



COVERSHEET

Minister	Hon Peeni Henare	Portfolio	ACC
Title of Cabinet paper	Seeking Proposals for Additions to the List of Occupational Diseases under the Accident Compensation Act 2001 – Approval to Consult	Date to be published	18 May 2023

List of documents that have been proactively released

Date	Title	Author
March 2023	Seeking Proposals for Additions to the List of Occupational Diseases under the Accident Compensation Act 2001 – Approval to Consult	Office of the Minister for ACC
29 March 2023	SWC-23-MIN-0024 Minute	Cabinet Office

Information redacted

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.

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

SEEKING PROPOSALS FOR ADDITIONS TO THE LIST OF OCCUPATIONAL DISEASES UNDER THE ACCIDENT COMPENSATION ACT 2001 – APPROVAL TO CONSULT

Proposal

1. I am seeking Cabinet agreement to release a public consultation document which seeks suggestions of occupational diseases to be added to 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. Work-related gradual process, disease, or infection (**WRGPDI**) injuries are personal injuries caused by exposure to an employment task or environment.
4. Claimants can be covered under the AC Act for WRGPDI 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, Aotearoa New Zealand and international workers compensation schemes also included provisions for WRGPDI injury cover.

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.

IN CONFIDENCE

6. On 16 September 2022, Cabinet approved a new process for reviewing Schedule 2, which was last updated in 2008 [CAB-22-MIN-0388 refers]. The review framework is summarised in the table below:

Stage	Description
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. 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 provide 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 an organisation to conduct a literature review of the relevant clinical and epidemiological evidence for occupational diseases. The organisation will also manage the independent selection and management of medical experts to assess the evidence of listed diseases against the technical criteria.
Stage 4 - MBIE consideration of the report	Officials consider the analysis, as well as cost estimates and other policy considerations, and make recommendations to the Minister for ACC.
Stage 5 - Minister's consideration and stakeholder consultation	Consultation with appropriate stakeholders, as determined by the Minister, on proposals to change Schedule 2.
Stage 6 - Cabinet and Order-in-Council	Following a Ministerial decision, an Order-in-Council process begins. Any changes are considered by Cabinet and taken to the Executive Council in an Order-in-Council. ²
Stage 7 - Evaluation	An evaluation of the framework will be completed to inform consideration of future legislative changes to the AC Act.

7. On 30 January 2023, Stage 1 of the review was completed when the then Minister for ACC, Hon Carmel Sepuloni, updated the House of Representatives that the Ministry of Business, Innovation and Employment, with ACC's support, determined that a review of Schedule 2 should occur for three reasons.

² Section 336 of the AC Act.

8. These three reasons were:
 - **A review should, at minimum, consider updates to the ILO List.** The ILO List was updated in 2010, and Schedule 2 was last updated in 2008.
 - **Schedule 2 has not been updated for more than 14 years.** This is nearly triple the recommended amount of time for the regularity of this review framework (which is five years).
 - **A variety of WRGPDI claims under the section 30 three-step test have a 50% or above acceptance rate.** This provides a provisional list of conditions which need to be analysed further, with epidemiological expertise, to understand if they should be considered in a review of Schedule 2.
9. For Stage 2, I am proposing to publish a discussion document requesting suggestions of occupational diseases to be considered for inclusion in Schedule 2.

Background

Why do workers get cover under the AC Scheme for occupational diseases?

10. Cover for occupational diseases has been a fundamental component of workers' compensation schemes in Aotearoa New Zealand in the past and of workers' compensation schemes internationally to date.
11. This 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.
12. It is also 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.

How is cover provided under the AC Act?

13. Claimants can be covered under the AC Act for WRGPDI injuries through two routes:
 - a causal relationship is shown between the claimant's gradual process, disease, or infection 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 (Section 30(3)). The inclusion of conditions in Schedule 2 reflects strong scientific evidence of a causal link between work and injury that renders any other cause unlikely.
14. An example of an occupational disease listed in Schedule 2 is lung cancer or mesothelioma diagnosed as caused by working with asbestos.

Purpose of the discussion document

The purpose is to request suggestions of occupational diseases to include in Schedule 2

15. The purpose of this document is to request suggestions of occupational diseases to be considered for inclusion in the list of occupational diseases covered under the AC Act, as set out in Schedule 2. These suggestions could include diseases not currently listed at all in Schedule 2, and additional employment tasks or environments for diseases already listed.
16. I am publicly consulting because I want to ensure that the list of occupational diseases appropriately reflects those that working New Zealanders experience. The consultation supports one of the objectives of the review of “transparency and consistency” by having honesty and openness about what is involved in the review and providing an opportunity for public input.

The consultation will specifically request information of how Schedule 2 applies to different population groups in New Zealand

17. There is a lack of understanding of how Schedule 2 diseases impact different population groups in Aotearoa New Zealand. Globally, the ILO has stated that there is a lack of gender-sensitive data in occupational illnesses research.
18. We know that women and men are exposed to different risks at work and may react differently to the same risks. As part of the request for suggested occupational diseases, submitters will be asked to include information that takes a gender-sensitive approach. This aims to support Stage 3 of the review, where researchers and medical experts will take a gender-sensitive approach to their analysis of diseases considered for inclusion in Schedule 2. How this approach would operate would be independently determined by the experts.

The submissions will inform consideration by researchers and experts

19. The submissions from this consultation will inform a list of occupational diseases which will be provided to a group of researchers to conduct a literature review on. Medical experts with appropriate expertise will then assess each occupational disease against a number of criteria based on an internationally recognised approach used by the ILO called Bradford-Hill criteria. This will inform a report with recommendations for changes to Schedule 2.
20. Any recommended changes to Schedule 2 would consider the experts’ report, as well as cost implications and other policy considerations relating to the scope of the Accident Compensation Scheme.
21. Any update to Schedule 2 would occur through a separate Order-in-Council process under section 336 in the AC Act.

Public consultation process

22. Stakeholder groups including ACC Futures Coalition, New Zealand Professional Firefighters Union and the Sawmill Workers against Poisons group have historically raised concerns, on behalf of their members, about the current WRGPDI provisions in the AC Act.
23. Considering the concerns stakeholders have about WRGPDI cover settings, I consider that it is important to seek their views on what diseases should be included in Schedule 2. Public consultation seeks to reassure these groups that we are taking a transparent, considered approach to how occupational diseases are covered under the AC Act.
24. I propose consulting for a period of six weeks. I will release the discussion document on or shortly after 4 April 2023 (dependent on Cabinet authorisation). The document will be released via MBIE's website.
25. 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.
26. The discussion document is contained as Annex 1.

Consultation

27. The Department of the Prime Minister and Cabinet and Te Puni Kōkiri have been informed about this proposal.
28. The following agencies and Crown entities have been consulted on the Discussion document: the Treasury, ACC, WorkSafe New Zealand, the Ministry of Health, the Ministry for Women, Whaikaha – the Ministry of Disabled People, the Ministry for Pacific Peoples, and the Ministry of Social Development.

Financial Implications

29. I will include the financial implications of any recommended diseases when I return to Cabinet with the outcome of the review. By agreeing to seek suggestions on which diseases should be added to Schedule 2, this does not mean agreement to make changes to Schedule 2, as these would be approved in a separate Cabinet process. Any financial impact would be funded from the levied Work Account, and would not require appropriations.

Legislative Implications

30. There are no legislative implications arising from the proposed release of the Discussion document. After the public consultation has been undertaken and I have received advice on any proposed changes to Schedule 2, I will seek Cabinet permission to consult with relevant stakeholders on any changes to Schedule 2.

31. Any updates to Schedule 2 will require Cabinet approval through a separate Order-in-Council process.

Impact Analysis

32. There are no regulatory proposals in this paper, and therefore Cabinet's impact analysis requirements do not apply.
33. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

34. Updates to Schedule 2 may enable people with occupational diseases to access cover, as there would be an opportunity to include diseases which are not currently in Schedule 2.
35. The request for additions may also be beneficial for multiple population groups in New Zealand, including men, women, disabled people, older people, Māori, Pacific peoples, and Asian groups. Further work could be commissioned, depending on the outcome of this review, 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 occupational diseases.

Human Rights

36. 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

37. If Cabinet agrees to the proposed consultation, I intend to make a public announcement shortly after Cabinet's decision.
38. 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

39. 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 with any appropriate redactions.

Recommendations

40. 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 has not been an update to Schedule 2, the list of occupational diseases, since 2008.
- c. **Agree** to the release of the attached public consultation document titled *Seeking Proposals for Additions to the List of Occupational Diseases under 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 in 2023.
- e. **Authorise** the Minister for ACC to make minor amendments to the consultation document before release if required.

Authorised for lodgement

Hon Peeni Henare

Minister for ACC