



COVERSHEET

Minister	Hon Matt Doocey	Portfolio	ACC
Title of Cabinet paper	Accident Compensation (Interest on Instalments and Unpaid Levies) Amendment Bill	Date to be published	26 July 2024

List of documents that have been proactively released

Date	Title	Author
March 2024	Accident Compensation (Interest on Instalments and Unpaid Levies) Amendment Bill	Office of the Minister for ACC
6 March 2024	Accident Compensation (Interest on Instalments and Unpaid Levies) Amendment Bill SOU-24-MIN-0005 Minute	Cabinet Office

Information redacted

YES

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Some information has been withheld to protect professional legal privilege and confidential advice to government.

In-confidence

Office of the Minister for ACC

Cabinet Social Outcomes Committee

Accident Compensation (Interest on Instalments and Unpaid Levies) Amendment Bill

Proposal

- 1 This paper seeks agreement to urgently amend the Accident Compensation Act 2001 (the Act) to:
 - 1.1 explicitly allow the Accident Compensation Corporation (ACC) to charge debit interest when an employer or self-employed levy payer pays levies using an instalment plan, and
 - 1.2 validate ACC's past and continuing practice of charging debit interest in some cases where levies are paid by instalments.

Relation to government priorities

- 2 The proposals in this paper will support ACC to continue to offer a range of instalment plans at a reasonable cost to levy payers. This will ensure the cost to affected businesses remains affordable, particularly those that are struggling in the current economic environment or still recovering from the financial impact of COVID-19.

Executive Summary

- 3 The Accident Compensation Scheme (the Scheme) provides entitlements that cover the cost of personal injuries in New Zealand. ACC pays for these entitlements largely from accounts funded by levies, which ACC collects from New Zealanders including businesses (employers, self-employed, contractors, and shareholder-employees)¹.
- 4 Businesses generally pay their ACC levy invoice annually in one single payment, based on the deadlines set out in the Accident Compensation Act 2001 (the Act). However, ACC also offers a range of instalment plan options to pay their levy, including a three-, six-, or ten-month instalment plan.
- 5 The Act, in section 234(2), allows ACC to charge "a reasonable fee to recover its costs of collecting any levy instalments". The empowering provision in the Act provides that regulations may prescribe "the matters in respect of which fees or charges are payable under this Act, including any administration fee payable in respect of levies paid in instalments".

¹ The cost of non-work injuries to earners and injuries to non-earners respectively are funded through earners' levies and an appropriation.

- 6 ACC has interpreted this to include debit interest where it would be reasonable. The fee ACC charges for the ten-month instalment plan is inclusive of debit interest and the practice of charging interest goes back to at least 2004.
- 7 Section 250 provides for interest to be paid to ACC at a rate set out in regulation for any unpaid levy, unpaid instalment payments in respect of any levy and on any interest that has been charged already. The relevant regulations currently set the rate of interest at one per cent per month, compounded monthly.

Legal advice - privileged

8 Legal professional privilege [Redacted]

9 Legal professional privilege [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

² Legal professional privilege [Redacted]

Legal professional privilege
[Redacted]

Policy

14 There are compelling reasons for charging debit interest where appropriate. The current ten-month plan (inclusive of a debit interest charge) is beneficial for those that opt to use it, as it is likely to cost them less than alternative sources of finance. Charging debit interest also ensures other levy payers are not cross subsidising those on instalment plans.

15 In these circumstances, I consider the most appropriate approach is to:

15.1 amend the Act to a regulation making power that clearly authorise allows the ACC to charge debit interest on levies that are paid under instalment plans and provide that in future the rate of interest payable will be set by regulations,

15.2 amend the Act to provide that, until regulations as described above are made, the interest rates will be the rates that ACC is currently charging those employers on instalment plans, and

15.3 validate ACC's past and current practice of charging interest in some cases where levies are paid by instalments.

16 The effect of this approach is that ACC's current practice would be specifically authorised in the Act. It will have no immediate impact on costs borne by those on instalment plans although the amendments would allow rates to be adjusted in the future via changes to the Injury Prevention, Rehabilitation and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002.

17 There has been no public consultation on this approach. Legal professional privilege
[Redacted]

18 Legal professional privilege
[Redacted]

19 The Legislation Design and Advisory Committee (LDAC) guidelines allow for retrospective legislation in some situations, including to validate matters generally understood and intended to be lawful, but that are, in fact, unlawful because of a technical error.

20 Legal professional privilege
[Redacted]

Background

- 21 The Accident Compensation Scheme provides entitlements that cover the cost of personal injuries in New Zealand. ACC pays for these entitlements largely from accounts funded by levies, which ACC collects from New Zealanders including businesses (employers, self-employed, contractors, and shareholder-employees). The cost of non-work injuries to earners and injuries to non-earners are respectively funded through earners’ levies and an appropriation.

- 22 ACC usually invoices some businesses in July, and some in September each year, based on information provided by Inland Revenue (IRD) when businesses file their tax returns.

- 23 Businesses generally pay their ACC levy invoice annually in one single payment, based on the deadlines set out in the Act³. However, ACC also offers a range of alternative payment options, including the option to use a three, six, or ten-month instalment plan to pay their levy.

- 24 Any levy payer can opt to use an instalment plan to pay their levy invoice, however instalment plans are particularly helpful for businesses that may otherwise struggle to pay their levy invoice by the due date.

- 25 Instalment plans are common in other contexts. For example, tax legislation allows taxes to be paid by instalments if taxpayers are otherwise unable to pay them by the due date. IRD charges debit interest on instalment plans but does not charge additional penalties.

Table 1: Approximate ACC’s instalment plan use in 2021⁴

	Ten-month	Six- or three-month	No payment plan	Total
Number of plans	32,000	68,000	546,000	646,000
Total revenue	\$154m	\$327m	\$833m	\$1,314m

- 26 ACC advises that for the period 2019 to 2021, employers comprised 66 per cent of the total number of instalment plans and 91 per cent of the total levy revenue under instalment plans, while the self-employed comprised 34 of the total number of instalment plans and 9 per cent of the total levy revenue collected.

³ Section 250 of the AC Act sets out when a levy is payable and when a levy payer may be liable to pay interest or penalties on unpaid levies.

⁴ Note, figures provided reflect a snapshot in time in February 2023 and are intended to be indicative only. Invoices can be released after a hold which will affect the final numbers. There are also some levy payers on individualised payment plans which are not reflected in the table above.

27 In 2020, the fee for the ten-month plan reduced from 5.4 per cent to 2.73 per cent of the levy payable, to reflect the economic environment at the time and to support businesses affected by the COVID-19 pandemic.

Analysis

28 ACC currently charges an instalment plan fee inclusive of a debit interest charge to businesses that opt to use a ten-month instalment plan, but not to businesses that opt to use a three or six-month instalment plan.

29 Charging debit interest on instalment plans ensures the choices of some levy payers do not increase the burden on others because of the payment method chosen. The interest charges avoid the potential cross subsidisation of those on instalments by those who pay a single amount.

30 Businesses who are unable to pay their levy invoice either on the date for the single annual payment, or on the dates specified in an agreed instalment plan would either need to obtain alternative finance (e.g. a bank overdraft or credit card), or not pay. If the invoice is unpaid, the levy payer begins to incur interest and penalties on unpaid levies.

31 From 1 July 2023, businesses behind on their levy due date (or instalment due date) must pay penalty interest on unpaid levies. This is charged at a rate of 1 per cent per month, and compounds monthly⁵.

Table 2: Comparison of a ten-month ACC instalment plan fee (including debit interest) and penalty interest on unpaid levies for the average business

Average business levy	Ten-month instalment plan fee (currently 2.73%)	Total penalty interest (over ten-month period, assuming levy is unpaid)
\$7,276	\$198.63	\$761.23

32 The inclusion of a debit interest component where appropriate plays an important role in promoting fairness between levy payers and preventing levy payers who pay their levy invoice in a single payment on the due date from being disadvantaged (or incentivised to pay via instalments instead).

33 Amending the Act to clearly provide for debit interest to be charged would:

33.1 provide explicit legal authority for ACC to charge debit interest when levies are paid by instalments;

33.2 allow ACC to recover the costs of collecting a levy by instalments and fairly compensating ACC (and by extension other levy payers) for not having the use of this money from the time the levies are due;

⁵ The Injury Prevention, Rehabilitation and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002 set the rate of interest charged.

- 33.3 allow for debit interest rate charges for instalment plans to be set in regulations, ensuring that levy payers pay a transparent and fair amount; and
- 33.4 align the Act with some other statutory regimes across government, including the income tax system's practice of charging taxpayers use of money debit interest on unpaid taxes (even when taxpayers are using an instalment plan).

Legislative changes required

- 34 The Act should be amended to make it clear that ACC can charge interest when a levy payer opts to use an instalment plan. Interest is currently only charged on ten-month plans but there should be an ability to charge interest on any instalment plan in future.
- 35 The rate for instalment plan interest should be able to be set by regulation. This aligns with the way that penalty interest is set⁶.
- 36 As a transition, I propose that the Accident Compensation (Interest on Instalments and Unpaid Levies) Amendment Bill (the Bill) Act specify the rate of interest to be the rate at which interest is currently being charged. This would mean that the initial fee in the Bill for the ten-month instalment plan would be 2.73 per cent of the total amount due. The initial rates for the three- and six-month plans would be 0 per cent.
- 37 This rate will be subject to change by amending the Injury Prevention, Rehabilitation and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002.
- 38 Setting these initial interest rates by a transitional provision through in the Bill initially, but with power to change them by regulations has the effect of continuing ACC's current practice so that levy payers will see no immediate impact from the Bill.
- 39 ACC's past and current practice of charging interest on levies paid under instalment plans must also be validated, Legal professional privilege
[Redacted]
[Redacted]
- 40 Charging interest on instalment plans is a long-standing practice dating back to at least 2004. The time the practice began cannot readily be pinpointed and for that reason I propose that the validation provision be expressed generally
Legal professional privilege
[Redacted]
[Redacted]

⁶ Penalty interest payable when the levy or levy instalment is unpaid calculated from the date on which payment was due at the rate of 1 per cent per month compounded monthly. This is currently set out in the Injury Prevention, Rehabilitation and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002 and would not be changed by the Bill

41 The LDAC guidelines allow for retrospective legislation in some situations, including to validate matters generally understood and intended to be lawful, but that are, in fact, unlawful because of a technical error.

Implementation

42 The proposals in this paper will not involve any immediate changes for businesses; the current instalment plan rates will continue to apply until they are next reviewed. Businesses can continue to opt in or out of paying by instalments when they receive their annual invoice. Ideally, the changes will be made to the Act before the next round of invoices are issued in July 2024.

43 Confidential advice to government
[Redacted]

44 Confidential advice to government
[Redacted]

Financial Implications

45 ACC derives revenue from debit interest, which contributes to the Crown’s overall fiscal position. Without this additional revenue, fractionally more levy revenue would need to be generated to maintain the same position.

Legislative Implications

46 The proposals in this paper will require legislative change.

47 The proposed validation must necessarily have retrospective effect. The LDAC guidelines state that retrospective legislation can be appropriate where it is intended to validate matters generally understood and intended to be lawful, but that are, in fact, unlawful as a result of a technical error.

48 Legal professional privilege
[Redacted]

49 The Bill will also set the initial rates of interest payable at the current rates so that levy payer expectations and ACC’s practices can continue unaffected. This is essential. Thereafter, regulations can set those rates subject to consultation requirements which are long standing.

50 Legal professional privilege
I propose the amendments are made under urgency.

51 The Act will bind the Crown.

SENSITIVE: LEGALLY PRIVILEGED

52 I proposed a priority category 3 (must be passed by the end of 2024) Legal professional privilege

_____ Ideally the Act will be amended before the next round of invoices are issued in July 2024.

53 Clarifying amendments such as the ones proposed in this Bill can sometimes result in uncertainty in other regimes that have not yet legislated to avoid the doubt. It is unknown if this is the case for these proposals. Legal professional privilege

Impact Analysis

Regulatory Impact Statement

54 A Regulatory Impact Statement has been completed and is attached in Appendix One.

55 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement partially meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper. There is relatively little data available on the operation of instalment plans and there has been no consultation with stakeholders on this proposal, which is partially mitigated by the lack of concern by stakeholders with ACC's practice over many years, and the opportunity for stakeholders to comment when levies are next reviewed.

Climate Implications of Policy Assessment

56 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

57 There are no population implications for this proposal.

Human Rights

58 The Bill may have implications for section 27 of the New Zealand Bill of Rights Act 1990. The consistency of any Bill with the New Zealand Bill of Rights Act would be assessed before it is introduced.

Consultation

59 The Treasury, ACC, Legal professional privilege and the Parliamentary Counsel Office (PCO) have been consulted. The Department of Prime Minister and Cabinet has been informed.

Communications

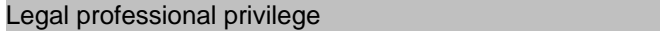

- 60 There will be some communications material provided at the time the Bill is introduced to the House to explain what it does and why it is needed.

Proactive Release

- 61 **Legal professional privilege**, this paper will not be proactively released until after the Bill is introduced to the House. It will be released at that time subject to redaction as appropriate.

Recommendations

- 1 The Minister for ACC recommends that the Committee:
- 2 **note** the Accident Compensation Scheme provides entitlements that cover the cost of personal injuries in New Zealand largely funded by levies, which ACC collects from New Zealanders including businesses;
- 3 **note** businesses generally pay their ACC levy invoice annually in one single payment, however, ACC also offers a range of instalment plan options to pay their levy;
- 4 **note** that the Accident Compensation Act 2001 allows ACC to charge a reasonable fee to recover its costs of collecting any levy by instalments (s234(2)) and ACC appears to have relied on s234(2) to collect debit interest since at least 2004;
- 5 **Legal professional privilege**
- 6 **note** the current ten-month plan (inclusive of a fee of 2.73 per cent of the levy, inclusive of a debit interest charge) is beneficial for those that opt to use it as it is likely to cost them less than alternative sources of finance, and ensures other levy payers are not cross-subsidising instalment plan levy payers;
- 7 **agree to:**
- 7.1 amend the Act to explicitly allow the ACC to charge debit interest when levy payers opt to pay by an instalment plan;
- 7.2 provide that the Act include a transitional provision in the Act which would set an initial rate of debit interest until regulations are made to set a rate. The initial rate will be the same as is currently charged; and
- 7.3 retrospectively validate ACC's past and current practice of charging debit interest in some cases where levies are paid by instalments by clarifying that it was appropriate to do so;
- 8 **note** there has been no public consultation on this approach **Legal professional privilege**
Legal professional privilege;

- 9 **invite** the Minister for ACC to instruct Parliamentary Counsel Office on the drafting of the Accident Compensation (Interest on Instalments and Unpaid Levies) Amendment Bill;
- 10 **note** that I have proposed a priority category 3 (must be passed by the end of 2024) because of the need to ensure that ACC's practice of charging interest to those who pay levies by instalment plans is clearly provided for in the Act;
- 11 **agree** to the use of urgency Legal professional privilege 
;
- 12 **authorise** the Minister for ACC to make any additional policy decisions or any minor and technical changes required to give effect to the decisions in this paper.

Authorised for lodgement

Hon Matt Doocey

Minister for ACC