penalised. On the other

hand, the families of people who die from disease are also severely affected and do not receive ACC entitlements.

Item 13: 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

Current provision

109 The IPRC Act requires that any payment made at the end of a person's employment (that is, employment held at the time of incapacity) in respect of leave entitlements cannot be considered as earnings for the purposes of abating weekly compensation. This means that ACC cannot reduce claimants' weekly compensation by abatement (and therefore treat the payment as earnings) because the claimant has been paid annual leave entitlements after their employment ended.

Proposal

110 It is proposed that if a claimant receives holiday pay on the termination of employment while receiving weekly compensation, ACC will abate weekly compensation for a period equivalent to the amount of leave paid. This aligns with treatment of holiday pay by other agencies such as the Ministry of Social Development.

Estimated savings

Account	Fully Funded Cost in \$,000			
	2010/11	2011/12	2012/13	2013/14
Motor Vehicle	40	40	40	40
Earners	680	720	750	790
Work	390	410	440	460
Total	1,110	1,170	1,220	1,280

Risks

111 Claimant complaints may increase. Claimants may think it is unfair to have weekly compensation abated because of annual leave accrued while they were earning or accrued in a previous financial year but that was not paid until termination of employment. This proposal will most likely affect claimants who lose their jobs because of injury. However, the provision was only brought into force in 2008.

Item 14: Make it optional for occupational assessors to consider pre-incapacity earnings when undertaking initial and Vocational Independence assessments

Current provision

112 Section 91 and clause 25 of Schedule 1 provide that: "in considering the suitability of the types of work [...] the occupational assessor must take into account, among other things, the claimant's earnings before the claimant's incapacity." This provision was intended to ensure that a claimant's pre-injury earnings were taken into account when jobs were considered during the occupational assessment.

Proposal

113 I propose that the provision be changed to say that "the occupational assessor may take into account, among other things, the claimant's earnings before the claimant's incapacity". This will still help inform the occupational assessment process but the provision will not be mandatory.

- 114 According to ACC case managers the 2008 amendment has made it more difficult for ACC to determine that claimants had reached *Vocational Independence* (achieving Vocational Independence requires testing a claimant's work capacity). This provision particularly relates to long-term weekly compensation claimants who had high earnings immediately prior to incapacity and were working in specialist occupations with no directly transferable skills (eg, highly skilled labourers).
- 115 Depending on the type and severity of injury, it can be difficult to identify suitable employment for claimants that matches their pre-incapacity earnings.
- 116 In the year from 1 July 2006 to 30 June 2007:
- 10,011 claimants received an Initial Occupational Assessment (undertaken early in the claimant's rehabilitation)
 - 1,431 claimants received a Vocational Occupational Assessment as part of the Vocational Independence process that usually results in the claimant leaving the Scheme.
- 117 Approximately 1,066 claimants were declared vocationally independent between May 2007 and April 2008.

Estimated savings

- 118 It is difficult to quantify the cost implications of this amendment. However, the amendment does affect ACC's long-term weekly compensation pool and valuation, because some of ACC's decisions on Vocational Independence may be quashed during the review and appeal process. Quashing would be on the basis that the occupations identified by the assessor had prospective earnings that were not reflective of the claimant's pre-incapacity earnings.

Risk

- 119 Claimants may not be able to return to their pre-injury earnings after being made vocationally independent. However, ACC's processes would still allow occupational assessors to consider pre-injury earnings during the occupational assessment for vocational independence. This amendment could result in more reviews if pre-injury earnings are not taken into account and claimants are dissatisfied with the jobs assessed in their occupational assessment because of low earnings.

Item 15: Remove the requirement to have the Work-related Gradual Process, Disease, or Infection Ministerial Advisory Panel

Current provision

- 120 Section 31 of the IPRC Act provides that the Minister must require a person to convene and chair a Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection (WRGPDI). The Panel is to:
- a provide independent and specialist advice to the Minister on any matter relating to work related gradual process, disease, or infection (WRGPDI)
 - b keep under review and may advise the Minister on –
 - i whether Schedule 2 should be amended (Schedule 2 sets out the list of work-related gradual processes, diseases, and infections that are covered)
 - ii how ACC deals with claims for cover for WRGPDI
 - iii the definition of WRGPDI.

- 121 The Panel has performed the above tasks, reporting to the Minister on Schedule 2, and commenting on ACC's performance in this area and on the definition of WRGPDI. The advice provided has resulted in legislative amendments to Schedule

2 and to the three-part test (Section 30 of the IPRC Act) for assessing a claim for WRGPDI.¹ The cost of these changes when proposed was estimated at \$5.34 million per annum for Schedule 2 changes and \$11.835 million for Section 30 changes.

Proposal

- 122 It is proposed that the requirement for the Ministerial Advisory Panel on Work-related Gradual Process, Disease, and Infection be removed from statute because:
- a the Department of Labour has reviewed the need for the WPGPDI panel as part of the wider review of statutory panels they administer. While the Panel is not administered directly by the Department it is contained in legislation administered by the Department.
 - b The review concluded that:
 - i should a future need arise for specialist advice on WRGPDI issues, external advice on this particular type of injury can be obtained by other means
 - ii the task for which the Panel was established has largely been completed, and no foreseeable legislative amendments in this area are expected to be needed in the near future.
- 123 There is no need to have such a Panel in statute, with its attendant ongoing costs.
- 124 The Workplace Health and Safety Council, which was not in place when the Panel was originally established, could keep a watching brief on work-related gradual process, disease, or infection and ask for work to be done if required. The Associate Minister for ACC is a member of the Council.

Estimated savings

- 125 Although not the primary reason for removing the Panel, there will be cost savings of \$60,000 each year from the Work Account.

Risks

- 126 There is a minor risk that work-related gradual process, disease, and infection issues will not be given adequate consideration. However this risk is offset by the oversight of the Workplace Health and Safety Council. Further, both the Department of Labour and ACC monitor developments in the workplace risk space.

Item 16: Remove the requirement to have the Injury Surveillance Ministerial Advisory Panel.

- 127 The IPRC Act established the Injury Information Manager in 2001. Cabinet [CBC Min (01) 5/2] agreed that Statistics New Zealand was to have this role. At the same time, section 291 of the IPRC Act established the Injury Surveillance Ministerial Advisory Panel (ISMAP) to provide, from an external and independent perspective, advice to the Minister on the strategies and the direction of the Information Manager.

Proposal

- 128 I propose that the requirement for the ISMAP panel be removed from the IPRC Act as there is no longer a need for it and duplication of effort is occurring.

¹ Note that I propose to repeal this change and revert to the previous test, as set out in item 11.

129 The Panel has been in operation since 2003. Despite changes in personnel over that time, the Panel has to date been unable to provide independent purchase advice to Ministers on the strategies and direction of the Information Manager or advice on the performance of the Injury surveillance data management system, including issues around implementation.

130 The Injury Surveillance Officials Group, which is funded out of baselines, now undertakes a similar role to the Panel's. Statistics New Zealand has the overall responsibility as Information Manager.

Estimated savings

131 During the Budget process this year dissolution of ISMAP was identified as a potential cost saving for the Department of Labour. The Panel costs \$23,000 per year in direct costs. The cost of servicing this Panel is around \$7,000 annually.

Further cost containment amendments

Item 17: Hearing loss claims – cover and entitlements

132 There are three key issues affecting ACC's provision of hearing loss services:

- a hearing loss claims numbers are increasing rapidly (11% per annum), with a corresponding cost escalation. The reasons for the increase are that there is a greater awareness that ACC cover is available and ACC has become the provider of preference because entitlements are more generous. There is also a factor related to the ageing of the population, with hearing loss becoming more evident for older people. Total annual cash expenditure is projected to rise from \$56.2 million in 2007/08 to \$65 million for 2009/10, and the outstanding liability for the Residual Claims and Work Accounts is projected to be \$1,150 million in 2014 if no change to policy is made.
- b ACC claimants with any amount of occupational noise-induced hearing loss (ONIHL) that results in personal injury will be eligible for cover whatever the level of ONIHL. With no threshold a claimant will have cover but not be eligible for entitlements such as hearing aids.
- c when ACC provides an entitlement (hearing aids) for people with a covered hearing loss, the aid provided meets the need of the client's total hearing loss. However, this means that ACC is funding the non-covered portion (such as age-related hearing loss) of the total hearing loss.

Proposal

133 An amendment to help manage the volume and cost of hearing loss claims is required.

134 I propose that a person's injury-related hearing loss must reach a 6% threshold before they can be considered for cover. A person with up to 6% hearing loss does not require a hearing aid. The savings will be made from not providing entitlements to people in this group. ACC will still pay for assessments to determine the level of hearing loss. This proposal is consistent with policy set by Australian WorkCover schemes in Victoria, South Australia, and New South Wales. These jurisdictions provide cover for work-related injury only.

Estimated savings

Levy Impact - fully-funded (\$000)	2010/2011	2011/2012	2012/2013	2013/2014
Work	1,400	1,500	1,700	1,800
Residual Work	8,900	8,900	9,100	9,000
Total	10,300	10,400	10,800	10,800

Risk

- 135 There is a risk of incorrect hearing levels being attributed by hearing loss specialists so that a claimant's injury-related hearing loss exceeds the prescribed threshold.
- 136 Note that although professional judgement is used to attribute levels of hearing loss to different causes, that judgement is based on a range of evidence. Audiometric tests measure a claimant's hearing over eight frequencies and help to determine the overall hearing loss. Standardised ageing tables determine the amount of age-related hearing loss, and the remaining hearing loss is attributed to specific causes depending on a range of factors including the claimant's work, leisure, military, and family history. Specialists draw on their medical knowledge to interpret the information that is presented to them by the claimant and through clinical tests. It is not an exact science and professional opinions can differ, as in other areas of medicine.
- 137 The following are possible ways to mitigate this risk:
- monitoring – ACC will monitor percentages attributed to hearing loss to see if there is any change in practice following the threshold introduction
 - peer review – ACC can request a second opinion as required. Also specialists belong to a profession which has a code of ethics for professional behaviour.
- 138 There is also a risk that this change may be viewed by the public as disregarding a claimant's individual behaviour. It could also be seen as operating essentially as an insurance excess.

Additional measures in the hearing loss space

- 139 I also consider that ACC should pay entitlements (eg, hearing aids) only for the proportion of a claimant's hearing loss that is injury-related. For example, for a person with 10% injury-related hearing loss and 10% non-injury-related hearing loss, ACC would contribute 50% of their entitlement costs. For a person with 10% injury-related hearing loss and 20% non-injury-related hearing loss, ACC would contribute a third of their costs.
- 140 Legislative amendment is not required, but amendments to regulations may be needed to achieve this. If regulations are proposed, then detailed costings would be undertaken at that time, when the specific proposal is known. However, the projected savings available when ACC only pays a proportion of the costs are significant. For example, assuming the 6% threshold (above) is in place, if ACC were to pay a 50% contribution then savings are estimated at \$75.8 million fully-funded in the 2010/11 year and rising to \$80.6 million fully-funded in 2013/14.
- 141 If this measure proceeds, a claimant may not be able to purchase a hearing aid because they cannot afford the additional cost, and assistance from other funders (Ministry of Health) may be insufficient to cover the entire cost. There is a risk that the claimant may not get the rehabilitation they require, which would lead to claimant dissatisfaction. The approach could result in more requests for additional financial assistance from welfare agencies. The Ministry of Social Development is able to provide a loan to obtain a hearing aid for people in financial need. The Ministry of Health provides a range of subsidies depending on the age and circumstances of the individual. These impacts would be fleshed out in any proposals for regulations.

Item 18: Strengthening the disentitlement provision for claimants for whom it would be repugnant to justice to provide entitlements

- 142 Entitlements that all ACC claimants may be eligible to receive are set out in Schedule 1 of the IPRC Act. Entitlements are treatment, rehabilitation (both social

and vocational), weekly compensation, lump sum compensation for permanent impairment and entitlements arising from fatal injuries.

- 143 Claimants who are in prison receive only medical treatment if necessary, and no other entitlements such as weekly compensation or lump sum entitlements (section 121),
- 144 Section 122 of the Act allows ACC to apply to the District Court to deny entitlements wholly or in part to previously imprisoned offenders who suffered personal injury in the course of committing the offence for which they were imprisoned, where it would be 'repugnant to justice' for the claimant to receive the entitlements. This section applies once the person is released from prison.
- 145 In determining whether to deny entitlements, under section 122(3), the District Court must use the following non-limiting, comprehensive criteria:
- a the harm caused by the claimant's offence; *and*
 - b the gravity of the offence; *and*
 - c the claimant's personal culpability for the offence; *and*
 - d the extent of other penalties the claimant has already suffered because of the offence; *and*
 - e the claimant's personal circumstances; *and*
 - f the nature of the entitlement; *and*
 - g the strength of the claimant's need for the entitlement; *and*
 - h the resources the claimant has to meet that need.
- 146 Eleven claimants have been disentitled under this provision since 1992. These, in general but not always, had a significant prison term of more than three years. The extent of disentitlements ordered ranged from no entitlements to a reduction in weekly compensation and no independence allowance for a paraplegic. I do not consider that this number reflects the number of claimants who should be caught by this provision and I propose that the provision be strengthened.

Proposal

- 147 I propose that the existing provision be replaced with a more restrictive provision that sets specific criteria. If a claim meets these criteria, automatic disentitlement would occur. However, ACC would be able to apply to the Minister for ACC to exercise his or her discretion in cases where ACC considers that exceptional circumstances apply. Claimants in this group would be entitled only to treatment, and their entitlement to elective and cosmetic surgery would be limited to that which is necessary to restore physical function to allow a claimant to return to work.
- 148 The criteria are:
- a the person was injured while committing the crime for which s/he was imprisoned
 - b the person has cover under ACC for this injury
 - c the person was imprisoned for this crime
 - d the person committed a crime that is punishable with a sentence of a maximum of two years or more imprisonment.
- 149 The length of time of the imprisonment in criterion d is derived from an examination of the Crimes Act 1961 and the Land Transport Act 1998. Most crimes such as serious assaults, manslaughter while driving a vehicle, murder, and rape have a

recommended sentence of well over two years. Assault of a child or assault of a woman by a man has a recommended sentence of a maximum of two years.

- 150 The claimants most likely to be caught by the proposed provision are those convicted of dangerous driving causing death. It is difficult to predict what savings this amendment can achieve as there is no history of the application of the proposed criteria.
- 151 This proposal is likely to have a disproportionate effect on Māori who tend to be a higher proportion of the prison population and to be imprisoned for longer.

Risks

- 152 This proposal may raise issues under the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
- 153 There are likely to be costs transferred to the welfare system to provide income support (if the claimant had been working) and to the health system to provide, for instance, personal care for a disoriented claimant if the injury is still problematic following release from prison. Officials have not yet assessed the extent of this cost transfer. Cases where hardship for families is an issue can be alleviated by appropriate use of the Ministerial discretion.

Amendments facilitating ACC to work more closely with other health sector agencies

Withheld under s 9(2)(f)(iv) of
Official Information Act 1982.

Withheld under 59(2)(f)(iv) of
the Official Information Act
1982.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Withheld under the s 9(2)(f)(iv) of
the Official Information Act 1982.

Item 20: Information sharing –enable ongoing information sharing between IRD and ACC to ensure good customer service. Consequential amendment to the Tax Administration Act 1994 required.

Current situation

- 165 Inland Revenue is subject to secrecy rules in the Tax Administration Act 1994 that restrict it from providing information to other agencies except in limited circumstances specified in law. These rules provide an exception for certain information held by Inland Revenue to be disclosed to ACC or passed on to ACC for the purposes of data matching. A corresponding provision in the IPRC Act ensures that ACC can request, and Inland Revenue must provide, specific types of information.
- 166 Inland Revenue has provided information to ACC upon request and carried out regular information matching since 1 April 2002, on the assumption that the law allowed it to do so. This information relates to:
- 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.
- 167 Recent legal advice indicates that Inland Revenue cannot include the information referred to in the paragraph above in any information matching with ACC

Proposal

- 168 I therefore recommend that the IPRC Act and the Tax Administration Act 1994 be amended to allow Inland Revenue to provide the above information to ACC upon request, and that these amendments apply on and from 1 April 2002, which is the date of application for the legislative provision under which the Inland Revenue-ACC memorandum of understanding for information sharing operates.
- 169 ACC and Inland Revenue are continuing to work with the Privacy Commissioner to ensure that ACC can appropriately meet ACC's obligations under the Privacy Act 1993 to notify affected individuals.
- 170 Although it is possible to collect the above information from individuals directly, ACC has advised that their ability to process levies and claims efficiently is likely to be impaired if the information is not provided to them by IRD. Administrative costs will be increased, and there may be issues about the accuracy of the information provided by an individual.
- 171 There will be additional compliance costs for individuals if Inland Revenue does not provide this information to ACC, because the taxpayer will need to provide the information directly to ACC. They will have already provided this information to Inland Revenue or alternatively they may not have the information readily available to them.

Risks

- 172 There may be risks that ACC and Inland Revenue are not acting in compliance with the Privacy Act 1993 to notify affected individuals. ACC and IRD are working with the Privacy Commissioner to reduce the risk of people being adversely affected by any errors that may arise in this process.
- 173 Retrospective legislation is unusual but in this instance it is validating and confirming the intended policy and operation of the provisions.

Item 21: Enable ACC to provide non-ACC related government services or entitlements to ACC claimants.

Background

- 174 The Sentencing (Offender Levy) Amendment Bill was introduced into the House in February, and is currently being considered by the Justice and Electoral Committee. The Bill provides for the establishment of a \$50 offender levy that all offenders who have been convicted of an offence must pay. Revenue generated by the levy will be used to fund additional support for victims of serious crime.
- 175 The Ministry of Justice is preparing a paper for Cabinet consideration that seeks agreement to several proposed new entitlements and services for victims of serious crime, subject to the Offender Levy Bill being passed.
- 176 One of the proposals is to provide an additional payment to supplement the ACC funeral grant for families of homicide victims. The Ministry of Justice considers that the most efficient way to administer the extra homicide funeral grant would be to use ACC's processes for managing its existing funeral grant. This would also ensure that families of homicide victims only need to apply once to claim the full amount to which they are entitled.
- 177 ACC is presently unable to undertake any service without having to do it via one of its subsidiaries, and without having to do so on a commercial basis, such as charging an administration fee.

Proposal

- 178 I propose an amendment so 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.
- 179 This proposal will assist the cost-effective implementation of government policy in relation to the support of victims of crime.

Amendment to improve financial reporting and accountability

Item 22: Require ACC to table in Parliament annually ACC's actuarial report on liabilities.

- 180 I am also proposing that Cabinet approve a provision in this Bill which requires ACC to table their actuarial report or financial statement annually in the House. Although the details of this proposal have yet to be worked out such a proposal would help to inform Parliament of the state of ACC's finances. Decisions on the exact detail of the provision can be made by me and the Minister of Finance.
- 181 This proposal would have the following benefits:

Ministry of Health comment

187 The Ministry of Health is concerned that that some of the proposals in this paper will have flow-on costs for health, but that officials have not fully assessed the extent of these costs or how they may be managed by the health sector. Given current and projected fiscal constraints, any increase in costs will have to be met either through an increase in health funding or by redirecting funding from existing activities. Therefore, the Ministry believes that decisions on the relevant proposals should be deferred until officials can provide Ministers with analysis of the full costs to Government (including costs that may be created as a result of a negative impact on health outcomes) and proposals for how these might be accommodated by the health sector. The items which may have flow-on costs to health are:

- Item 6: removing cover for work-related mental injury
- Item 11: changes to cover for workplace gradual process, disease, or infection
- Item 12: disenfranchisement of willfully self-inflicted injury and suicide claims
- Item 17: changes to the hearing loss threshold
- Item 18: 'repugnant to justice' disenfranchisement.

188 The Ministry understands that ACC can have difficulties in sharing case information with other agencies due to provisions in the IPRC Act. These issues would need to be addressed so that officials can work together to clarify the full impacts of the proposals listed above.

*Withheld under s 9(2)(1)(iv) of
the Official Information Act 1982.*

Ministry of Social Development

190 The Ministry of Social Development has a strong interest in this paper, and has noted that a number of the proposals are likely to have cost implications for Vote: Social Development.

Te Puni Kokiri

191 Te Puni Kokiri has noted that the impacts of the proposed changes are likely to have a disproportionate effect on Māori. Māori are more likely to be employed in high risk jobs, be from low income families, and have higher rates of imprisonment.

- a Alignment with existing requirements for private Insurance agencies
- b Encouragement of greater financial transparency and openness by the Accident Compensation Corporation, which aligns with existing fiscal responsibility legislation and the findings of the Ministerial Inquiry into Disclosure of Funding Shortfall in ACC Non-earners' Account.

Consultation on proposals

182 ACC has assisted the Department of Labour with preparation of this paper. The Treasury, Ministries of Health, Economic Development, Justice, and Social Development, Te Puni Kokiri, New Zealand Customs and the Privacy Commissioner have been consulted on this paper. Substantive comments are set out below and have been incorporated through the paper. The Ministries of Transport and Women's Affairs, Inland Revenue, Land Transport New Zealand, the State Services Commission and the Department of the Prime Minister and Cabinet have been informed. The Regulatory Impact Statement (RIS) was circulated with the draft Cabinet paper. Feedback received has also been incorporated into the RIS.

Treasury comment

- 183 Treasury supports the proposed amendments to ACC levy provisions (items 1-5) because they would avoid a somewhat arbitrary upward spike in some levies between 2010 and 2014 and would improve the flexibility of levy collection. However, the experience rating regulations envisaged in item 4 would need to be carefully developed to take account of the administrative costs involved in setting and reviewing firm-specific levies for a large number of firms.
- 184 The other amendments (items 6-21) address scheme costs and administrative matters. Treasury supports all of these except items 6, 13, and 19 which Treasury does not support for the following reasons:
- Item 6 (workplace mental injury): Treasury considers that, provided they are tightly defined, it is reasonable for workplace mental injury claims to fall within the ambit of a comprehensive no-fault scheme. The cost of this item is difficult to forecast but is likely to be relatively minor because only one claim has been accepted since October 2008.
 - Item 13 (abate weekly holiday pay): the \$1m a year savings seem small compared to the fairness concerns that arise from abating unpaid holiday pay entitlements against ACC entitlements.
 - Item 19 (collaborative purchasing): Treasury considers that the existing Commerce Act exemption provisions that the Commerce Commission administers are sufficient and there is no advantage in replacing these with a Joint Ministers' process, and that doing so could have an adverse precedent effect.
- 185 The amendments (excluding those that Treasury does not support) would save ACC approximately \$50m a year, based on ACC's costings. However, Treasury considers there would be a net cost to the Crown because only \$3m of the savings would accrue to the Crown and those savings may not fully offset the increases in Vote Health and Vote Social Development expenditure as some claimants shift from ACC to their next-best alternative for income support.
- 186 The \$47m balance of the savings would accrue to levy payers. While the savings are worthwhile, they are under 2% of ACC's levy income and so will make little difference to levy rates. Halting the recent growth in ACC costs would require additional actions to further restrict scope and/or address community safety, rehabilitation rates, and the cost of claims.

External stakeholders

- 192 There has been no opportunity for consultation with external stakeholders on many of the proposals because of time constraints. Where there has been consultation stakeholder views are indicated in the specific proposal.
- 193 External stakeholders will have an opportunity to make submissions to the Select Committee considering the Bill once it has been drafted.

Financial implications

- 194 The financial implications are set out for each proposal where appropriate. In most cases the proposal will result in savings for levy payers or the Crown. There are likely to be other costs to the Crown as a result of these changes, particularly in the health and social welfare areas. The costs, where available, are set out under each amendment
- 195 Expected savings are expressed in the table below. Savings were estimated by ACC and have not been externally verified. Costings for the 2009/10 year are not included in this table because of uncertainty around the timing of when the proposed changes would come into force.

Fully funded per head of staff (\$m)	2010/11	2011/12	2012/13	2013/14
Earners	15,920	16,570	17,140	17,770
Work	18,990	19,880	21,080	22,180
Motor Vehicle	6,070	6,110	6,150	6,300
Residual	11,100	11,100	11,300	11,200
Non-Earners	3,760	3,960	3,970	4,240
Total	55,840	57,620	59,640	61,690

- 196 Also, savings of roughly \$13 million per annum for Item 7 - reinstating long-term weekly compensation calculations - can be expected across the levied Accounts. Item 7 has not been included in the figures in the table above because it has been calculated using different assumptions. The figure used is from the 2008 amendment when this provision came into force because ACC has been unable to update its costings for this proposal.

- 197 The following changes to appropriations will be required, as a result of legislative changes contained in the Injury Prevention, Rehabilitation, and Compensation Amendment Bill, with a corresponding impact on the operating balance (note that due to uncertainty around the timing of the Introduction of the Bill the 2009/10 year has not been included, however, savings can be estimated based on a pro-rata of the below figures i.e. savings would be approximately \$300,000 per month, so if all provisions came in on 31 March savings of \$900,000 would be expected):

Vote ACC Minister for ACC	Increase/(decrease)			
	2010/11	2011/12	2012/13	2013/14 & outyears
Benefits and unrequited expenses:				
Other compensation	(3.760)	(3.960)	(3.970)	(4.240)

Implementation

- 198 Amendments to the IPRC Act will be implemented gradually, depending on their complexity.

- 199 Likely timeframes and cost involved with systems changes for the proposed reversal of the 2008 weekly compensation amendments is approximately 4-5 months at a cost of \$285,000 (plus some contingency). In addition to this the calculator function in EOS (ACC's claimant management system) would need to be updated at an estimated cost of \$432,000. Other cost-saving mechanisms will be implemented as part of standard operations.
- 200 Implementation of the provisions changing collection of the residual Motor Vehicle Levy will be simple and can be incorporated into the levy consultation round in 2009.
- 201 Implementation of the experience rating provisions will require further consultation with stakeholders, collection of better claims data, development of methods of experience rating, and probably promulgation of regulations. There is likely to be further legislative amendment required before experience rating can be fully implemented. Costs are not yet known.
- 202 Implementation of the hearing loss proposals will take some time and require consultation in particular with the Ministry of Health. We propose that this amendment does not come into force until July 2010.

Power to Act

- 203 A number of transitional and consequential issues may arise during the course of the proposed IPRC Amendment Bill. There are also likely to be a number of further minor matters. I request a Power to Act for the Minister for ACC and the Minister of Finance to address any transitional and consequential decisions falling out of the above significant policy changes and for any further matters of a minor nature. Any significant policy proposals will be brought to Cabinet for approval.

Human rights implications

- 204 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 may affect the right to be free from discrimination (section 19(1) of the New Zealand Bill of Rights Act) and the right to natural justice (section 27(1) of the New Zealand Bill of Rights Act). Officials will work with the Ministry of Justice on these issues during the drafting of the bill. A final view as to the consistency of these proposals will be possible once the legislation has been drafted.

Legislative implications

- 205 All proposals require amendment to the IPRC Act. The Bill amending the IPRC Act is listed in the 2009 Legislation Programme as category 3 to be passed if possible in 2009. It is anticipated that the Bill will be ready for introduction by September 2009. Proposed amendments in the Bill to the residual claims levies need to be passed before the levy decisions are made for the 2010/11 levy year in November 2009.
- 206 As a consequence of the proposal to fold the Residual Claims Account into the Work Account, an amendment will be required to section 59 of the Health and Safety in Employment (HSE) Act 1992. This section provides for collection of the HSE Act levy, which recovers the Crown's costs of administering the HSE Act. The HSE Act levy is currently collected with and deemed part of the Residual Claims Levy - this will need to be changed to the Work Account Levy.

Regulatory impact statement

207 The regulatory impact analysis (RIA) and regulatory impact statement (RIS) have been reviewed by the Treasury's RIA team. The RIA team has assessed the RIS as inadequate because it is incomplete in a number of key areas, and states the following examples:

- **"quantification of impacts:** a number of the proposals that remove ACC entitlements will shift the costs onto other government agencies or private individuals and these costs have not been quantified
- **implementation issues:** the proposal to enable experience rating and risk sharing in the Work Account involves significant implementation issues, and is likely to increase administrative and business compliance costs, but there is no information on the nature and extent of these
- **risk management:** risks are flagged for a number of the proposals including that some of the proposals may raise Bill of Rights issues, but there is little explanation of the likelihood or severity of the risks, and risk mitigation strategies are not identified
- **the RIA consultation requirements** have also not been met. While departments have been consulted on the proposals, key concerns have not been adequately addressed. Other affected stakeholders, such as business, do not appear to have been consulted on this set of proposals."

208 The draft RIS was circulated with the Cabinet paper for departmental consultation and was amended following feedback.

Gender implications

209 Some of these proposals will affect men and women differently. Men are more likely to be injured at work, to die by suicide, and to commit crimes. Women are more likely to have a self-harm injury requiring hospitalisation.

Disability perspective

210 Some amendments may disadvantage some disabled people as a number of amendments reduce ACC entitlements.

Publicity

211 Information about these proposed changes should be made public during the legislative process.

212 Information about the proposed changes to the Injury Prevention, Rehabilitation, and Compensation Act, once passed, will be conveyed to stakeholders through ACC's usual mechanisms.

213 There is a requirement that the regulatory impact statement be published and my officials will ensure this occurs.

Recommendations

I recommend that the Cabinet Social Policy Committee

1 **Note** that amendments are proposed to the Injury Prevention, Rehabilitation, and Compensation Act 2001 (IPRC Act) comprising:

- 1.1 amendments improving flexibility
- 1.2 amendments repealing some unfunded changes to the IPRC Act made by the previous government and that offer cost containment opportunities
- 1.3 amendments to achieve other cost containment opportunities
- 1.4 amendments facilitating ACC to work more closely with other health sector agencies, and
- 1.5 an amendment requiring improved financial reporting and accountability.

Amendments Improving flexibility

2 **Agree** to amend the IPRC Act to:

- 2.1 fold the Residual Claims Account into the Work Account and remove the ring-fence around residual claims in the Earners' and Motor Vehicle Accounts
- 2.2 require that a final valuation of the residual liabilities, as at 30 June 2009, be conducted, which would become the total amount to be paid by residual levy payers.
- 2.3 set a final date of 31 March 2019 by which the estimated outstanding claim liability associated with residual claims must be paid off.
- 2.4 require the Minister for ACC to set in regulations each year, the portion of the levies to be allocated to the residual portion for the relevant Accounts;

3 **Agree** to a consequential amendment to the Health and Safety in Employment Act 1992 for the same purpose;

4 **Agree** to 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;

5 **Agree** to introduce a broad provision, relating to the Work Account into the IPRC Act that will:

- 5.1 enable the establishment by regulations of experience rating and risk sharing for levy payers in relation to levy rates, which could include no-claim bonuses, higher or lower levies, and claim thresholds
- 5.2 allow all of the current ACC workplace programmes to be retained (with some modifications) alongside any new process for experience rating and risk sharing;

6 **Agree** to enable the establishment by regulations of risk rating in the Motor Vehicle Account, 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;

7 **Agree** to enable ACC to enter into an agreement to supply an agreed level of weekly compensation to shareholder employees who cannot demonstrate taxable earnings as a shareholder employee;

Amendments repealing some unfunded changes to the IPRC Act made by the previous government that offer cost containment opportunities

- 8 **Agree** 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);
- 9 **Agree** to reinstate the pre-2008 calculations in the IPRC Act for long-term (after 4 weeks) weekly compensation for non-permanent employees;
- 10 **Agree** to change the Vocational Independence threshold from capacity to work for 35 hours per week to capacity to work for 30 hours per week;
- 11 **Agree** to return the eligibility for payment of the minimum weekly compensation amount to after the fifth week of incapacity instead of after the second week of incapacity;
- 12 **Agree** to reduce weekly compensation for loss of potential earnings (LoPE) claimants from 100% to 80% of the minimum weekly earnings;
- 13 **Agree** to repeal changes made in 2008 in the IPRC Act to the test for causation for workplace gradual process, disease, or infection;
- 14 **Agree** to reintroduce disentitlement, except for treatment, for wilfully self-inflicted injuries and suicide except where the claimant is already covered for mental injury arising from a physical injury or for injuries caused by certain criminal acts;
- 15 **Agree** to return to the provision that claimants' leave entitlements, after their employment ends, are considered as part of weekly earnings when calculating weekly compensation;
- 16 **Agree** to make it optional for occupational assessors to consider pre-injury earnings when undertaking initial and vocational independence assessments;
- 17 **Agree** to remove the requirement to have the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection;
- 18 **Agree** to remove the requirement to have the Injury Surveillance Ministerial Advisory Panel;

Amendments to achieve other cost containment opportunities

- 19 **Agree** to automatic disentitlement, except for treatment and elective and cosmetic surgery required to restore physical function to enable a return to work only, for persons who suffer an injury covered by ACC while committing a crime punishable by a maximum of two years or more who are imprisoned for that crime, with the discretion of the Minister for ACC to allow entitlements in exceptional cases;
- 20 **Agree** to set a threshold of six percent hearing loss before a claimant receives cover for injury-related hearing loss;
- 21 **Note** that ACC should pay in entitlements (hearing aids) only for the proportion of a claimant's hearing loss that is injury-related injury, and
- 22 **Note** that the approach in recommendation 21 may result in regulations for this purpose;

Amendments facilitating ACC to work more closely with other government agencies

Withheld under: s 9(2)(f)(iv) of the
Official Information Act 1982.

25 Note that:

25.1 Inland Revenue has provided information to ACC upon request, and has carried out regular information matching since 1 April 2002. The information provided has related to:

25.1.1 the agent's name and contact details, if the taxpayer has a tax agent;

25.1.1 the date of death and the address of the estate administrator, for a deceased taxpayer;

25.2 recent legal advice indicates that Inland Revenue cannot include the information referred to in paragraphs 25.1.1 and 25.1.2 in any information matching with ACC;

26 Agree to validate with retrospective effect, ongoing information sharing between the Inland Revenue Department and ACC to ensure efficient customer services, in relation to the following information:

26.1 the agent's name and contact details, if the taxpayer has a tax agent,

26.2 the taxpayer's date of death and the address of estate administrator, for a deceased taxpayer,

27 Agree to a consequential amendment to the Tax Administration Act 1994 for the same purpose;

28 Agree that, where there is a government policy decision that ACC may provide non-ACC related additional government services or entitlements in relation to ACC claimants, ACC can do so without having to provide the service through 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;

Amendment requiring improved financial reporting and accountability

29 Agree that a provision be included in the Bill to require ACC to table their actuarial report or financial statement annually in the House with details to be decided by the Minister of Finance and the Minister for ACC under the authorisation set out in paragraph 33 below;

Financial recommendations

30 Approve the following changes to appropriations as a result of legislative changes contained in the Injury Prevention, Rehabilitation, and Compensation Amendment Bill, with a corresponding impact on the operating balance:

Vote ACC Minister of ACC	2009/10 (increase/decrease)			
	2010/11	2011/12	2012/13	2013/14 3 years
Benefits and unrequited expenses:	(3.760)	(3.960)	(3.970)	(4.240)
Other compensation				

- 31 **Note** that, due to uncertainty around the timing of when the amendments would come into force, the 2009/10 year has not been included in the above table, however savings for this year can be estimated based on a pro-rata of the above figures, that is, savings would be approximately \$300,000 per month, and if all provisions came into effect on 31 March 2010 savings of \$900,000 would be expected;
- 32 **Note** that
- 32.1 the Bill amending the Injury Prevention, Rehabilitation, and Compensation Act 2001 is listed in the 2009 Legislation Programme as category 3 priority (to be passed if possible in 2009);
- 32.2 it is anticipated that the Bill will be ready for introduction by September 2009;
- 33 **Authorise** the Minister for ACC and the Minister of Finance to take any decisions on any transitional or consequential matters that fall out of the above significant policy changes and for any further matters of a minor nature;
- 34 **Note** that Cabinet approval will be sought for any further significant policy changes that are required;
- 35 **Invite** the Minister for ACC to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs.


Hon Dr Nick Smith
Minister for ACC

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Regulatory Impact Statement

EXECUTIVE SUMMARY

The costs of the Accident Compensation Corporation Scheme have been rising above the rate of inflation (the Labour Cost Index) for some years.

Some of these additional costs are due to legislated increases in cover and entitlements over time. The government has asked for amendments to the Injury Prevention, Rehabilitation, and Compensation Act 2001 (IPRC Act) to help reduce costs. This is only the first phase of legislation. The government will be undertaking a Stocktake of all ACC Accounts, the results of which are likely to lead to further legislation in 2010. In addition, a review is planned of cover and entitlements under the ACC Scheme, the results of which may also require future legislative change.

The current amendments cover a range of proposals that trim some entitlements and cover, rescind some amendments made late last year, change the date for fully-funding the Residual Claims Account, allow different sources of funding for collection of the levy for the Motor Vehicle Account, enable experience rating in the Work Account, and enable collaboration across the health sector.

Most proposals will reduce levies and Crown costs but will affect some entitlements and cover. Some costs are likely to be transferred to the health and social welfare budgets. Disentitlement of claimants with wilfully self-inflicted injuries including suicide is likely to affect the families of those claimants.

Changing the final date for fully funding residual claims will reduce levies but extend the payment time further into the future to levy payers who did not incur the residual claims. Allowing experience rating will provide an additional way of individual risk rating in the Work Account, which should encourage safer workplace practices and reduce subsidisation of employers who have high claims costs by employers with low claims costs.

Quantification of all cost and benefit impacts has not been possible. Figures are provided wherever relevant data exists. Qualitative assessment of costs and benefits has however been made.

ADEQUACY STATEMENT

"The Treasury Regulatory Impact Analysis (RIA) Team has reviewed the regulatory impact statement (RIS) and considers that it does not meet the RIS requirements. The RIS does not contain the required information and the analysis is incomplete in a number of key areas. For example, some of the proposals to remove ACC entitlements will shift costs onto other government agencies or on to individuals but the RIS does not quantify these costs. The proposal to introduce experience rating and risk sharing in the Work Account will increase administrative and compliance costs for business and for the ACC Scheme but these costs have not yet been investigated. In addition, the RIS consultation requirements have not been met."

STATUS QUO AND PROBLEM

The ACC Scheme provides, instead of the right to sue, cover and entitlements including compensation to all people currently in New Zealand. The Scheme is funded by levies paid by employers (Work Account), workers (Earnings' Account) and motor vehicle owners (Motor Vehicle Account) as well as some Crown funding for people who are not working (Non-Earnings' Account). The Treatment Injury Account is jointly funded by the Non-Earnings' and the Earnings' Accounts.

Claims received before 1 July 1999 are paid for from residual claims' accounts linked to the Work, Earnings' and Motor Vehicle Accounts. The residual claims elements of the

Accounts were funded by a pay-as-you-go system before 1999 and are required by the IPRC Act to be fully-funded by 2014.

Levies are charged to ensure that the current claims on the Accounts are fully funded. Levies are influenced by factors such as returns ACC makes on investments, interest rates, and discount factors, as well as numbers of claims, rehabilitation rates, and cover and entitlements. Cover and most entitlements are set by the IPRC Act and can only be changed by legislative amendment. Some entitlements are made at the discretion of ACC. The ACC has responsibility for administering the Scheme. The way ACC administers the Scheme also has a significant impact on Scheme costs.

The costs of the ACC Scheme are rising rapidly above the rate of inflation (Labour Cost Index). Some of the increased costs are due to expanded cover and entitlements available under the Scheme. New claims have increased around 16.7% since 2003/04. This compares to a population increase of approximately 7.4% over the same period. The cash cost (does not include the long term liabilities and therefore only has a partial effect on levies) of entitlements and services increased by 12% in the 2007/08 financial year. Rehabilitation rates for weekly compensation claims have been gradually decreasing since 2004/05 from a 93% 12-month rehabilitation rate to a 91% rate in 2007/08. The number of weekly compensation claims with duration of more than one year has increased from 13,890 at 30 June 2004 to 19,999 at 31 March 2009. Long-term liabilities have risen because of these factors but also because of decreased investment returns and a decreased discount rate, which means more funding is required to pay off liabilities. Liabilities have risen from \$12,714 million at 30 June 2006 to \$21,875 million (as estimated in December 2008) for 30 June 2009.

Changes made in 2008 and previously to the IPRC Act expanded cover and entitlements, thereby increasing Scheme costs and liabilities. Other existing legislative provisions, such as the requirement to fully fund residual claims by 2014, are also increasing pressure on the Scheme. Still other existing provisions, such as the inability to use the petrol levy to help fund residual claims, are inflexible. Costs are also rising for wilfully self-inflicted injuries, hearing loss, and rehabilitation.

The government has asked that all aspects of the Scheme are looked at, to reduce costs by:

- reviewing ACC administration, claims handling, and purchasing
- reviewing ACC legislation
- undertaking a Stocktake of ACC Accounts.

The ACC Board is undertaking a value for money exercise and reviewing all ACC's administrative procedures, purchasing and claims handling to identify areas where costs could be reduced.

The Stocktake of Accounts will examine, among other things, the underlying cost drivers of each Account and strategies to address them. The Stocktake will also examine where ACC's interpretation of the IPRC Act has affected costs. Alongside this work will be analysis of the IPRC Act to identify areas where cover and entitlements have changed over time and caused cost increases. Recommendations coming out of the Stocktake will be addressed either administratively through the ACC Board or through further legislative changes in 2010/11.

OBJECTIVE

The first objective of the Injury Prevention, Rehabilitation, and Compensation Amendment Bill 2009 is to reduce levy fluctuation and increases as a result of the existing requirement to fully fund the residual claims accounts by 2014.

The second objective of the Bill is to contain immediate and downstream costs to the ACC Scheme and to enable better co-ordination of service initiatives across the whole health sector, including ACC.

The third objective is to ensure sufficient flexibility in the levy setting mechanisms to allocate costs fairly, enable the costs of the Scheme to be allocated in a way that matches the sources of risk, and avoids excessive fluctuation in levies.

A fourth objective is to reduce duplication of effort, improve efficiency, and facilitate co-operation between agencies.

ALTERNATIVE OPTIONS

Status quo

To retain the status quo would result in large ACC levy fluctuations, restrict the ability of ACC to restrain costs caused by extension of legislated entitlements, and would not achieve the government policy to improve individual risk sharing.

Other options

Other cost reduction measures are occurring at the same time, namely a review of ACC administration, claims' handling, and purchasing costs. An example of one result of this review is the renegotiation of high cost contracts with physiotherapists. ACC is also looking at regulating some payment rates that have previously been made under contract or paid on an *ad hoc* basis. ACC is also focused on improving its rehabilitation rates, particularly concentrating on long-term claimants.

Preferred option

There is no alternative to repealing or amending the current legislation for the proposals in the Bill revoking the 2008 amendments and making other changes to reduce costs and enhance collaboration across the health sector. These proposals collectively are estimated to generate savings of at least \$65 million each year across levy accounts and the (Crown funded) Non-Earner's Account.

The proposal to extend the date by which the Scheme must fully-fund residual claims from 2014 to 2019 will improve affordability in the immediate term by spreading the costs over a longer time period. This proposal can only be effected by legislative amendment.

Another set of proposed amendments are not about cost containment *per se*. These include the disestablishment of ministerial advisory committees that are no longer needed, and enabling provisions to allow Ministers to have flexibility in the way residual claims are funded and to improve application of an ACC levy. These proposals cannot be achieved other than by legislative amendment.

Costs and benefits of the various proposals are set out in the table below.

Costs and benefits of proposals

No	Amendment type	Benefits			Costs		
		Government	Business	Public	Government	Business	Public
1	Amendments to improve flexibility Funding ACC's residual liabilities This amendment incorporates all residual claims from the Work, Earners' and Motor Vehicle Accounts into the main accounts from 30 June 2009. A valuation of the residual accounts as at 30 June 2009 will be the total amount to be paid as residual levy. The Minister for ACC will set in regulations the amount of residual levy to be recovered each year. A final date for funding the residual claims is set at 31 March 2019 for the Work and Earners' Residual Claims, and 30 June 2019 for the Motor Vehicle Residual Claims.	Stabilises levy increases and provides long-term solution to increase in claims attributable to the residual claims accounts. Implemented during ACC's regular processes for estimation of levies.	Provides greater levy stability for business. The present legislative requirement would see levies rise exponentially. For example under the present legislation the Work levy for 2009/10 year would be \$1.26 per \$100 wages, with the amendment in place it could have been \$1.01 per \$100 wages.	Provides greater stability. As an example the Motor Vehicle Levy could rise to \$585 per vehicle by 2014 if this change is not made.	Paying for costs which existing business did not incur. Costs will also be higher, although spread over a longer time period, (like extending the payment period for a mortgage).	Paying for costs which current levy payers did not incur. Costs will also be higher although spread over a longer time period.	
2	Add a provision enabling the Motor Vehicle Account Residual Levy to be funded from the Motor Spirit Levy	Improves flexibility of collection. Implementation cost is negligible.	Would reduce motor vehicle licensing fee for petrol powered vehicles.	Would reduce motor vehicle licensing fee for petrol powered vehicles.	May increase cost of petrol but petrol costs already very volatile. Risk-rates on distance travelled, but residual claims relate to past risk	May increase cost of petrol but petrol costs already very volatile.	
3	Experience rating -an enabling provision to re-introduce experience rating into the Work Account	A move towards costs in the Work Account falling where they lie	Reduces cross-subsidisation in Work Account. Will reduce levies on Work Account, depending on claims rate.		Will increase levies in Work Account for some, depending on claims rate.	May work claims transferred to Earners' Account (non-work injuries) if employers move risks.	
4	Risk rating in Motor Vehicle Account -	A move towards		May provide	Implementation	Likely to	

No.	Amendment type	Schools		Business		Public		Government					
		Government	Business	Government	Business	Government	Business	Government	Business				
	an enabling provision establishing regulations that allow risk rating to be applied to vehicles and vehicle owners	costs in the Motor Vehicle Account falling where they lie	Allows shareholder-employees to purchase agreed cover for weekly compensation.	Reduces Work Account levies by \$13.8 million p.a.	Reduces levies by \$13 million across	Reduces levies by \$13 million	Reduces levies by \$1.3 million	costs should regulatory proposals proceed. Administrative difficulties in implementing.	May increase cost to businesses where the provision might have applied.	May increase costs to other Crown agencies including health social development (same as pre-2008 costs but not budgeted for by those agencies). Still has liability for ongoing entitlements.	ACC may still have some	Reduces cover available since 2008 for workers. Entitlements under Health less than ACC allows	disadvantage people who cannot afford safest cars.
5	A technical amendment to enable ACC, at its discretion, to enter into an agreement to supply an agreed level of weekly compensation to shareholder employees who cannot demonstrate taxable earnings but have the potential for future earnings..	Confirms ACC's ability to sell its Cover-plus Xtra product to shareholder employees without earnings											
6	Remove cover for work-related mental injury that has been wholly or substantially caused by direct exposure to a sudden and traumatic event during the course of a person's employment	Amendments that rescind changes by the previous government to the previous government's share insurance opportunities											
7	Reinstate the pre-2008 calculations for long-term (after four weeks) weekly												

No.	Benefits		Costs		Public	
	Government	Business	Government	Business		
	compensation for non-permanent employees	all levy accounts p.a. Calculation is more equitable.	across all levy accounts. Calculation is more equitable.	liability for entitlements	employees' work. May be done through phone contact by ACC as in the past.	compensation for some casual workers, which was extended in 2008
8	Change the Vocational Independence threshold (when claimant loses weekly compensation after 3 months' notice) from capacity to work for 35 hours per week to capacity to work 30 hours per week	Reduces Crown costs by \$200,000 p.a.	Reduces levies in Work, Residual & Motor Vehicle Accounts by \$7.2 million. Claimants back to work sooner	Reduces Motor Vehicle and Earners' Accounts by \$5.2 million. Claimants back to work sooner	May result in increased benefit payments if claimants are unable to find work or classified as invalids. Estimated at 200 extra people p.a. ACC still has liability for other entitlements	Claimants leave Scheme earlier but may not be sufficiently rehabilitated and may have difficulty finding work.
9	Return to weekly compensation being increased to the minimum weekly earnings rate from the fifth week of incapacity instead of the second week for employees	Reduces Crown costs by \$60,000 p.a.	Reduces levies in the Work Account by \$1,740,000 p.a.	Reduces Earner levy by \$5,110,000 p.a. Reduces Motor Vehicle Levy by \$510,000 p.a.	May increase welfare costs if claimant is unable to meet extra costs but may not be eligible for benefits.	Reduces weekly compensation to lower paid workers; only in place since 2008
10	Reduce weekly compensation for loss of potential earnings (LoPE) claimants from 100% to 80% of minimum weekly earnings	Reduces Crown costs by approx \$3 million p.a.	Reduces Motor vehicle levies by \$3,780,000 p.a.	Reduces Motor Vehicle levy by \$3,780,000 p.a. and Earners' levy by \$740,000 p.a.	May increase costs to Health	Returns weekly compensation payments to approximately 500 long-term severely injured claimants to rates in place before August 2008.
11	Reinstate the test for workplace gradual process, disease, or infection (WPGPDI) that applied before the 2008 amendment	Costs ACC less in proving causation.	Reduces Work Account levy by \$6.3 million p.a.			Reduces cover for WPGPDI for workers who

OFFICIAL INFORMATION ACT

No.	Amendment type	Government	Business	Public	Government	Business	Public	
12	Willfully self-inflicted injury and suicide disentitlement to be reintroduced except for treatment.	Reduces Non-Earners' annual appropriation by \$500,000			Reduces the Earners' levy by \$5.2 million p.a.	May result in increased costs to health and welfare system to support claimants and their families. Costings unavailable. Approximately 220 suicide claims are received by ACC each year for which income support and funeral costs may be paid.	Removes entitlements for claimants with willfully self-inflicted injuries including suicides. May have negative effects on dependent families and whānau of people who commit suicide.	cannot prove causation.
13	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	Aligns with other statutory treatment of holiday pay.	Reduces levies in Work Account by \$380,000 p.a.	Reduces levies in Earners' Account by \$650,000 p.a.			Reduces weekly compensation for people who lose their job as the result of an injury and receive backdated annual leave. Same as before August 2008.	Claimants may not be able to return to work that has
14	Make it optional for occupational assessors to consider pre-incapacity earnings when undertaking initial and vocational independence assessments		May reduce levies	May reduce levies				

No	Amendment type	Benefits		Costs	
		Government	Business	Government	Business
15	Remove the requirement to have the Injury Surveillance Ministerial Advisory Panel.	Reduces costs by \$28,000 p.a. Injury statistics remain the responsibility of Statistics NZ		May affect independence of advice on collection of injury statistics but formal responsibility of Statistics NZ.	equivalent pay to pre-injury earnings.
16	Remove the requirement to have the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection. Review underway. Not yet included in Bill.	Reduces costs by 67,000 p.a. Can obtain advice other ways. Reduces duplication of effort.	Less funding taken from Work Account	Loses advice of technical advisory group but advice available other ways, incl in-house	
Further costs/containment amendments					
17	Hearing Loss – sets a threshold for cover for hearing loss (6%)	Savings to ACC are estimated to be \$10.3 million per year	Reduces liabilities in Work and Work Residual Claims Accounts.	Costs may increase under Health budget – estimated by MoH at \$0.5 M p.a. in 2009/10, rising rapidly as the population increases.	Difference in payments available from ACC and Health will be borne by individuals.
18	'Repugnant to justice' disentitlement – Applies to criminals injured while committing crime. More restrictive than existing provision. ACC to make decisions on the basis of 4 criteria: claimant is injured committing a crime; is		Addresses public concerns over criminals receiving ACC entitlements.	Cost of ongoing care and income maintenance after prisoner released will need to be	May affect families of claimant. Ministerial discretion ability will address this.

ORIGINAL INFORMATION UNDER THE PRIVACY ACT

No.	Amendment type	Government	Business	Public	Government	Business	Public
	covered by ACC; is imprisoned for the crime; the crime is punishable for a maximum of 2 years. Ministerial discretion for exceptional cases.				covered by health and welfare sectors if person is eligible for benefits. Likely to be small cost.		Likely to be very limited number of people affected. Will have a particular affect on Maori.
Amendment facilitating close working with one aspect							
Withheld under s 9(2)(f)(i) of the Official Information Act 1982.							
20	Information sharing – a technical amendment to enable ongoing information sharing between IRD and ACC to ensure good customer services. Consequential amendment to the Tax Amendment Act 1994 required	Allows ACC to continue to receive necessary information about tax agents and deaths of claimants.	Enables correct administration of levy charging and payment of weekly compensation.				Potential for privacy issues but working with Privacy Commissioner to address.
21	Enable ACC, where there is a government policy decision that ACC should provide non-ACC related additional government services or additional entitlements related to ACC claimants, to do so without having to do it via one of its subsidiaries and without having to do so, on a commercial basis.	Allows government to implement wider policy for victims of homicide, and possible other future uses.		Allows victims of crime to receive further financial assistance.			

IMPLEMENTATION AND REVIEW

Implementation

Amendments to the IPRC Act will be implemented gradually, depending on their complexity.

Likely timeframes and cost involved with systems changes for the proposed reversal of the 2008 weekly compensation amendments is approximately 4-5 months at a cost of \$285,000 (plus some contingency). In addition, the calculator function in EOS (ACC's claimant management system) would need to be updated at an estimated cost of \$432,000. Other cost-saving mechanisms will be implemented as part of standard operations.

Implementation of the provisions changing collection of the residual Motor Vehicle Levy will be simple and can be incorporated into the levy round in 2009.

Implementation of the enabling experience rating provisions will require further consultation with stakeholders, collection of better claims data, development of methods of experience rating, and probably promulgation of regulations. Costs are not yet known.

Review

The key parts of this amendment, namely, changes to entitlements and cover, experience rating, and changes to the collection mechanisms for the Motor Vehicle Levy, will be reviewed as necessary. It is unlikely that the residual claims funding mechanism will be reviewed as it provides for an ongoing means of dealing with any substantive increases in residual claims by folding the increases into the main accounts.

CONSULTATION

Consultation with external stakeholders on most proposed amendments has not yet occurred. This could result in opposition to parts of the Bill being expressed during the Select Committee process.

Consultation on the proposed content of the Bill occurred with ACC, The Treasury; and the Ministries of Health, Economic Development, Transport, Justice, and New Zealand Customs.

The Cabinet policy paper on which decisions on the Bill's content are based has been shared with the above agencies, plus the Ministries of Social Development and Women's Affairs; Te Puni Kokiri; State Services Commission; and the Department of the Prime Minister and Cabinet.

Concerns raised have been included in the Cabinet paper, and individual agencies have made separate comments in that paper. The primary concerns raised related to the effect on the potential transfer of costs from ACC to the Health and Welfare budgets and the lack of opportunity because of timing constraints for officials to analyse the impact of these flow-on costs.

The only proposal for which flow-on costs have been able to be estimated is the change to the threshold for hearing loss cover. The Ministry of Health estimates it will bear around \$0.5 million p.a. in 2009/10 from this proposal, with costs rising as the population ages. This is considerably less than what ACC has been paying.

Other areas where costs to the welfare and health budgets might occur but have not yet been estimated are in supporting workers who are on low weekly compensation, supporting families of people who commit suicide who may require benefit support and a funeral benefit, and ongoing support of people seriously injured as a result of wilfully self-inflicted injury (about 4 claimants each year). Te Puni Kokiri also expressed a view that a number of the amendments would particularly affect Maori, including those reducing weekly compensation and the "repugnant to justice" amendment.

Withheld under s 9(2)(f)(iv) of
the Official Information Act 1982.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT