



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	Review Framework for Schedule 2, List of Occupational Diseases	Date to be published	20 October 2022

List of documents that have been proactively released

Date	Title	Author
September 2022	Cabinet Paper: Review Framework for Schedule 2, List of Occupational Diseases	Office of the Minister for ACC
September 2022	Attachment One: Review Framework for List of Occupational Diseases	Office of the Minister for ACC
14 September 2022	Cabinet Social Wellbeing Committee Minute of Decision [SWC-22-MIN-0163]	Cabinet Office

Information redacted

YES

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 for the reasons of Confidential advice to Government.

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

REVIEW FRAMEWORK FOR SCHEDULE 2, LIST OF OCCUPATIONAL DISEASES

Proposal

1. I am seeking Cabinet agreement to the final review framework on the list of occupational diseases covered under Schedule 2 of the Accident Compensation Act 2001 (the AC Act).

Relation to Government Priorities

2. An evidence-based 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 access cover under the AC Act for work-related gradual process injuries through two routes:
 - the successful application of the three-step test in section 30 of the AC Act, or
 - a disease 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, Aotearoa New Zealand and international workers’ compensation schemes also included provisions for gradual process injury cover.

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

IN CONFIDENCE

6. Schedule 2 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 Ministerial Advisory Panel on Work-Related Gradual Process, Disease or Infection² in 2006. The Advisory Panel was disestablished in 2010.
7. In March 2022, I received Cabinet agreement to consult on a proposed review framework and an invitation to report back on the outcome of the consultation and policy proposal [SWC-22-MIN-0023 refers]. This consultation ran from 17 March to 28 April 2022 and received seven submissions.
8. Most submitters supported the introduction of a review framework for Schedule 2, with suggested amendments to ensure the review is clearer and delivering against the objectives. I have made these changes to the criteria that the diseases will be assessed against and have introduced an evaluation of the framework.
9. The final review framework that I'm proposing will be used to inform regulatory changes to Schedule 2 and is summarised below:
 - **The review occurs every five years** after an initial determination of whether a review is needed that is conducted by Ministry of Business, Innovation and Employment (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 compile evidence on the submitted occupational diseases for medical experts** to analyse 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.
10. If the proposed framework is approved, officials will commence the review in October. Confidential advice to Government

Background

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.

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 (IRPC Act). 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.

IN CONFIDENCE

12. Cover for gradual process injuries is a distinct feature of the AC Scheme. The AC Scheme generally provides cover for injury (for example, a broken leg), but not for diseases. However, the gradual process provisions provide cover for gradual process physical injuries, infections, 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 infections, and that not all injuries have instant effects.
14. It is also a requirement under ILO Convention 42, to which Aotearoa New Zealand is a party, for members to provide compensation to workers incapacitated by occupational diseases.

How can people access cover provided under the AC Act?

15. People can access cover under the AC Act for work-related gradual process injuries through two routes:
 - a causal relationship is established between their gradual process injury and their performance of a work task or employment in an environment that caused or contributed to their injury, in accordance with the Section 30(2) three-step test for cover, or
 - the gradual process disease 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 a work-related gradual process injury 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 appoint a person 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.
21. There is currently no set process 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. I am proposing a review framework for Schedule 2 that will be used to inform updates to the list. 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 Aotearoa New Zealand

23. There is a lack of understanding of how Schedule 2 diseases impact different population groups in Aotearoa New Zealand and how groups are exposed to different exposure risks. The ILO stated that a gender-sensitive approach to occupational disease research and policy is not used enough internationally, and they recommend taking this approach to promote healthier outcomes for all workers.
24. We know that people are both exposed to different risks at work, and may react differently to the same risks, depending on their sex and gender. As part of a review, researchers could, as recommended by the ILO, take a gender-sensitive approach to their analysis to improve our understanding of this. This includes the use of sex-disaggregated data and considering how biological differences, employment patterns and gender roles in society can impact occupational health.
25. How this approach would operate in practice would be independently determined by the researchers, including the ILO's Guidelines for Gender Mainstreaming in Occupational Safety and Health.
26. The review could also improve our understanding of how the diseases in Schedule 2 impact other population groups in Aotearoa New Zealand, including, but not limited to, disabled people, Māori, Pacific peoples, ethnic communities and rural communities.

The proposed review framework

27. Following public consultation, I am proposing that a consistent review framework is introduced that will be used to ensure that Schedule 2 remains up-to-date with modern science. This is set out in Table 1 on the following page and in Annex One to this Cabinet paper.

Table 1: Overview of Proposed Final Review Framework for Schedule 2

Stage	Description
1 - Initial determination	<p>MBIE will undertake an initial determination every five years (engaging relevant agencies) of whether a review is needed. Officials can look at a number of considerations to inform this determination, including the acceptance rate of ACC’s gradual process claims under the section 30 three-step test, evidence based research, and developments in occupational disease knowledge.</p> <p>This determination can be undertaken outside of the five year period if new evidence emerges which needs considering.</p> <p>The Minister for ACC will provide an update the House of Representatives on whether a full review of Schedule 2 will occur and the rationale for that decision, to support transparency throughout the framework.</p>
2 - Public consultation	<p>If yes, MBIE prepares a consultation document seeking suggestions of occupational diseases for independent experts to consider.</p> <p>MBIE and ACC engage with key stakeholders one month ahead of opening the submissions process. These stakeholders include, but are not limited to, Māori, disabled people, unions, businesses, and medical experts.</p> <p>MBIE releases a consultation document on its website and requests submissions suggesting occupational diseases to include in Schedule 2 and supporting research.</p>
3 - Independent researchers and medical experts’ report	<p>MBIE compiles the submissions, alongside the ILO List and any other diseases identified, to create a list of occupational diseases for evidence to be collected on.</p> <p>MBIE (with potential support from ACC) procures a literature review of the relevant clinical and epidemiological evidence, and selection and management of medical experts, to assess the evidence.</p> <p>Experts will be expected to take a gender-sensitive approach and consideration of different population groups in Aotearoa in their analysis of occupational diseases to recommend for inclusion in Schedule 2.</p> <p>The independent experts would produce a report with recommended diseases to add to Schedule 2.</p>

IN CONFIDENCE

4 - Officials' consideration of report	MBIE considers the independent report, as well as cost estimates and other policy considerations, to inform recommendations to the Minister on proposed changes to Schedule 2.
5 - Minister's consideration and stakeholder consultation	Following the Minister's consideration and decision, we will seek Cabinet permission to consult on these proposals and if approved, consult with relevant stakeholders. These stakeholders include, but are not limited to, Māori, disabled people, unions, businesses, and medical experts.
6 - Cabinet and Order-in-Council	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.
7 - Evaluation	An evaluation of the framework will be completed to inform consideration of future legislative changes to the AC Act, such as Confidential advice to Government [REDACTED].

28. The review process would involve stakeholders and the public, so that employees and employers are given the opportunity to suggest additions to Schedule 2.
29. Potential additions to Schedule 2 would then be analysed by independent medical experts with appropriate expertise in occupational diseases, against criteria based on an internationally recognised approach used by the ILO called Bradford-Hill criteria. Following this, if a causative relationship was established, there would be separate criteria to determine if this relationship was sufficiently strong to be included in Schedule 2.
30. The experts analysing the diseases to inform a report with recommended changes to Schedule 2 will be independent of Government. The experts will be expected to demonstrate a gender-sensitive approach in their report and will need to consider the impact of Schedule 2 diseases on New Zealand's population groups in their analysis.
31. Recommendations made by officials will consider the experts' report, as well as cost implications and other policy considerations, to inform advice on changes to Schedule 2.
32. This review framework will be used to inform updates, if required, to Schedule 2 made through an Order-in-Council process under section 336 in the AC Act.
33. Confidential advice to Government [REDACTED]
[REDACTED]
[REDACTED]

Public consultation process

34. Seven responses were received, most of which were from medical organisations. Most submitters agreed with the introduction of the proposed review framework in

IN CONFIDENCE

principle, to enable Schedule 2 to be kept up-to-date with modern science, with suggestions to refine the technical criteria and introduce an evaluation of the framework.

35. A small number stated that the criteria which diseases would be assessed against assumed that evidence would be easily available. Some stated that workers find it difficult to demonstrate a causal connection between the work environment and the diseases for claims under the section 30 three-step test.
36. Two submissions disagreed with the proposal and suggested the re-introduction of the Ministerial Advisory Panel, with a mixed membership of disciplines and updated terms of reference.

Response

37. To refine the technical criteria, I have now clarified that the link between the disease and employment must first be established using the internationally recognised approach called Bradford-Hill, and then the strength of that causation is assessed to see if it is strong enough to be included in Schedule 2.
38. This will make the decision process more transparent and straightforward for the public and experts to follow. It also clearly aligns with Schedule 2's purpose, which is to make access to cover more efficient for claims clearly related to occupational diseases.
39. I have also incorporated greater transparency at the beginning and end of the framework to ensure it will be meeting its objective of 'transparency and consistency'. After the initial determination is made on whether a review of Schedule 2 will occur, the Minister for ACC will provide an update the House of Representatives on this decision and provide accompanying rationale. This will align the transparency of the first stage with other stages of the framework, such as publishing the independent experts' report and the rationale behind their recommendations.
40. I have also included an evaluation of the framework once the first review has been completed. This evaluation can be used to inform consideration of future legislative changes to the AC Act, such as embedding a regular review period of Schedule 2 and allocating ongoing funding.
41. Where the connection between work and a disease is not as consistently clear and strong, the section 30 three-step test is the appropriate avenue to consider cover, rather than Schedule 2. I am currently addressing the concerns that gradual process cover under the AC Scheme is unfair by proposing to amend the three-step test in the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill to put the onus explicitly on ACC to investigate and gather evidence on gradual process claims.

IN CONFIDENCE

42. The purpose of Schedule 2 is to include diseases which have a sufficiently strong linkage to work to support their automatic acceptance (unless ACC can establish that the disease has a cause other than the person's employment).
43. I am not re-introducing the Ministerial Advisory Panel because the framework is clearer in demonstrating what evidence is being used to inform decisions at each stage. The process will enable a variety of disciplines to contribute, which the proposed framework supports through a public consultation supporting employees, unions, employers and any interested party to contribute and these suggestions will be assessed by independent medical experts.
44. With a specific section involving only medical experts, this allows for greater assurance that their recommendations are made on epidemiological research and clinical knowledge. This supports the review framework being evidence-based.

Consultation

45. The Department of the Prime Minister and Cabinet and Te Puni Kōkiri have been informed about this proposal.
46. The following agencies and Crown entities have been consulted on the proposal: the Treasury, ACC, WorkSafe New Zealand, Inland Revenue, the Ministry of Health, the New Zealand Transport Agency (Waka Kotahi), the Ministry of Transport, the Ministry for Women, the Ministry for Pacific Peoples, the Ministry of Social Development, Office for Disability Issues, Whaikaha - Ministry of Disabled People, the Ministry of Justice, and Oranga Tamariki.

Financial Implications

47. I previously advised that the introduction of a Schedule 2 review framework would have financial implications for ACC's levied Work Account, if implemented, due to costs associated with consultation and commissioning research.
48. This was because the previous Ministerial Advisory Panel reviewing Schedule 2 and other gradual-process injury matters cost \$60,000 per annum. This was less than 0.01% of the Work Account.
49. However, a pilot review will be funded by MBIE (with support from ACC, if required). This will enable a better understanding of costs, before making a decision on whether it is necessary to specifically allocate costs from the Work Account for future reviews. Establishing direct funding from the Work Account would require an amendment to the AC Act.
50. By agreeing to a review framework, this does not mean agreement to make changes to Schedule 2. The framework will be used to inform future decisions which would be approved in a separate Cabinet process.

Legislative Implications

51. There are no legislative implications arising from the agreement to the review framework. Any updates to Schedule 2 will be completed through an Order-in-Council process.
52. Confidential advice to Government
[REDACTED]

Impact Analysis

53. There are no regulatory proposals in this paper, and therefore Cabinet's impact analysis requirements do not apply.
54. 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

55. The proposed review framework may enable people with gradual process injuries to access cover, or to access cover more readily, as occupational diseases which were previously not in Schedule 2 in 2008, would have the opportunity to be included on the list.
56. The review framework may also be beneficial for multiple population groups in Aotearoa New Zealand, including men, women, disabled people, Māori, Pacific peoples, Asian groups, and rural and ethnic communities. Further work could be commissioned through this review to understand gender differences in occupational diseases and how different population groups in Aotearoa New Zealand are impacted by the diseases in Schedule 2.

Human Rights

57. 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

58. If Cabinet agrees to the proposed policy proposal, I intend to make a public announcement shortly after Cabinet's decision.

Proactive Release

59. I propose to proactively release this paper and Annex One, 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.

Recommendations

60. 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 take 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 proposed final review framework in Annex One for the list of occupational diseases in the Accident Compensation Act 2001.
- d. **Agree** that a gender-sensitive and population-based approach is expected as part of the review framework
- e. **Note** that, pending your agreement, the review process can commence from October 2022 Confidential advice to Government [REDACTED].
- f. Confidential advice to Government [REDACTED]

Authorised for lodgement
Hon Carmel Sepuloni
Minister for ACC



ATTACHMENT ONE: REVIEW FRAMEWORK FOR LIST OF OCCUPATIONAL DISEASES

The Ministry of Business, Innovation and Employment (MBIE), with support from Accident Compensation Corporation (ACC), is responsible for using this review framework to support, if needed, changes to the list of occupational diseases which can be covered by ACC. The list is Schedule 2 of the Accident Compensation Act 2001 (AC Act).

[Pending Cabinet decision, include line on Cabinet agreement to the review framework].

Schedule 2 is based on the International Labour Organization's List of Occupational Diseases (ILO List).¹ Prior to the development of ACC, Aotearoa New Zealand and international workers compensation schemes supported workers who had injuries that developed gradually (including occupational diseases).

The framework supports MBIE's regulatory stewardship of the AC Act. MBIE will undertake an initial determination (**Stage One** of the review on page 3) of whether a review is needed every five years. This will provide a regular, evidence-based approach to inform how Schedule 2 is reviewed to ensure it reflects diseases that working New Zealanders experience. The Minister for ACC will provide an update to the House of Representatives on the outcome of the decision to review Schedule 2 or not and the rationale. This will provide transparency about what is involved in the review from the beginning. The objectives of the framework are set out below and an evaluation of the framework against these objectives will be completed as soon as practicable after the implementation of the pilot review.

The use of the framework can also address gaps in our understanding of how occupational diseases impact different population groups in Aotearoa New Zealand. As part of using this framework, independent researchers and medical experts will be expected to take a gender-sensitive approach (as recommended by the ILO²) to their analysis of different occupational diseases against the technical criteria on page 4 of this paper.

The outcome of using the framework will inform, if needed, a change to Schedule 2 by an Order in Council. Apart from Acts of Parliament, Orders in Council are the main method by which the government implements decisions that need legal force. Confidential advice to Government

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

² ILO, *10 Keys for Gender Sensitive OSH Practice - Guidelines for Gender Mainstreaming in Occupational Safety and Health*, 2013. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_324653.pdf



OBJECTIVES

- **Clinical and epidemiological knowledge:** How well Schedule 2 reflects this current knowledge
- **Clarity:** The review is easy to understand
- **Transparency and consistency:** Honesty and openness about what is involved in the review, including an evaluation of the framework against these objectives as soon as practicable after implementation of the review
- **How well the option maintains existing coverage:** The outcome of the review does not narrow or expand the scope of ACC's coverage.



REVIEW FRAMEWORK

Stage 1 - Initial determination

MBIE undertakes an initial determination every five years (engaging relevant agencies) of whether a review is needed. An initial determination can be completed outside of this period if new evidence emerges. Officials can look at a number of factors to inform this determination, including the acceptance rate of ACC's gradual process claims under the section 30 three-step test and developments in occupational disease knowledge.

The Minister for ACC will update the House of Representatives on whether a full review of Schedule 2 will occur and the rationale for that decision, to support transparency throughout the framework.

Stage 2 - Public consultation

If a review is needed, MBIE will prepare and release a consultation document for interested parties to suggest occupational diseases and providing supporting research.

MBIE, with ACC's support, will proactively contact stakeholders and interested parties. These stakeholders include, but are not limited to, Māori, disabled people, unions, businesses, and medical experts.

Stage 3 - Independent researchers and medical experts' report

MBIE compiles a list of the diseases suggested through the consultation, alongside the ILO's list and any other diseases identified.

MBIE procures a literature review of the relevant clinical and epidemiological evidence for occupational diseases, and the independent selection and management of medical experts to assess the evidence of listed diseases against the technical criteria (**on page 4 of this paper**).

The independent experts would produce a report recommending diseases.

Stage 4 - MBIE consideration of the report

MBIE considers the independent report, as well as cost estimates and other policy considerations, to inform recommendations to the Minister for ACC on proposed changes to Schedule 2.

Stage 5 - Minister's consideration and stakeholder consultation

Following the Minister's consideration and decision, the Minister will seek Cabinet permission to consult on the suggested changes with relevant stakeholders. These stakeholders include, but are not limited to, Māori, disabled people, unions, businesses, and medical experts.

Stage 6 - Cabinet and Order-in-Council

After consultation, the Minister will bring the proposals to Cabinet and any approved changes to Schedule 2 will be taken to the Executive Council through an Order-in-Council process.

Stage 7 - Evaluation

An evaluation of the framework will be completed to inform consideration of future legislative changes to the AC Act, such as Confidential advice to Government



TECHNICAL CRITERIA

1) Criteria to establish a causal relationship

Strength of association: The greater the impact of an exposure on the occurrence or development of a disease, the stronger the likelihood of a causal relationship.

Consistency or reproducibility: Consistent findings observed by different persons in different places with different samples strengthen the likelihood of an effect.

Specificity: Causation is likely if there is a very specific population at a specific site and disease with no other likely explanation. The more specific an association between a factor and an effect is, the bigger the probability of a causal relationship.

Temporality or time sequence: The effect has to occur after the cause (and if there is an expected delay between the cause and expected effect, then the effect must occur after that delay).

Biological gradient: Greater exposure should generally lead to greater incidence of the effect. However, in some cases, the mere presence of the factor can trigger the effect. In other cases, an inverse proportion is observed: greater exposure leads to lower incidence.

Biological plausibility: From what is known of toxicology, chemistry, physical properties, or other attributes of the studied risk or hazard, it makes biological sense to suggest that exposure leads to the disease or injury.

Coherence: A general synthesis of all the evidence (eg, human epidemiology and animal studies) leads to the conclusion that there is a cause-effect relationship in a broad sense and in terms of general common sense.

Analogy: The use of analogies or similarities between the observed association and any other associations.

Experimental evidence: this can be considered if relevant.

2) Criteria to establish if the causal connection between the disorder and employment is sufficiently strong to enable automatic acceptance of a claim

Insufficient causal evidence: Diseases will be excluded if evidence of the causal connection between the disorder and employment is not sufficiently strong to allow a connection to work to be automatically accepted.

‘Sufficiently strong’ here is not generally quantifiable. For each condition on Schedule 2 it will need to be based on an expert assessment of the evidence available and its quality.

Proportion of work cases: Diseases will only be included if employment is the cause of the disorder in a significant majority of the cases of that disorder in a subset of the population, identified based on the subset’s exposure to particular work tasks, or particular work environments.