



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



# Discussion Document

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*Seeking Proposals for Additions to the List of  
Occupational Diseases under the Accident  
Compensation Act 2001*

5 April 2023



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

## **Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

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Information, examples and answers to your questions about the topics covered here can be found on our website: [www.mbie.govt.nz](http://www.mbie.govt.nz) or by calling us free on: **0800 20 90 20**.

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# How to have your say

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## Submissions process

The Ministry of Business, Innovation and Employment (**MBIE**) seeks written submissions on the issue raised in this document by **5pm on 17 May 2023**.

A submission may range from a short letter on one disease to a detailed response covering a range of diseases. Where possible, please include evidence to support your views, for example references to peer-reviewed studies, facts and figures, or relevant examples.

You can make a submission in a variety of ways. You can:

- Email a submission to us at: [ACregs@mbie.govt.nz](mailto:ACregs@mbie.govt.nz)
- Mail your submission to us at:  
The Manager, Accident Compensation Policy  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
Aotearoa New Zealand

Please direct any questions that you have in relation to the submissions process to [ACregs@mbie.govt.nz](mailto:ACregs@mbie.govt.nz)

## Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on making additions or changes to the list of occupational diseases in Schedule 2 under the *Accident Compensation Act 2001*. We may contact submitters directly if we require clarification of any matters in submissions.

Making a submission will not, in itself, preclude an individual from being part of the group of medical experts who will provide a report with recommendations of additions to Schedule 2. As with all procurement processes, conflict of interest issues will be appropriately managed.

## Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to requests under the *Official Information Act 1982*. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the *Official Information Act 1982*.

## Private information

The *Privacy Act 2020* establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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# List of Acronyms

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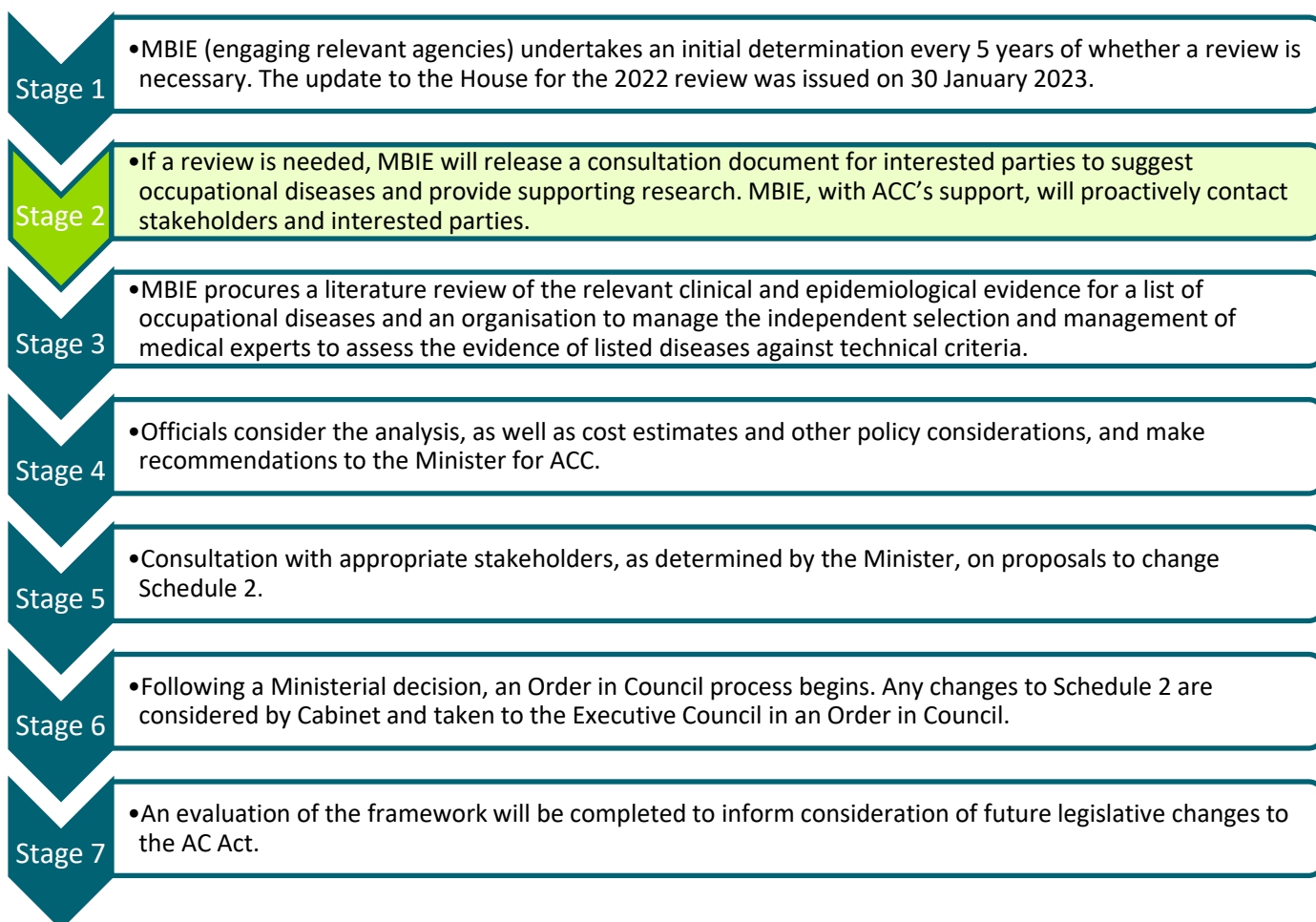
AC Act	Accident Compensation Act 2001
ACC	Accident Compensation Corporation
AC Scheme	Accident Compensation Scheme (administered by ACC)
ILO List	International Labour Organization List of Occupational Diseases (revised 2010)
MBIE	Ministry of Business, Innovation and Employment
Schedule 2	Schedule 2 of the Accident Compensation Act 2001
WRGPDI	Work-related gradual process, disease, or infection

# 1 Introduction

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## 1.1 Purpose

1. The purpose of this document is to obtain submissions from workers, employers, occupational health professionals, academics, and any other interested parties, of proposed occupational diseases and their relevant exposures to include in [Schedule 2](#) of the AC Act. Schedule 2 in the AC Act provides a route for someone to access cover for certain work-related gradual process, disease, or infection injuries, which occur under certain conditions, and these are set out in a list of occupational diseases.
2. Proposals to add occupational diseases and relevant exposures to Schedule 2 will first be considered by independent researchers, who will conduct a literature review to compile the relevant evidence on the proposed diseases. Following that, a group of medical experts will then assess each occupational disease, and others they may identify through the process, against technical criteria for inclusion in Schedule 2.
3. Public consultation supports transparency throughout the process of reviewing Schedule 2, and constitutes Stage 2 of the review. The full review process is set out below.



4. We want to ensure that the list of occupational diseases appropriately reflects those that workers experience in Aotearoa New Zealand and your expertise and/or experience could inform how Schedule 2 is kept up to date.

## 1.2 Context

5. Aotearoa New Zealand's AC Scheme provides cover for injuries caused by a gradual process, disease, or infection as a result of a work-related task or environment. These are commonly referred to as work-related gradual process, disease, or infection (WRGPDI) injuries. One way of accessing cover for a WRGPDI injury is through the three-step test, which is used to determine if a personal injury is, on the balance of probabilities, more likely to be caused by a work-related factor than not.
6. As set out in the purpose, [Schedule 2](#) in the AC Act provides another route for someone to access cover for certain WRGPDI injuries which occur under certain conditions, and these are set out in a list of occupational diseases. An example of an occupational disease in Schedule 2 is lung cancer or mesothelioma diagnosed as caused by exposure to asbestos.
7. Schedule 2 is based on the ILO List, which was created in 1934 and most recently updated in 2010. Schedule 2 has not been updated since 2008.
8. In September 2022, Cabinet agreed to a formal process for reviewing Schedule 2. The process is available online [here](#) and set out on the following page. Our objectives for the review are:
  - **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.
9. This review aims to ensure Schedule 2 is up to date with the most recent scientific evidence of a causal link between disease and work-related exposure. Although not a measured aim of the review, we recognise that this review could also highlight gaps in our understanding of how occupational diseases impact different population groups in Aotearoa New Zealand. It could also raise awareness for measures which can be taken to reduce the incidence of occupational disease.

## 1.3 Scope

10. The review of Schedule 2 has a specific focus on determining if additions are needed to Schedule 2 to ensure fair access to WRGPDI cover. If changes are needed and agreed upon by Cabinet, they will be made by an Order in Council which has parameters set out in the AC Act.



11. An Order in Council is a type of secondary legislation that is made by the Executive Council. There are no requirements to publicly consult on the Order in Council, and as the change to the AC Act is not done via a Bill, there is no Select Committee process. This discussion document provides an opportunity for the public to submit views to inform policy recommendations.
12. Under section 336 of the AC Act, amendments to Schedule 2 can be made by:
  - a) adding or varying the description of a personal injury, together with the corresponding:
    - (i) agents, dusts, compounds, substances, radiation, or things (as the case may be) and, if appropriate, the relevant level or extent of exposure to such agents, dusts, compounds, substances, radiation, or things; or
    - (ii) occupations, industries, or processes; or
  - b) updating the schedule in order that the schedule may conform with the terminology or recommended practices of any international organisation.
13. This review process will, if changes are required, inform the development of an Order in Council focusing on meeting the elements of section 336(1)(a)(i) and (ii).
14. The review will not consider wider changes to the AC Scheme, including how WRGPDI cover is provided more broadly and how other types of injuries, which are not an occupational disease, are covered under the AC Act. This review will not consider work-related mental injury cover, as this is covered separately under section 21B of the AC Act and is therefore out of scope.

## 2 Background on work-related gradual process, disease, or infection injuries

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15. This section describes the background on WRGPDI injuries and why they are covered under the AC Scheme.

### 2.1 A work-related gradual process, disease, or infection injury

16. A WRGPDI is caused by a work-related task or environment.
17. Examples of WRGPDI injuries include those arising from working with substances, such as asbestos, which cause illness over time. Other examples include performing tasks that involve a particular forceful and repeated movement that causes a gradual onset injury. Other WRGPDI injuries can be caused by a single exposure, such as certain infections from animals or their carcasses.
18. WRGPDI injury does not include work-related mental injury. This is covered under section 21B, a separate section of the AC Act unrelated to WRGPDI injury cover, in certain circumstances. Work-related mental injury will not be considered as part of this review.

### 2.2 Cover for work-related gradual process, disease, or infection injuries

19. Cover for WRGPDI injury has been a fundamental component of workers compensation schemes in Aotearoa New Zealand in the past and of workers compensation schemes internationally to date. It is 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.
20. The AC Scheme generally provides cover for injuries (for example, a broken leg), but not for illnesses. Illnesses are cared for through the health and welfare system when they are not a result of somebody's work activities. However, the WRGPDI settings in the AC Act provide cover for gradual process, diseases and infection caused by work.
21. These provisions acknowledge that not all injuries have instant effects, some work activities are higher risk than others and workers may have restricted control over their work tasks or environments that cause a disease, injury, or illness.

22. There are two ways that WRGPDI injuries are covered in the AC Act. The first route involves using the three-step test (set out in section 30(2) of the AC Act). This test is used to determine if a personal injury is, on the balance of probabilities, more likely to be caused by a work-related factor than not.
23. The three-step test enables ACC to consider claims for a variety of WRGPDI injuries, including hearing loss and musculoskeletal conditions, which can also be caused by non-work factors (such as ageing). ACC has recently released a short video describing how WRGPDI injury cover works using the three-step test, which you can watch here:  
<https://www.youtube.com/watch?v=mB5N8d25ero>.

## 2.3 Occupational Diseases in Schedule 2

24. The second route to WRGPDI injury cover is being diagnosed with an occupational disease that is on Schedule 2. Schedule 2 provides a simpler pathway to AC cover for individuals who develop an occupational disease. It is appropriate to have a streamlined process when there is existing strong scientific evidence of a causal link between work and a disease, infection or gradual process, as this provides improved efficiency for claimants and decision-makers throughout the claim process.
25. The inclusion of occupational diseases in Schedule 2 has reflected strong scientific evidence of a causal link to work to render any other cause unlikely. This is usually demonstrated through separate, good quality studies demonstrating a causal link. Diseases that are not included in Schedule 2 can still be considered for cover through the three-step test.
26. An occupational disease being listed on Schedule 2 does not guarantee the acceptance of a claim. Claims for cover under Schedule 2 can be declined under section 60 of the AC Act if a claimant does not have a personal injury (e.g., they make a claim for exposure only), or if a personal injury was not caused by their employment (e.g., the causal factor for the condition described in Schedule 2 was not present in their work activities).
27. The occupational diseases listed in Schedule 2 are largely based on the ILO List which was initially created in 1934 and most recently updated in 2010. The ILO, as part of its workers' compensation commitments, recommended to members that they implement a list, test, or mixed approach to provide workers' compensation for occupational diseases.
28. Aotearoa New Zealand's approach uses both Schedule 2 and the three-step test to compensate workers for WRGPDI injuries. This mixed approach combines the certainty of cover from the Schedule 2 list of occupational diseases, with the three-step test providing the ability for a flexible response to injuries with less causative evidence linking them to work or new and emerging circumstances.

## 3 Developments since 2008

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29. This section describes the developments in occupational disease recognition and research since Schedule 2 was last updated in 2008.

### 3.1 The ILO

30. The ILO List was most recently updated in 2010 and is available [here](#). The ILO List includes a range of occupational diseases, from illnesses caused by chemical, physical and biological agents to respiratory and skin diseases. Mental and behavioural disorders were also specifically included for the first time in the ILO List. Under the AC Act, as explained on pages 9 and 10 of this document, work-related mental injury is covered separately to WRGPDI injury and will not be considered in this review.
31. In 2013, the ILO recommended that member states take a ‘gender sensitive’ approach when reviewing and developing occupational health research and legislation.<sup>1</sup> This approach is not designed to negatively impact any group of individuals. The approach recognises that workers are exposed to different risks and may react differently to the same risks because of their different biological makeup. It also recognises that different societal roles, expectations, and responsibilities may influence the exposures that workers have in the workplace.

### 3.2 Safe Work Australia

32. In Australia, there are 11 main workers’ compensation systems. Each of Australia’s states and territories have developed their own compensation scheme and there are three Commonwealth schemes.
33. Most jurisdictions in Australia have a Deemed Diseases List as part of their workers’ compensation scheme. The Deemed Diseases list comprises diseases which are deemed to be work-related.
34. Safe Work Australia commissioned a review of the 2015 Deemed Diseases as part of a bigger project with the objective of having an updated list, to address the issue of the list not being commonly used as the basis for claims. The review was published in November 2021<sup>2</sup>, containing recommendations of new diseases and associated exposures to be added to the Deemed Diseases List.

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<sup>1</sup> International Labour Organization, [10 Keys for Gender Sensitive OSH practice – Guidelines for Gender Mainstreaming in Occupational Safety and Health](#), 2013.

<sup>2</sup> Driscoll T, [SWA Deemed Diseases List Recommendations for amendments to 2015 List: final report](#), 2021.

35. The recommendations informed the most recent Revised List of Deemed Diseases in December 2021 which is available [here](#).
36. The Deemed Diseases List is useful in informing a review of Schedule 2. The Deemed Diseases List works similarly to Schedule 2 in that it is designed as a streamlined route to workers' compensation claims. This compares with an alternative process of demonstrating a multi-factorial disease is more likely to be caused by work than non-work factors, similar to the AC Act three-step test.
37. However, the Deemed Diseases List was produced for the context of Australian workers' compensation systems. The Schedule 2 [review framework](#) includes criteria for inclusion in Schedule 2 which differ from those used for the Deemed Diseases List. Mental injury is also included in the scope of the Deemed Diseases List. Under the AC Act, as explained on pages 9 and 10 of this document, work-related mental injury is covered separately from WRGPDI injury and will not be considered in this review.

### 3.3 Aotearoa-focused research

38. Aotearoa-focused occupational health research has not presented any new occupational diseases outside of the ILO List, but it has developed in the last fourteen years with a growing focus on understanding the impact of diseases on traditionally under-represented populations in research. This recognises the lack of detailed information regarding ethnicity and occupational diseases in much of the published research in Aotearoa New Zealand.<sup>3</sup>
39. It was also recognised by the National Occupational Health and Safety Advisory Committee's 2014 report that the vast majority of published research in Aotearoa New Zealand presents information only, or predominantly, on men. This means it could be more difficult to prove a causal relationship between an occupation that women are more likely to participate in and its associated occupational disease.
40. WorkSafe New Zealand and Massey University have conducted studies and surveys to improve understanding of the exposure to work-related health risks in Aotearoa New Zealand workplaces. A 2022 Massey University study on occupations and ischaemic heart disease (a work-related disease) in the general and Māori populations of New Zealand concluded that current knowledge of exposure to occupational risk factors may not be generalisable across different population groups.<sup>4</sup>
41. A review will be able to consider new research since 2008, particularly for those typically under-represented in occupational health research such as Māori and women, in the context of updating Schedule 2.

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<sup>3</sup> Denison, HJ., Eng, A., Barnes, LA., Cheng, S., Mannetje, A., Haddock, K., and Ellison-Loschmann, L., *Inequities in exposure to occupational risk factors between Māori and non-Māori workers in Aotearoa New Zealand*, Journal of Epidemiology and Community Health. 72(9), 809-816, 2018.

<sup>4</sup> Barnes LA, Eng A, Corbin M, Denison HJ, t'Mannetje A, Haslett S, et al., *A longitudinal linkage study of occupation and ischaemic heart disease in the general and Maori populations of New Zealand*, 2022.

## 3.4 Use of developments

42. The 2010 ILO List and Safe Work Australia's 2021 Revised Deemed Diseases List will inform consideration of diseases for inclusion in Schedule 2. Submitters should be aware that a disease being on either of these lists, or submitted as a suggestion through this consultation, does not guarantee its inclusion in Schedule 2.
43. Proposed changes to Schedule 2 must still be assessed independently by experts against the technical criteria to inform recommendations. The experts will use a gender-sensitive approach to inform their recommendations and understand how the diseases impact different population groups in Aotearoa New Zealand, to the extent that is possible.
44. MBIE will then consider the recommendations in the context of the objectives of the review, cost estimates and the type of cover provided under the AC Scheme.

## 4 List of Questions

1. Do you think there is relevant evidence to support including new occupational diseases to Schedule 2 at this time?
2. If yes to Question 1, what occupational diseases should be added to Schedule 2?
3. For each occupational disease suggested in response to Question 2, what should be listed as the corresponding:
  - agents, dusts, compounds, substances, radiation or things, and
  - if appropriate, the relevant level or extent of exposure to these; or
  - occupations, industries, or processes?
4. Do you think there is relevant evidence to support including additional exposures for occupational diseases currently included in Schedule 2?
5. If yes to Question 4, for each relevant current occupational disease, what should be listed as the corresponding additional:
  - agents, dusts, compounds, substances, radiation or things, and
  - if appropriate, the relevant level or extent of exposure to these; or
  - occupations, industries, or processes?

If you have suggested including a new occupational disease or diseases, and/or additional exposures, please provide links and/or references to supporting evidence.

Where relevant, please include information on how the disease or diseases affect different populations, including impacts on different genders.

## 5 What Happens Next?

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45. Once the consultation has closed at 5pm on 17 May 2023, we will use the suggestions submitted, alongside the ILO's List and Safe Work Australia's Revised Deemed Diseases List, and any others identified, to inform proposals for additions to the list of occupational diseases.
46. The proposals will be provided to a group of independent researchers and medical experts. The researchers will conduct a literature review to gather the relevant causal evidence on each disease. This evidence will be provided to medical experts with epidemiological and occupational health expertise to inform their report with any recommended changes to Schedule 2.
47. We encourage medical experts to provide responses to this consultation. A submission will not, in itself, preclude an individual from being in the group of experts developing recommendations of additions to Schedule 2. Any conflict of interest issues will be appropriately managed during the procurement process.
48. As part of developing their report, the experts will use technical criteria (available on MBIE's website [here](#)) to inform their assessment of including a disease in Schedule 2. Experts will be expected to take a gender-sensitive approach and consideration of Aotearoa New Zealand's population to develop these recommendations.
49. MBIE will then use the experts' report, alongside policy considerations such as cost and scope of the AC Scheme, to inform advice to the Minister for ACC on any recommended changes to Schedule 2. We expect to be able to make these recommendations in mid-2023.