



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	Proposed Review Framework for Schedule 2, List of Occupational Diseases – Approval to Consult	Date to be published	14 April 2022

List of documents that have been proactively released		
Date	Title	Author
16 December 2021	2122-2181 Discussion Document on Proposed Review Framework for Schedule 2: List of Occupational Diseases	Ministry of Business, Innovation and Employment
2 March 2022	Cabinet Paper: Proposed Review Framework for Schedule 2, List of Occupational Diseases – Approval to Consult	Office of the Minister for ACC
2 March 2022	Cabinet Social Wellbeing Committee Minute of Decision [SWC-22-MIN-0023]	Cabinet Office

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under the Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld to protect confidential advice to Government and the privacy of natural persons.

Office of the Minister for ACC
Chair, Cabinet Social Wellbeing Committee

PROPOSED REVIEW FRAMEWORK FOR SCHEDULE 2, LIST OF OCCUPATIONAL DISEASES – APPROVAL TO CONSULT

Proposal

1. I am seeking Cabinet agreement to release a public consultation document which proposes a framework for reviewing the gradual process occupational illnesses covered under Schedule 2 of the Accident Compensation Act 2001 (the AC Act).

Relation to Government Priorities

2. The review of Schedule 2 was identified as a priority in our 2020 Manifesto, which stated that we would: “consider the range of conditions ACC covers and take an evidence-based approach to updating the list of chronic illnesses caused through workplace exposure to harmful environments”.

Executive Summary

3. Gradual process injuries are personal injuries caused by exposure to an employment task or environment.
4. Claimants can be covered under the AC Act for work-related gradual process injuries through two routes:
 - the successful application of the three-step test provided by section 30 of the AC Act, or
 - an illness being included in the Schedule 2 list of occupational diseases.
5. Schedule 2 is based on the International Labour Organization’s List of Occupational Diseases (‘ILO List’), which was most recently updated in 2010.¹ Prior to the AC Scheme, New Zealand and international workers compensation schemes also included provisions for gradual process injury cover.
6. Schedule 2 currently does not have a formal process for its review. Schedule 2’s latest update was in 2008, which was based on advice from the previous

¹ It is a requirement under the International Labour Organization (ILO) Convention 42, to which New Zealand is a party, for members to provide compensation to workers incapacitated by occupational diseases.

Ministerial Advisory Panel on Work-Related Gradual Process, Disease or Infection² in 2006. The Advisory Panel was disestablished in 2010.

7. I am proposing to seek public and stakeholder feedback on an evidence-based review framework that will ensure Schedule 2 reflects modern scientific knowledge on occupational diseases.
8. The proposed review framework is summarised below:
 - **The review occurs every four to five years** after an initial determination of whether a review is needed that is conducted by MBIE officials, with relevant agency input.
 - **There is an open consultation for stakeholders and the public** to submit their suggested additions to Schedule 2.
 - **Independent researchers analyse the submissions** against detailed criteria and provide an analysis report to MBIE officials.
 - **Officials consider the report and make recommendations**, considering cost estimates and other policy considerations.
 - **Following my decision**, seek Cabinet approval to consult with stakeholders on any changes and then begin an Order-in-Council process.

Background

What are work-related gradual process injuries?

9. Gradual process injuries are personal injuries incurred by exposure to an employment task or by being employed in an environment that has a particular property which causes injury.
10. Examples of gradual process injuries include those arising from working repetitively with agents, dusts, compounds, substances, radiation, or other things which cause illness over time. Performing tasks that require a particular or repeated movement that causes a gradual onset injury are also included.

Why do workers get cover under the AC Scheme for gradual process injuries?

11. Cover for gradual process injuries has been a fundamental component of workers compensation schemes in New Zealand in the past and of workers compensation schemes internationally to date.
12. Cover for work-related gradual process injuries is a distinct feature of the AC Scheme. The AC Scheme generally provides cover for injury (for example, a sprain or strain), but not for illness. However, the gradual process provisions

² The Ministerial Advisory Panel on Work-Related Gradual Process, Disease or Infection was established in 2003 under the Injury, Prevention, Rehabilitation and Compensation Act (2001). The panel's terms of reference included providing the Minister responsible for the IRPC Act advice on any matter relating to work-related gradual process, disease, or infection.

provide cover for gradual process physical injuries, illness, and diseases that arise from work.

13. This gradual process cover acknowledges that workers may have little control over work tasks or environments that cause disease, injury, or illnesses, and that not all injuries have instant effects.
14. It is also a requirement under the ILO Convention 42, to which New Zealand is a party, for members to provide compensation to workers incapacitated by occupational diseases.

How is cover provided under the AC Act?

15. Claimants can be covered under the AC Act for work-related gradual process injuries through two routes:
 - a causal relationship is shown between the claimant's gradual process injury and their performance of a work task or employment in an environment that caused or contributed to their injury (Section 30(2) three-step test cover), or
 - the gradual process, disease, or infection is on a list of Occupational Diseases in Schedule 2, where there is strong scientific evidence of a causal link between work and injury that renders any other cause unlikely (Section 30(3)).
16. An example of work-related gradual process injury covered listed in Schedule 2 is lung cancer or mesothelioma diagnosed as caused by working with asbestos.

Schedule 2 reviews

17. Under a previous version of the AC Act, the Minister for ACC was required to convene and chair a Ministerial Advisory Panel on Work-Related Gradual Process, Disease or Infection.
18. The Ministerial Advisory Panel consisted of union representatives, lawyers, occupational health providers and medical experts and was required to provide advice on:
 - any matter relating to work-related gradual process injuries
 - whether Schedule 2 should be amended
 - how ACC deals with gradual process claims for cover for work-related gradual process injuries, and
 - the definition of a gradual process injury in section 30 of the AC Act.
19. In 2006, the Ministerial Advisory Panel provided advice on a revised Schedule 2 to the then-Minister for ACC. This resulted in amendments to Schedule 2 in 2008.

20. However, the Ministerial Advisory Panel was disestablished in 2010 on the basis that it had completed the tasks which it was established for and there were no further legislative amendments expected at the time. This also resulted in a cost saving of \$60,000 per annum for ACC’s Work Account.
21. There is currently no mechanism in the AC Act for the regular review of the list of occupational diseases in Schedule 2.

Analysis

Introducing a review framework would ensure Schedule 2 is consistent with current evidence

22. A regular review for Schedule 2 would:
 - keep Schedule 2 up-to-date with current medical and epidemiological evidence
 - stimulate the prevention of occupational diseases by facilitating a greater awareness of the risks involved in work, and
 - discourage the further use of harmful substances which contribute to gradual process injuries for workers.

A review framework could also improve understanding of how Schedule 2 applies to different population groups in New Zealand

23. There is a lack of understanding of how Schedule 2 illnesses impact different population groups in New Zealand. Specifically, the ILO has stated that there is a lack of gender-sensitive data in occupational illnesses research.
24. We know that women and men are exposed to different risks at work and may react differently to the same risks. As part of a review, researchers could take a gender-sensitive approach to their analysis to address this. How this approach would operate would be independently determined by the researchers.
25. The review could also improve our understanding of how the illnesses in Schedule 2 impact other population groups in New Zealand, including, but not limited to, disabled people, Māori, Pacific peoples, and Asian groups.

The proposed review framework

26. I am proposing that a consistent review framework is introduced to ensure that Schedule 2 remains up to date with modern science. This is set out in Table 1 below.

Table 1: Overview of Proposed Review Framework for Schedule 2

Stage	Description
1	Reviews are proposed to occur every 4 to 5 years.
2	Officials prepare a consultation document explaining Schedule 2 and work-related gradual process disease or infection in the AC Act for the engagement of stakeholders and the

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	public. This will enable informed submissions and properly shape engagement with the process.
3	Officials begin engaging with key stakeholders one month ahead of opening the submissions process.
4	MBIE releases a consultation document on its website and requests submissions.
5	MBIE compiles the submissions for engagement with researchers. Researchers analyse and evaluate submissions against detailed technical criteria to produce an independent report. Researchers would consider how to take a gender-sensitive approach and how Aotearoa New Zealand population groups are impacted by Schedule 2 diseases.
6	Officials consider the independent report, as well as cost estimates and other policy considerations to inform recommendations to the Minister on proposed changes to Schedule 2.
7	Following the Minister's consideration and decision, we will seek Cabinet permission to consult on the changes and if approved, consult with relevant stakeholders.
8	The Minister will bring the proposals to Cabinet and any changes to Schedule 2 will be taken to the Executive Council through an Order-in-Council process.

27. The review process would involve stakeholders and the public, so that employees and employers are given opportunity to suggest relevant additions for New Zealand's workforce.
28. Potential additions to Schedule 2 would be analysed by independent researchers with appropriate expertise in gradual process injuries, against a number of criteria based on an internationally recognised approach used by the ILO called Bradford-Hill criteria. The selection process for researchers will be provided in my final policy proposal, including the range of expertise to be sought.
29. Researchers would also consider a gender-sensitive approach and the impact of Schedule 2 illnesses on New Zealand population groups in their analysis.
30. Recommendations made by officials would consider the researchers' analysis, as well as cost implications and other policy considerations.
31. Any update to Schedule 2 would occur through an Order-in-Council process under section 336 in the AC Act.

Public consultation process

32. Stakeholder groups including ACC Futures Coalition, New Zealand Professional Firefighters Union and the Sawmill Workers against Poisons group have raised concerns, on behalf of their members, about the current gradual process provisions in the AC Act.
33. In particular, they are concerned that the current scope of cover under Schedule 2 excludes some work-related gradual process injuries and that the Ministerial Advisory Panel was disbanded without a formal review mechanism in place.

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34. In light of the concerns stakeholders have about gradual process cover settings, I consider that it is important to test the proposed Schedule 2 review framework with them and the public. Comprehensive public consultation will reassure these groups that we are taking the issues they are highlighting seriously, and have taken a considered approach to the problem and their responses.
35. To enable sufficient time for members of the public to provide feedback, I propose consulting for a period of six weeks. I will release the Discussion document on or shortly after 7 March 2022 (dependent on Cabinet authorisation). The Discussion Document will be released via MBIE's website.
36. Officials will also build in opportunities for specific consultation with key stakeholders, such as unions and worker groups.
37. The Discussion Document is contained as Annex 1.

Consultation

38. The Department of the Prime Minister and Cabinet has been informed about this proposal.
39. The following agencies and Crown entities have been consulted on the Discussion document: the Treasury, ACC, WorkSafe New Zealand, Inland Revenue, the Ministry of Health, the New Zealand Transport Agency (Waka Kotahi), the Ministry of Transport, Te Puni Kōkiri, the Ministry for Women, the Ministry for Pacific Peoples, the Ministry of Social Development, the Ministry of Justice, and Oranga Tamariki.

Financial Implications

40. The introduction of a Schedule 2 review framework would have financial implications to ACC's levied Work Account, if implemented, due to costs associated with consultation and commissioning research.
41. The previous Ministerial Advisory Panel reviewing Schedule 2 and other gradual-process illness matters cost \$60,000 per annum. This was less than 0.01% of the Work Account. This was a different framework, therefore I am using the discussion document to gather further information on potential cost implications.
42. I will include the financial implications of any recommended review framework in my final proposal to Cabinet after consultation closes in May 2022. By agreeing to a review framework, this does not mean agreement to make changes to Schedule 2, as these would be approved in a separate Cabinet process.

Legislative Implications

43. There are no legislative implications arising from the proposed release of the Discussion document. After the public consultation has been undertaken, and a

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review framework is established, any updates to Schedule 2 will be completed through an Order-in-Council.

Impact Analysis

44. The Regulatory Impact Analysis panel at the Ministry of Business, Innovation and Employment has reviewed and confirmed that the discussion document can substitute for an interim Regulatory Impact Statement. It will lead to effective consultation and support the eventual development of a quality Regulatory Impact Statement.
45. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there is no direct emissions impact.

Population Implications

46. The proposed review framework may enable people with gradual process injuries to access cover, as illnesses which were previously not in Schedule 2 in 2008, would have the opportunity to be included on the list.
47. The proposed review framework may also be beneficial for multiple population groups in New Zealand, including, disabled people, Māori, Pacific peoples, and Asian groups, and help address gender disparities in the AC Scheme. Further work could be commissioned to understand gender differences in occupational diseases and how different population groups in New Zealand are impacted by the diseases in Schedule 2. This could inform options to better support New Zealanders injured at work and how to protect them from gradual process illnesses.

Human Rights

48. The proposals contained in this paper are unlikely to raise issues of consistency under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Communications

49. If Cabinet agrees to the proposed consultation, I intend to make a public announcement shortly after Cabinet's decision.
50. The consultation document will be published on MBIE's website. ACC will also publicise the consultation document on its website and will notify relevant stakeholders of its release.

Proactive Release

51. I propose to proactively release this paper, along with the Cabinet minute and any relevant supporting documentation, on MBIE's website within 30 working days of

the final decision being made by Cabinet. The release of the information is subject to redactions consistent with the *Official Information Act 1982*.

Recommendations

52. I recommend that the Committee:

- a. **Note** that the 2020 Labour Party Manifesto made a commitment to consider the range of conditions ACC covers and taking an evidence-based approach to updating the list of chronic illnesses caused through workplace exposure to harmful environments.
- b. **Note** that there is not currently a process for reviewing the list of occupational diseases in Schedule 2.
- c. **Agree** to the release of the attached public consultation document titled *Proposed Review Framework for the List of Occupational Diseases in the Accident Compensation Act 2001*
- d. **Invite** the Minister for ACC to report back to the Committee on the outcome of the consultation and on policy proposals for the review in 2022.
- e. **Authorise** the Minister for ACC to may make minor amendments to the consultation document before release if required.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for ACC