



## Department of Labour briefing

# PROPOSED LEGISLATIVE AMENDMENTS FOR THE IPRC AMENDMENT BILL 2009 AND OTHER COST SAVINGS PROPOSALS

## Executive summary

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- 1 This briefing proposes various means to achieve cost savings in the ACC Scheme. The paper is set out as follows:
  - Part A details legislative change proposals  
**NOT RELEVANT TO THE INJURY PREVENTION, REHABILITATION, AND  
COMPENSATION AMENDMENT BILL 2009**
- 2 Some of the legislative proposals are cost-saving measures, others are to improve flexibility for the Motor Vehicle Account or for ACC purchasing, and still others will help rationalise advisory committees.
- 3 You have been briefed separately on the following legislative proposals: to change the approach to funding residual claims, including extending the 2014 target date for full-funding; to allow the motor spirit levy to be used for residual claims funding; and on the Injury Surveillance Ministerial Advisory Panel and the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection.
- 4 Receiving your decisions on the proposals in this paper will determine the timing possible for the introduction of the IPRC Amendment Bill into the House. Proposals to change the approach to, and extend the full-funding date for, residual claims and the various advisory panels need to be progressed quickly if legislation is to be passed this year. The drafting for the residual claims proposals is expected to be complicated. Once your decisions are made, the Department will issue drafting instructions to Parliamentary Counsel Office, who will indicate the time they need to draft the Bill.
- 5 The first group of proposals are those to repeal some of the amendments made in 2008 to the Injury Prevention, Rehabilitation, and Compensation Act 2001 (IPRC Act). These are:
  - 1.1 return eligibility for weekly compensation for workers who are injured between jobs or on unpaid leave, to 14 days after stopping work, rather than the current 28 days (details page 12)
  - 1.2 review the calculations for long-term weekly compensation (after four weeks) for non-permanent employees (details page 13)
  - 1.3 review the weekly compensation abatement calculation for partially incapacitated people who return to work part-time (details page 14)
  - 1.4 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 (details page 15)

- 1.5 return to eligibility for payment of the minimum weekly compensation amount from the fifth week of incapacity instead of the second week (details page 17)
  - 1.6 reduce weekly compensation for loss of potential earnings (LoPE) claimants from 100% to 80% of minimum weekly earnings (details page 18)
  - 1.7 remove cover for 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 (details page 19)
  - 1.8 change the provision requiring occupational assessors to consider pre-incapacity earnings in the initial and vocational independence assessments to Clause 26(1) of Schedule 1 (details page 21)
  - 1.9 reinstate the test for workplace gradual process, disease, or infection that applied before the 2008 amendment (details page 23).
- 6 Other amendments to the IPRC Act that can be made now with minimal further policy work being required are proposed. These are:
- 2.1 change the approach to funding residual claims, including extending the 2014 target date for full-funding (details page 24)
  - 2.2 allow the Residual Motor Vehicle Levy to be funded from the Motor Spirit Levy (details page 26)
  - 2.3 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
  - 2.4 remove the requirement to have the Injury Surveillance Ministerial Advisory Panel (details page 30)
  - 2.5 remove the requirement to have the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection (details page 31)
  - 2.6 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
  - 2.7 change the Vocational Independence threshold from capacity to work for 35 hours per week to capacity to work full-time as defined by Statistics New Zealand (details page 33)
  - 2.8 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
- 7 **WITHHELD UNDER s9(2)(g)(i) OF THE OFFICIAL INFORMATION ACT 1982**
- 8 Treatment injury costs have been rising. This is due largely to increases in the cost of social rehabilitation and reflects the number of long-term seriously injured claimants paid for out of the Treatment Injury Account. Many of these long-term claimants were in the Scheme before the recent Treatment Injury legislative changes were made. The Department recommends that a review of social rehabilitation should be undertaken encompassing all Accounts.
- 9 **NOT RELEVANT TO THE INJURY PREVENTION, REHABILITATION, AND COMPENSATION AMENDMENT BILL 2009**

## **Recommended actions**

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It is recommended that you:

1 **indicate** which of the proposed legislative amendments in Table 1 you wish to proceed with:

**Table 1**

<b>Amendment</b>	<b>Estimated full-funded savings 09/10 (\$000)</b>	<b>Include in Bill Yes/No</b>
<b>Amendments to repeal 2008 amendments</b>		
1.1 Return eligibility for weekly compensation for workers who are injured between jobs or on unpaid leave, to 14 days after stopping work, rather than the current 28 days.	550	
1.2 Review the calculations for long-term (after four weeks) weekly compensation for non-permanent employees.	15,000	
1.3 Review the weekly compensation abatement calculation for partially incapacitated people who return to work part-time	2,490	
1.4 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.	1,060	
1.5 Return to eligibility for payment of the minimum weekly compensation amount from the fifth week of incapacity instead of the second week for employees.	7,430	
1.6 Reduce weekly compensation for loss of potential earnings (LoPE) claimants from 100% to 80% of minimum weekly earnings	7,400	
1.7 Remove cover for 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.	13,800	
1.8 Change the provision requiring occupational assessors to consider pre-incapacity earnings in the initial and vocational independence assessments	Unable to cost	
1.9 Reinstate the test for workplace gradual process, disease or infection that applied before the 2008 amendment	6,300	
<b>Other amendments</b>		
2.1 <b>Note</b> you have already approved changes to: <ul style="list-style-type: none"> <li>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</li> <li>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</li> <li>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</li> </ul>	Will reduce levy rates depending on which date you choose	(Approved)
<b>Nominate and agree</b> a final date <b>(please indicate which</b>		(Approved)
		(Approved)
		2016/17

Amendment	Estimated full-funded savings 09/10 (\$000)	Include in Bill Yes/No
<b>date</b> ) further out than 2014 by which the estimated outstanding claim liability associated with residual claims must be paid off		2018/19 2020/21 2022/23 2024/25
2.2 Add a provision enabling the Motor Vehicle Account Residual Levy to be funded from the Motor Spirit Levy.	Not applicable	
2.3 <b>WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982</b>		
2.4 Remove the requirement to have the Injury Surveillance Ministerial Advisory Panel.	40 (cash costs)	
2.5 Remove the requirement to have the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection.	67 (cash costs)	
2.6 <b>WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982</b>		
2.7 Reduce the threshold required to attain vocational independence from a capacity to work for 35 hours to a capacity to work full-time as defined by Statistics New Zealand.	11,000	
2.8 <b>WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982</b>		
<b>Total estimated savings</b>	<b>\$67,035</b>	

2 **note** that you have received separate briefings on legislative proposals to: change the approach to funding residual claims, including extending the 2014 target date for full-funding, allow the motor spirit levy to be used for residual claims funding; and disestablish the Injury Surveillance Ministerial Advisory Panel (ISMAP). The Associate Minister for ACC has received both the ISMAP briefing and a briefing from ACC on the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection.

3 **direct** officials to do work on the issues associated with lump sum payments

**AGREE / DISAGREE**

4 **agree** that rather than amending the legislation relating to treatment injury now, when social rehabilitation is the key driver of these costs, officials begin a review of social rehabilitation across the Scheme to identify areas where costs could be reduced

**AGREE / DISAGREE**

5 **NOT RELEVANT TO THE INJURY PREVENTION, REHABILITATION, AND COMPENSATION AMENDMENT BILL 2009**

6 **NOT RELEVANT TO THE INJURY PREVENTION, REHABILITATION, AND COMPENSATION AMENDMENT BILL 2009**

7 **note** your decisions on the proposals in this paper will determine the timing possible for the introduction of the IPRC Amendment Bill into the House.

Craig Armitage  
Deputy Secretary Workplace  
for Secretary of Labour

Hon Dr Nick Smith  
Minister for ACC

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## Department of Labour briefing

# PROPOSED LEGISLATIVE AMENDMENTS FOR THE IPRC AMENDMENT BILL 2009 AND OTHER COST SAVINGS PROPOSALS

## Purpose

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- 1 This briefing proposes cost savings initiatives that encompass:
  - Part A: legislative change proposals for the Injury Prevention, Rehabilitation, and Compensation Amendment Bill (IPRC Amendment Bill) in 2009, split into revocation of some of the 2008 amendments, and other amendments that can be done now without additional policy work

**NOT RELEVANT TO THE INJURY PREVENTION, REHABILITATION, AND  
COMPENSATION AMENDMENT BILL 2009**

## Analysis

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### Introduction

- 2 You have asked for a briefing that details cost saving proposals requiring legislative change and for the following information in relation to those proposals:
  - proposals which repeal legislative amendments made in 2008
  - potential cost savings (short and long term, total annually and per account, and how these compare to the original costings)
  - the risks of making the proposed change and a process for managing that risk
  - identification of where cost-shifting to another government agency such as the Ministry of Social Development or Ministry of Health is likely to occur.
- 3 You also asked that the paper outline proposed regulatory and administrative changes that are expected to deliver cost savings.

### Other issues

- 4 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
- 5 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
- 6 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
- 7 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
- 8 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
- 9 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
- 10 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**
- 11 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**

## Part A: legislative change proposals

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### Introduction

- 13 You have advised officials that you intend to introduce an IPRC Amendment Bill this year. This section of the paper sets out potential amendments, some of which would repeal some of the amendments made to the Injury Prevention, Rehabilitation, and Compensation Act 2001 (IPRC Act) in 2008, others that address cost savings, and others that are enabling amendments.
- 14 You have already agreed to some proposals to be included in the IPRC Amendment Bill, including extending the target date for full-funding of residual claims [BPs 09/82161 and 09/82829] and allowing the motor spirit levy to be used for residual claims funding [BP 09/82424]. Briefing papers have also been provided on the future of the Injury Surveillance Ministerial Advisory Panel [BP 09/82113] and review of the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection [ACC paper BP 09/014].

### Proposed amendments

- 15 Most legislative amendments that could be made to save substantial costs in the ACC scheme are complex, and would require reducing long-standing entitlements such as weekly compensation and social rehabilitation, with substantial impacts on claimants. Robust policy work would be required before such amendments could be considered and this cannot be undertaken in time for the IPRC Amendment Bill 2009. Additional amendments in these areas could be considered alongside, or following, the Stocktake of ACC Accounts and other policy work, and implemented later through a further piece of legislation.
- 16 We propose some amendments that were made to the IPRC Act in 2008 could be considered for repeal this year because they have been in force for less than a year and have therefore had little effect to date, and will reduce downstream costs. We have also identified a number of other straightforward cost saving amendments that could be made now, without further policy work being needed.
- 17 You have already agreed to include a change in legislation to change the structure of the funding of residual claims including extending the target date for funding residual claims, and asked for further information on options for the final target date, which is included in this paper. You have approved requiring 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, and allowing 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. You also agreed to allow the Motor Vehicle Account Residual Levy to be funded from the Motor Spirit Levy, included in this paper for completeness.
- 18 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982
- 19 We have provided estimated cost savings of the proposals where possible and appropriate. There will be costs for ACC to implement the legislative changes and time will be required for implementation.

20 The amendments to be considered for inclusion in the IPRC Amendment Bill 2009 are listed in Table 4.

**Table 4**

<b>No.</b>	<b>Amendments to repeal 2008 amendments</b>	<b>Page</b>
1.1	Return eligibility for weekly compensation for workers who are injured between jobs or on unpaid leave, to 14 days after stopping work, rather than the current 28 days	12
1.2	Review the calculations for long-term (after four weeks) weekly compensation for non-permanent employees.	13
1.3	Review the weekly compensation abatement calculation for partially incapacitated people who return to work part-time.	14
1.4	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.	15
1.5	Return to eligibility for payment of the minimum weekly compensation amount from the fifth week of incapacity instead of the second week.	17
1.6	Reduce weekly compensation for loss of potential earnings (LoPE) claimants from 100% to 80% of minimum weekly earnings	18
1.7	Remove cover for 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.	19
1.8	Change the provision requiring occupational assessors to consider pre-incapacity earnings in the initial and vocational independence assessments to Clause 26(1) of Schedule 1.	21
1.9	Reinstate the test for workplace gradual process, disease, or infection which applied before the 2008 amendment	23
<b>No.</b>	<b>Other amendments</b>	<b>Page</b>
2.1	Amend the provision relating to residual claims to: <ul style="list-style-type: none"> <li>• 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</li> <li>• 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</li> <li>• nominate a final date (<b>please indicate which date</b>) further out than 2014 by which the estimated outstanding claim liability associated with residual claims must be paid off</li> <li>• allow the Minister for ACC to set the portion of the levies to be allocated to the residual portion for the relevant Accounts in regulations each year</li> </ul>	24
2.2	Add a provision enabling the Residual Motor Vehicle Levy to be funded from the motor spirit levy	26
2.3	<b>WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982</b>	27
2.4	Remove the requirement to have the Injury Surveillance Ministerial Advisory Panel	30
2.5	Remove the requirement to have the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection	31

2.6	<b>WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982</b>	32
2.7	Change the threshold required to attain Vocational Independence from the capacity to work 35 hours per week to the capacity to work full-time as defined by Statistics New Zealand	33
2.8	<b>WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982</b>	35

21 Each proposal is detailed in the following pages on the page number listed in Table 4.

## Section 1: revocation of certain 2008 amendments

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### 1.1 Return eligibility for weekly compensation for those workers who are injured while temporarily between jobs or on unpaid leave, to 14 days after stopping work, rather than the current 28 days

#### Current provision

- 22 Clause 43, Schedule 1 of the IPRC Act entitles people, who are incapacitated within 28 days from the date they last worked, to weekly compensation, where the person has arranged prospective employment.

#### Why changed in 2008

- 23 The provision originally entitled claimants to receive weekly compensation when incapacitated within 14 days from the date they last worked. This was changed in the 2008 amendment to 28 days. Casual workers who have periodic layoffs as a result of seasonal cycles of work are more likely to be unemployed for longer periods. There is a greater chance that casual and temporary employees will not be working at the time of their injury / incapacity than full-time permanent employees. The change was therefore targeted mainly at these employees.

#### Proposal

- 24 It is proposed that eligibility for weekly compensation for earners injured while temporarily between jobs or on unpaid leave, be reduced back to 14 days.
- 25 At the time the increase to 28 days was made, it was estimated that it would increase the number of people on weekly compensation by 950 per annum, so reversal should reduce the number by at least this amount.

#### Estimated savings

Account	Amounts in \$(000)				
	2009/10	2010/11	2011/12	2012/13	2013/14
Treatment Injury	4	4	4	4	5
Non-Earners	11	11	12	12	12
Motor Vehicle	80	82	85	87	90
Earners	455	469	483	497	512
<b>Total</b>	<b>550</b>	<b>567</b>	<b>583</b>	<b>601</b>	<b>619</b>

- 26 For the 2008 amendment, the increase in days was estimated to cost \$6 million annually fully-funded across levy accounts. The new costing has taken into account a discount rate of 5.13% pa; an inflation rate of 3% pa; the annual claim frequency, and claim severity, and is considered to be more realistic. Expected savings from the proposal will therefore be much lower than first anticipated.

#### Risks

- 27 When the 2008 legislation was being prepared ACC estimated that each year 3,750 to 4,500 casual workers could experience difficulties with the 14 day provision because of the casual nature of their work. This provision also affects workers who take periods of unpaid leave or take a break before starting a new job. The number of people in casual work is likely to increase in the current economic situation. People between jobs are able to purchase cover for weekly compensation through

the Time-Out provision in the IPRC Act. Time-Out cover is designed especially for this purpose.

- 28 In view of the low predicted savings, and the particular group of people it is likely to affect, you may not wish to proceed with this proposal.

## **1.2 Review the former calculations for long-term (after four weeks) weekly compensation for non-permanent employees**

### **Current provision**

- 29 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 previous four weeks 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-permanent employment is the same as for workers in permanent employment. It is calculated by dividing the previous 52 weeks of earnings by the actual weeks worked.

### **Why changed in 2008**

- 30 The intent was that employees would receive a rate of compensation reflective of the level of their earnings from the employment held at the time of injury. A number of employees in non-permanent employment were receiving less after the first four week period because of the way the weekly compensation was calculated. On the other hand, a number of employees were receiving more. In effect, some employees were being undercompensated and others over compensated. ACC received many complaints about this issue from claimants. When the 2008 legislation was being prepared ACC estimated that 1,750 employees each year would receive a long-term rate lower than their short-term rate, and 775 would be in this situation for more than 10 weeks.
- 31 The result of this change was that workers in non-permanent employment would then be over-compensated if they receive weekly compensation for more than four weeks. If the rate was annualised, workers in non-permanent employment may receive more in weekly compensation than they would have earned over the same period. This does not encourage them to return to work. Some workers would also receive less than they would have earned over a 12 month period if they are in a lower paying job at the time of injury. Overall the current calculation is not equitable and also increases costs to levy payers.

### **Proposal**

- 32 It is proposed that the long-term weekly compensation calculation for non-permanent workers be amended to reflect the likely earnings of the worker over a 12 month period. This may be by returning to the pre-2008 amendment calculation or by some other means. We will advise you of the details of the calculation in a further briefing if you choose to proceed with this proposal. We will also take the opportunity to assess the weekly compensation calculations overall.
- 33 This amendment would remove the situation where weekly compensation for casual workers does not necessarily reflect their likely annual earnings. The change would ensure that periods where higher earnings were received over the previous year would be taken into account in the weekly compensation calculation. The average weekly compensation duration is about six weeks for casual workers.

### **Estimated savings**

- 34 This amendment is estimated to save up to \$15 million per annum fully-funded across levy accounts (probably more as the economic situation worsens).

### **Risks**

- 35 With the present economic situation there are likely to be more people in the non-permanent work category.
- 36 This proposed amendment could make the calculation of weekly compensation more complex if it results in a separate calculation method for non-permanent workers. However, it removes the need for ACC to determine how many weeks of the previous year the worker actually worked.
- 37 A change to the calculation may increase complaints to ACC. If the calculation reflects a payment representative of real earnings over a year it may increase employers' compliance costs as ACC will have to seek details of earnings from previous employers in the 52 weeks prior to incapacity, or from Inland Revenue.

## **1.3 Review the weekly compensation abatement calculation for partially incapacitated people who return to work part-time**

### **Current provision**

- 38 ACC reduces a claimant's weekly compensation (abates it) when they return to work on a part-time basis. Claimants are allowed to earn the 20% difference between their weekly compensation and their assessed earnings as calculated under the Act before compensation is abated. Once a claimant earns more than 20% of assessed weekly earnings, compensation is abated dollar-for-dollar so that weekly compensation and income from work does not exceed pre-injury income.

### **Why changed in 2008**

- 39 Pre-2008 weekly compensation was abated at the rate of 24 cents for every \$1 of earnings above \$67.24 per week, and 56 cents for every \$1 of earnings above \$107.52 per week. The total of claimants' earnings from employment and weekly compensation could not be more than their weekly earnings as calculated under the Act.
- 40 In 2008 this calculation was changed because it was complex and hard for claimants to understand. Claimants tended to become focused on what compensation they were due, rather than on returning to work. The rationale for change was that claimants would have an extra incentive to return to work quickly, to top-up their weekly compensation.

### **Proposal**

- 41 It is proposed that the current calculation be reviewed to ensure that it does not cost any more to pay weekly compensation than it did under the calculation pre-2008. Simply returning to the pre-2008 calculation is not recommended because of its complexity.
- 42 It is recommended that a less complicated calculation than was used before the 2008 amendment be used while reintroducing an incentive to return to work.

## Estimated savings

43 The costings below reflect the savings possible by going back to the pre-2008 system.

Fully funded cost, in \$(000), with risk margin, past reserves were spread over 5 years

Account	2009/10	2010/11	2011/12	2012/13	2013/14
Residual	400	400	400	400	400
Motor Vehicle	390	410	420	430	450
Non Earners	60	70	70	70	80
Earners	1,000	1,000	1,000	1,000	1,000
Work	640	670	700	730	770
<b>Total</b>	<b>2,490</b>	<b>2,600</b>	<b>2,710</b>	<b>2,830</b>	<b>2,960</b>

44 The change made in 2008 was estimated to cost \$5.3 million per annum fully-funded in levy accounts. That estimate did not spread the costs from past accidents (those costs are normally spread over 5 years). The updated costings have also been adjusted for inflation. However as the Department is recommending a slightly different system the cost savings might be different.

## Risks

- 45 Claimant concern at the reduction in weekly compensation is expected. There would be a marginal effect on most individual claimants' weekly compensation but savings overall for the Scheme and levy payers.
- 46 The change would affect Work and Income clients who receive both a benefit and also weekly compensation from ACC because they were injured while a beneficiary working part-time. . The benefit payment for these claimants is abated against their weekly compensation payment. There were approximately 800 ACC claimants also receiving a benefit each year when last assessed. There may be a small effect on benefit payments, which we are unable to quantify. As most savings for this amendment are in the levy accounts and savings in the Non-Earners account are very small, there is possibly a small risk that this amendment may cost the taxpayer more overall in funding beneficiaries.
- 47 ACC is of the view that this is a complex issue and should be considered longer-term. However, the Department considers the savings warrant consideration of the proposal. It would not be difficult to return to the previous calculation although a simpler calculation would be easier to administer and understand.

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

### Current provision

48 Clause 49 (3), Schedule 1 of 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.

### Why changed in 2008

- 49 Before the 2008 amendment ACC abated claimants' weekly compensation over the period that they were paid leave entitlements after their employment ended.
- 50 The provision affected people who had lost their job because of their injury and who had accrued annual leave paid out on dismissal. These claimants complained that this provision was unfair because the leave was accrued over the period they were working, but was abated because it was paid while they were receiving weekly compensation.
- 51 The provision was changed so that ACC could not abate weekly compensation if annual leave was paid on termination but while weekly compensation was being paid.

### Proposal

- 52 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.
- 53 The current provision is also inconsistent with Clause 43, Schedule 1 which provides that payments made after employment has ceased and on which the Earners levy was paid must be considered as earnings, and deems the person as still in employment for the purpose of abatement and calculation of entitlement. Other government agencies such as Inland Revenue and Work and Income still treat annual leave as income for the purposes of income tax and the calculation of benefit entitlement, so the proposal is consistent with that approach.

### Estimated savings

Account	Fully Funded Cost in \$ (000)				
	2009/10	2010/11	2011/12	2012/13	2013/14
Motor Vehicle	40	40	40	40	40
Earners	650	680	720	750	790
Work	380	390	410	440	460
<b>Total</b>	<b>1,060</b>	<b>1,110</b>	<b>1,170</b>	<b>1,220</b>	<b>1,280</b>

- 54 The cost was estimated for the 2008 amendment to be \$1 million per annum fully-funded over levy accounts. The variation in the updated costings is because these have been inflated for an increase in claim numbers and weekly compensation amounts.

### Risks

- 55 Claimant complaints would increase, as they will still think it is unfair to have weekly compensation abated because of annual leave accrued while they were earning but not paid until termination of employment.

## 1.5 Return to eligibility for payment of the minimum weekly compensation amount from the fifth week of incapacity, instead of the second week

### Current provision

56 Under clause 42, Schedule 1 low income claimants are entitled to receive the minimum weekly compensation payment from the second week of injury. Claimants who are entitled to this payment pay a minimum levy, which is calculated using the minimum weekly compensation payment as a basis. Minimum weekly compensation is calculated by using 80% of whichever is greater:

**either** the adult minimum wage

**or** 125% of the Invalid's Benefit for the appropriate age group.

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

### Why changed in 2008

58 Pre-2008 claimants who worked full time below, the minimum wage were eligible to increase their weekly compensation to the minimum weekly compensation amount only from the 5<sup>th</sup> week of incapacity onwards. Claimants in this group often received less than the minimum weekly compensation amount until the 5<sup>th</sup> week of incapacity, which could create financial difficulty for these people.

59 The 2008 change allows full-time earners early access to the minimum compensation rate, to help reduce the financial burden of injury on low-income people and allow claimants to focus better on rehabilitation. Approximately 110,000 adults and 9,200 youth workers (6% of the workforce) earn the minimum wage.

### Proposal

60 It is proposed that minimum weekly compensation is only paid from the fifth week of injury, as occurred before 2008. This change will exclude people who are on weekly compensation for four weeks or less from obtaining minimum weekly compensation.

61 There may be some cost-shifting to the Ministry of Social Development if claimants need emergency assistance. An Emergency Benefit is an income and asset tested benefit payable to people who are in hardship and who are unable to earn enough income for themselves. This includes people who are sick, injured, or disabled, who cannot receive another benefit. Some may qualify for the sickness or Invalid's Benefit.

### Estimated savings

Account	Fully-funded savings in \$(000)				
	2009/10	2010/11	2011/12	2012/12	2013/14
Motor vehicle	510	530	550	570	590
Non-Earners	60	70	70	70	80
Earners	5,110	5,300	5,500	5,700	5,920
Work	1,740	1,810	1,870	1,940	2,020
<b>Total</b>	<b>7,430</b>	<b>7,700</b>	<b>7,990</b>	<b>8,290</b>	<b>8,600</b>

- 62 The 2008 amendment was originally estimated to cost \$5.98 million per year fully funded, mostly over levy accounts as above. The increase in the updated costings is because the number of people receiving short-term weekly compensation has increased, and the difference between the average entitlement amount and minimum weekly compensation have also increased.

### **Risks**

- 63 This provision applies to people who are in very low paid jobs and who are therefore vulnerable. The risk is that they will need additional support from other government agencies such as Work and Income, and that their rehabilitation may be delayed as a result of insufficient income.

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

### **Current provision**

- 64 Under clause 47, Schedule 1 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.
- 65 The current rate of LoPE compensation is 125% of the adult minimum weekly compensation rate, and is currently \$480.00 per 40 hour week before tax. This rate is based on either the minimum wage or 125% of the invalid's benefit, whichever is higher. At present the minimum wage is higher than 125% of the invalid's benefit. The rate is calculated using the adult minimum wage as at 1 July each year (\$12 per hour at present but will increase on 1 July 2009 in line with the recent increase in the minimum wage). The payment is made when the claimant has been incapacitated for 6 months or more and is aged over 18.

### **Why changed in 2008**

- 66 Approximately 220 claimants receive this type of compensation. All are aged under 35 and 67% have serious brain or spinal injuries that mean they are likely to remain on weekly compensation for the rest of their lives. Weekly compensation is usually based on a claimant's actual earnings pre-injury and paid at a rate of 80% of those earnings to encourage return to work.
- 67 The reduction of 20% on earnings for workers to encourage return to work is not applicable for potential earners as most of them will be unable to work. The LoPE rate was changed from the 80% of minimum weekly earnings to 100% of minimum weekly earnings in 2008. This new rate was meant to recognise, in part, the claimant's loss of potential earnings over a lifetime. The rationale was that most people earn more than the minimum wage, and potential earners in most cases could have been expected to earn more than the minimum wage but for their injury.
- 68 Part of ACC's National Serious Injury Strategy is to encourage and support seriously injured persons to return to work. LoPE claimants are included in that initiative.

### **Proposal**

- 69 It is proposed that the LoPE rate be reduced to the adult minimum weekly compensation rate, which is the same rate for other low income claimants. At 80%

of the minimum wage the payment would be \$384 per 40 hour week, pre-tax. This calculation is based on the minimum weekly wage as at 1 July 2008 (as required by the IPRC Act).

- 70 This was the calculation used to ascertain the rate that LoPE claimants received prior to the 2008 amendment.

### Estimated savings

Account	Fully-funded savings in \$(000)				
	2009/10	2010/11	2011/12	2012/12	2013/14
Motor vehicle	3,780	3,800	3,820	3,840	3,870
Non-Earners	2,890	2,990	3,090	3,200	3,360
Earners	740	740	750	750	760
<b>Total</b>	<b>7,400</b>	<b>7,530</b>	<b>7,660</b>	<b>7,800</b>	<b>7,990</b>

- 71 This change was estimated for the 2008 amendment to cost an additional \$5.7 million per annum fully-funded over the Earners', Motor Vehicle, and Non-Earners' Accounts. The difference in the updated costings is due to a change in economic assumptions, including a decrease in the discount rate, and a change in the mix of serious versus non-serious cases, with more serious injury claimants now receiving LoPE than in 2006.

### Risks

- 72 This change affects a very small, but high cost, group of claimants. This change may not be viewed favourably by the potential earners may never have the option to improve their circumstances and are in a particularly vulnerable group of claimants who may (because of their serious injury) never have the opportunity to earn a decent income. However, these claimants receive other ACC entitlements such as attendant care, treatment, and aids and appliances. LoPE claimants currently receive more entitlements than people with non-injury-related disabilities.

## 1.7 Remove cover for 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

### Current provision

- 73 Section 21B of the IPRC Act provides cover for mental injury caused wholly or substantially by direct experience of a sudden traumatic event during the course of employment (for example, witnessing a colleague shot in a bank robbery or a train driver hitting someone on the tracks).
- 74 The provision excludes mental injuries caused by:
- non-work exposure, and
  - exposure to gradual onset workplace stress.
- 75 Cover is limited because the IPRC Act defines mental injury as a clinically significant behavioural, cognitive, or psychological dysfunction. Applying the current definition to this provision means that only those with a clinically significant degree of functional impairment are likely to be covered. Temporary distress that constitutes a normal reaction to trauma is not covered.

76 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.

### **Why changed in 2008**

77 The change was made to provide cover for mental injury caused wholly or substantially by direct experience of a sudden traumatic event during the course of employment as a result of several highly publicised incidents where employees were significantly affected by a traumatic event.

78 There was considered to be a gap in cover in the scheme for workers who sustain a mental injury as the result of exposure to a significant traumatic event during work time. Most other workers' compensation jurisdictions provide cover for mental injury caused by traumatic events and/ or gradual workplace stress. New Zealand is unusual in that the ACC scheme does not offer cover for mental injury derived from the workplace. The amendment was intended to ensure that people who are harmed in this way in the course of employment receive cover. It was intended that cover would ensure appropriate treatment, and would facilitate rehabilitation, including an early and sustainable return to work.

79 Two cases in recent years highlighted the absence of cover for a person who suffered a mental injury as the result of an acute, sudden, and unexpected traumatic event in the course of their work:

- the colleague of a bank teller shot and killed in a bank robbery, who witnessed the murder and feared for her own life
- a milk tanker driver who struck and killed someone who jumped in front of their vehicle.

80 Experiencing an extreme traumatic event affects people in different ways. Many people exposed to such an event experience feelings of fear, sadness, guilt and anger. Most deal with the event in their own way, with no longer-term consequences. However, some people develop severe, long term mental/psychological problems that impact on their ability to function in everyday life. Acute stress disorder, post-traumatic stress disorder, adjustment disorder with anxiety (or anxiety and depression), and specific phobias are the most common conditions associated with an extreme, work-related traumatic event. Standardised diagnostic criteria for these conditions are taken from the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM IV).

### **Proposal**

81 It is proposed that the provision included in October 2008 be revoked. Since this provision came into force, 13 claims have been made, of which 7 have been declined, and 6 are under investigation. It is difficult to say what impact this provision would have longer-term, but there is evidence that more claims under this provision are beginning to be made, with a likely impact on costs downstream.

82 Cover decisions so far have proven to be hard for ACC to make, which may result in people receiving cover for mental injury caused by events that were not intended by the policy.

83 Experience to date shows that it is difficult to determine what might be 'reasonably expected to cause mental injury in people generally', both epidemiologically and from a clinical perspective. For example, claims are being made for identification of a dead body, which usually is considered a transient trauma.

- 84 Transitional arrangements will be required for this change. People who lodge claims from the time the legislation was in force until it is amended and who meet the 2008 criteria will be granted cover.

### Estimated savings

**Table A: Fully-funded savings**

Levy Impact (\$000)	2010	2011	2012	2013	2014
Work Account	13,800	14,700	15,600	16,500	17,500

- 85 Costs were estimated for the 2008 amendment at \$22.6 million annually in the Work Account.

### Risks

- 86 The cost of treating employees who experience mental injury in these circumstances is likely to return to the health system, although we are aware that many large employers offer help, such as counselling and psychiatric help, to their employees in this situation (eg. NZ Police). It is unlikely, however, that small dairy owners would be able to do likewise.
- 87 New Zealand would be going against the trend in other jurisdictions in removing cover for workplace mental injury caused by witnessing a traumatic event.
- 88 Submissions received in relation to the 2008 amendment proposal identified issues of:
- inequity with other people under the Scheme (only workers are covered)
  - the cost of the amendment
  - volunteer workers (especially in emergency services) would not be covered
  - employers would have difficulty in mitigating the chances of harm through training of employees, and
  - the provisions were difficult to interpret.
- 89 There is likely to be a range of public comment on this proposal, which can be managed by appropriate communications.

## 1.8 Make it optional for occupational assessors to consider pre-incapacity earnings when undertaking initial and vocational independence assessments

### Current provision

- 90 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.”

### Why changed in 2008

- 91 The amendment in 2008 ensured that a claimant’s pre-incapacity earnings were a mandatory factor for the occupational assessor to consider when determining what types of work were ‘suitable’ for a claimant as part of the claimant acquiring vocational independence status. The amendment was made because occupational assessors did not always consider pre-injury earnings even though the ACC guidelines recommended that pre-injury earnings be considered. For some

claimants, types of work assessed as suitable would have resulted in a considerable reduction in earnings on return to work.

## Proposal

- 92 It is proposed 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.
- 93 According to 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).
- 94 It is difficult to identify suitable employment for these people that matches their pre-incapacity earnings.
- 95 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.
- 96 Approximately 1,066 claimants were declared vocationally independent between May 2007 and April 2008.<sup>1</sup>

## Estimated savings

- 97 It is difficult to quantify the cost implications of this amendment. The Cabinet paper proposing the 2008 vocational rehabilitation amendments did not provide costs on this specific change, as these were considered minimal. However, the amendment does affect ACC’s long-term weekly compensation pool and valuation, because there is an assumption that some of ACC’s decisions on vocational independence will be quashed 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

- 98 Claimants may not be able to return to their pre-injury earnings after being made vocationally independent. ACC’s processes would still allow occupational assessors to consider pre-injury earnings during the occupational assessment for vocational independence.

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<sup>1</sup> Based on the number of claimants who received a notification of compensation cessation letter during this period.

## **1.9 Reinstate the test for workplace gradual process, disease, or infection that applied before the 2008 amendment**

### **Current provision**

- 99 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. The person must either perform a particular or characteristic task, or be in a particular or characteristic environment. The particular characteristic of the task or environment must cause or contribute to the cause of the personal injury. The characteristic task or environment need not be present through the whole time of the person's employment. If the particular characteristic is present in both work tasks and/or environment and in non-work tasks and/or environment, it has to be more likely that the personal injury was caused by the work tasks and/or environment.
- 100 ACC may decline the claim even if it is established that a claimant's injury was caused by the above circumstances. ACC must establish that the risk of suffering the personal injury is not significantly greater for persons who perform the task or work in the environment is not significantly greater than it is for people who do not.

### **Why 2008 changes made**

- 101 The 2008 changes were made as a result of recommendations from the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection that highlighted the three-part test as being a barrier for cover for claimants with work-related gradual process, disease, or infection. The Panel noted that the burden of proof rested with the claimant and could be hard to meet.
- 102 The intention was to provide greater clarity for claimants and ACC on the responsibilities for investigating claims, and remove some of the barriers to obtaining cover.

### **Proposal**

- 103 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 adds to ACC's costs and to the number of people receiving cover.
- 104 Section 57 of the IPRC Act still requires ACC to investigate all complicated claims, including WRGPDI claims, which in effect puts the onus on ACC to prove the claim.
- 105 The requirement for ACC to disprove "significantly greater risk" is difficult in practice because when considering the last part of the test there is a presumption that a person's work places them at significantly greater risk of suffering a condition, unless ACC can prove otherwise. This is especially an issue where a claim is being made for an uncommon condition caused by a common exposure, or a common condition caused by an uncommon exposure.
- 106 For example, mature onset diabetes is most commonly of constitutional origin, and can also be caused by obesity in the non-work setting. ACC receives claims for diabetes caused by exposure to chemicals in the work place. There are no epidemiological studies to support the claim that chemicals cause diabetes and medical opinion varies because it is difficult to prove either way. The current provision gives the claimant the benefit of the doubt even though there has to be a clear link between injury and cause to obtain cover for most other types of injuries.

107 A return to the old provision will be clearer, because ACC has more experience and court precedent to guide decisions.

### **Estimated savings**

108 The reduction in levies for the Work Account are outlined in the table below:

<b>Fully- funded (\$000)</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Work Account	6,300	6,800	7,200	7,700	8,100

### **Risks**

109 There is likely to be adverse reaction from potential claimants, resulting in negative publicity. This can be managed by an appropriate communications plan to ensure that claimants and providers are given adequate notice of the policy change, and include strategies to address the risks of adverse publicity from claimants to this policy.

110 Individual claimants are unlikely to have easy access to epidemiological evidence to determine 'significantly greater risk'. ACC would continue to actively investigate whether a claimant is at 'significantly greater risk' of sustaining an injury in their employment.

## **Section 2: other proposed amendments**

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### **2.1 Funding ACC's residual liabilities**

#### **Current provision**

111 ACC has liabilities arising from injuries incurred between 1 April 1974 and 1 July 1999.

112 The Residual Claims Account (RCA) funds the ongoing costs of:

- i work injuries incurred between 1 April 1974 and 1 July 1999
- ii earners' non-work and non-motor vehicle injuries incurred between 1 April 1974 and 1 July 1992, and
- iii work-related gradual process, disease and infection claims with pre- 1 July 1999 exposure.

113 The RCA levy is collected from employers (including private domestic workers) and the self-employed.

114 There are also residual claims components of the Earners' and Motor Vehicle Accounts, which respectively fund claims for:

- i motor vehicle related claims from the pay-as-you-go (PAYG) period commencing on 1 April 1974 and ending on 30 June 1999, and
- ii earners' non-work, non-motor vehicle claims from the PAYG period commencing on 1 July 1992 and ending on 30 June 1999.

115 The residual portion of the Motor Vehicle Account is funded by the Motor Vehicle Account Residual levy that is paid by vehicle owners through the motor vehicle licence fee. The residual portion of the Earners' Account is funded by the Earners' Account Residual levy. This is incorporated into the composite Earners' levy rate which is paid by all salary and wage earners.

116 The IPRC Act requires ACC to set levies to achieve full-funding by 30 June 2014 of residual claims liabilities in the Residual Claims, Motor Vehicle, and Earners' Accounts but not the Non-Earners' Account.

### Proposal

117 On 16 March 2009 you agreed that the IPRC Act be amended to:

- a fold the Residual Claims Account into the Work Account and remove the ringfence 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 further out than 2014 by which the estimated outstanding claim liability associated with residual claims must be paid off
- d require the Minister for ACC to set the portion of the levies to be allocated to the residual portion for the relevant Accounts in regulations each year.

### Decision on date for fully-funding residual claims

118 In the officials meeting of 16 March 2009 you advised that you would like to see further options for funding horizons other than 2019. The table below outlines four further options. Whichever date you choose, these further options should give an indication of how the rates drop as the funding cut-off is extended.

#### Estimated rates for pre-1999 claims under different funding cut-off dates

Account	Cabinet approved rates 2009/10	Estimated rates for pre-1999 claims from the 2010/11 levy year until...					
		2013/14	2016/17	2018/19	2020/21	2022/23	2024/25
Residual Claims	\$0.56	\$0.68	\$0.47	\$0.36	\$0.30	\$0.25	\$0.22
Earners'	\$0.079	\$0.136	\$0.074	\$0.056	\$0.045	\$0.038	\$0.032
Motor Vehicle	\$167.92	\$207	\$113	\$87	\$72	\$61	\$54

119 Levy rates for the Residual Claims and Earners' Accounts are per \$100 of liable earnings, and levy rates for the Motor Vehicle Account are per licensed vehicle. It should be noted that the uncertainty and variability of the estimated rates quoted increases the further out the funding cut-off date is set.

120 These estimated rates have all been calculated based on the following basis:

- estimated rates are calculated as a flat rate to be charged from the 2010/2011 levy year until the targeted funding cut-off levy year
- projected outstanding claim liabilities and future claim cashflows are from the PwC December 2008 valuation
- risk-free discount rate assumptions are as at 31 December 2008
- current investment return assumptions.

121 While these are indicative figures only and will change as assumptions (such as discount rate, rehabilitation rates etc.) change, the relationship between the lengthening of the funding horizon and the reduction in the rate should remain.

122 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). The Department recommends that the funding horizon be extended by five years to 2019. The Department considers that this date balances the Government's call for more affordable levy rates, with the intergenerational equity issues of making future generations bear the cost of these historic claims.

### **Estimated savings**

123 The purpose of this amendment is not to promote savings but to reduce the effect of the increasing residual levies on levy payers in the short to medium term.

### **Risks**

124 Current levy payers are paying for the costs of past injuries, this amendment would transfer some of the liability on to future generations, meaning they would also be paying for these past injuries. The current situation is inequitable; any prolonging of this inequity would be offset by the increased short- to medium-term affordability gains that would result.

125 There is a risk that the cost of 'residual claims' will increase beyond the amount assessed on 1 July 2009. With the amalgamation of the residual liabilities into the current account the increase would be paid by levy payers of the amalgamated account.

## **2.2 Allow the Motor Vehicle Account Residual Levy to include funding from the Motor Spirit Levy (note that you have already approved this amendment)**

### **Current provision**

126 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 must come from both licence fees and the motor spirit levy.

### **Proposal**

127 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.

128 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.

129 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.

130 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 fuel levy money to be used as well would have the effect of reducing the size of future rises in licence fees.

**Savings**

131 There are no savings for this amendment. The amendment is intended to improve flexibility for government to decide how the Motor Vehicle Account Residual Levy is collected.

**Risks**

132 More risk rating would be 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.

133 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. Using the 2008/09 levy assumptions, a one-cent increase in motor spirit levy would decrease the licence fee for petrol vehicles by \$12. This is not a significant risk because of the volatility of the petrol price.

**2.3 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**

134 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982

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151 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982

## **2.4 Remove the requirement to have the Injury Surveillance Ministerial Advisory Panel**

### **Current provision**

- 152 In 2001 section 289 of the IPRC Act established the Injury Information Manager. 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 independent purchase advice directly to the designated Minister on the direction the Information Manager is taking and on the strategy of the Information Manager.
- 153 ISMAP's terms of reference invite the Panel to comment on issues wider than the narrow role specified in the Act. The Panel's recommendations are not binding on Ministers.
- 154 The Injury Surveillance Ministerial Advisory Panel (the Panel) has been in operation since 2003. The Department's view is that the Panel has, to date, been unable to provide purchase advice on the strategy and direction of the Information Manager and to thereby improve the quality of injury-related information in New Zealand.
- 155 The Department has increased the resources provided to the Panel, and updated the Panel's Terms of Reference. In October 2007 the previous Minister expressed concern with the Panel's progress and directed them to take a more strategic, long-term outlook and to provide advice that rises above technical issues. The Panel was also advised to pay more attention to the cost of injury data collection at the 'coalface'. These measures have had a limited effect on the quality and substance of advice that the Panel provides.
- 156 A major difficulty is that external stakeholders are not well placed to assess the strategic direction and strategy of a technical function of Statistics NZ that is accountable to the Chief Statistician and the Minister of Statistics.

### **Proposal**

- 157 It is proposed that the Panel be dissolved because:
- the Panel was established at the same time as the Information Manager, and the system was new. The Information Manager role is now well developed and many of the theoretical concerns about how it might work in practice have now been allayed. In particular, the Panel has affirmed the direction of the Information Manager and the work programme being advanced.
  - the Panel is comprised of stakeholder representative surveillance experts, agency data providers, and data users, as well as officials from relevant agencies. Over the years it has become apparent that this mix of people is not necessarily able to provide independent advice on the direction and strategy of the Information Manager.
  - having such a Panel in statute is not necessary, and it has not been providing value for money
  - although the Department supports the concept of oversight and guidance for the Information Manager, a standing committee is not the most efficient or effective method of achieving this oversight

- the Panel can form an independent view of the Information Manager’s direction and strategy, but it does not have the capacity or the capability to make a meaningful contribution to solving any problems that it identifies. Further, the Minister of Statistics and the Chief Statistician are responsible for the performance of the Information Manager and its strategic direction.
- 158 ACC and Statistics New Zealand support this proposal but wish to ensure some other means of governance of the Information Manager remains. Options under consideration include:
- use of the Chief Executives Forum which oversees the New Zealand Injury Prevention Strategy
  - use of the Injury Information Senior Officials Group, chaired by Statistics NZ, which is directly addressing many of the issues that have been considered by ISMAP
  - having a committee of senior officials from the Department of Labour, Ministries of Health and Transport, ACC, and Statistics New Zealand, similar to those officials already appointed to the current Panel.
- 159 External advice can be sought from time to time by the governance body on any further needs for injury statistics.
- 160 The Associate Minister for ACC has been briefed on our intention to propose this legislative amendment.

### **Estimated savings**

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

### **Risks**

- 162 There is a risk that injury statistics will not meet the requirements of the health sector without guidance. However, if the Panel is dissolved the options above for continued oversight and guidance will be further developed.

## **2.5 Remove the requirement to have the Ministerial Advisory Panel on Work-related Gradual Process, Disease, or Infection**

### **Current provision**

- 163 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. 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.

164 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. 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**

165 It is proposed the provision requiring there to be a WGPDI Panel is removed because:

- the Panel was constituted at a time when the government specifically wanted to address compensation for this specific type of injury
- the task has largely been completed, and no foreseeable legislative amendments in this area are expected to be needed in the near future
- there is no need to have such a Panel in statute, with its attendant ongoing costs. Should a future need arise, external advice on this particular type of injury can be sought by other means.

166 We have discussed this proposal with Hon Pansy Wong who wishes to ensure that the residual function of this Panel, if needed, could be carried out by some other method.

167 The usual work of identifying WRGPRI issues and advising Ministers on these is undertaken by both the Department and ACC. The Department is considering how other workplace and safety committees, such as the Workplace Health and Safety Council - a tripartite forum that includes representatives of both the CTU and Business NZ and supports improved workplace health and safety outcomes - could be used to advise on issues relating to WPGPDI. The Minister of Labour convenes this Council, and the terms of reference of the Council are currently under review.

168 You also have the right to convene a ministerial advisory panel, or consult with independent experts, at any time should you require advice on these issues in the future.

### **Estimated savings**

169 The Panel costs approximately \$60,000 a year in direct costs, and indirectly around \$7,000 in staff time and resources to service.

### **Risks**

170 The Chair of the Panel, Hazel Armstrong, is likely to comment publicly if you decide to disestablish the Panel.

## **2.6 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**

171 **WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**

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175 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982

176 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982

## **2.7 Replace the vocational independence threshold from capacity to work for 35 hours per week to capacity to work full-time as defined by Statistics NZ**

### **Current provision**

177 This provision was originally introduced to ensure that claimants had a capacity to work full-time when they left the Scheme.

178 Vocational Independence is defined as the claimant's capacity to engage in work for which s/he is suited by reason of experience, education, or training, or any combination of those things; and for 35 hours or more per week. A claimant is only tested for Vocational Independence if s/he is receiving or is entitled to receive weekly compensation.

179 A claimant undergoes:

- (a) an occupational assessment (assesses type of work the claimant has the skills to do), and
- (b) a medical assessment (assesses whether a claimant is medically fit enough to do any of the jobs identified in the occupational assessment).

180 This process allows ACC to determine whether a claimant is vocationally independent. A claimant cannot be assessed for Vocational Independence unless ACC considers s/he is likely to achieve Vocational Independence and all vocational rehabilitation under the claimant's Individual Rehabilitation Plan has been completed.

181 Once a claimant is determined to be vocationally independent, weekly compensation ceases after three months. Three months is considered to be sufficient time to allow a claimant to find work.

### **Proposal**

182 This is a new proposal. The provision for Vocational Independence was enacted in 2001 but the concept existed in the legislation as work capacity testing before that.

183 It is proposed to change the 35 hours requirement to capacity to work for a full-time working week as defined by Statistics New Zealand. The 35 hours component is a proxy for full-time work. However Statistics New Zealand defines the full-time employed as those who usually work 30 hours or more per week. It is also consistent with the Ministry of Social Development's and Inland Revenue's definition of full-time work. Using a standard measure such as that used by Statistics New Zealand will improve the flexibility of the legislation.

184 A set figure in legislation does not move with labour market conditions, whereas the Statistics New Zealand definition considers all employment factors. This amendment would also improve flexibility in assessing vocational independence; for example, using the current Statistics New Zealand definition of full-time work ACC estimates that 200 more people a year would obtain vocational independence.

185 This amendment would mean that the definition moves with the employment situation and further amendments would not need to be made.

**Estimated savings**

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

**Risks**

- 186 This change could result in increased numbers of claimants moving to benefit payments and therefore increased cost to the Crown, particularly if the claimant is unemployed when s/he loses weekly compensation. The risk of this occurring is higher in the present economic situation.
- 187 The Vocational Independence process has been the subject of several reviews and negative publicity. This has largely been linked to the finality of the medical assessment, which is difficult to challenge in review and in court, and not to the 35 hour proxy for full-time work.

**2.8 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982**

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206 WITHHELD UNDER s9(2)(f)(iv) OF THE OFFICIAL INFORMATION ACT 1982

**THE REMAINDER OF THIS PAPER IS NOT RELEVANT TO THE INJURY PREVENTION,  
REHABILITATION, AND COMPENSATION AMENDMENT BILL 2009**