



COVERSHEET

Minister	Hon Matt Doocey	Portfolio	ACC
Title of Cabinet paper	Accident Compensation (Interest on Instalment Plans) Amendment Bill – Approval for Introduction	Date to be published	26 July 2024

List of documents that have been proactively released

Date	Title	Author
May 2024	Accident Compensation (Interest on Instalment Plans) Amendment Bill – Approval for Introduction	Office of the Minister for ACC
23 May 2024	Accident Compensation (Interest on Instalment Plans) Amendment Bill – Approval for Introduction LEG-24-MIN-0101 Minute	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 to protect professional legal privilege and confidential advice to government.

In Confidence

Office of the Minister for ACC
Chair, Cabinet Legislation Committee

Accident Compensation (Interest on Instalments) Amendment Bill - Approval for introduction

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the introduction of the Accident Compensation (Interest on Instalments) Amendment Bill (the Amendment Bill).

Policy

- 2 On 11 March 2024, Cabinet agreed to the following proposals for inclusion in the Amendment Bill [SOU-24-MIN-0005 Minute and CAB-24-MIN-0071 refer] to:
 - 2.1 amend the Accident Compensation Act 2001 (the Act) to explicitly allow ACC to charge debit interest when levy payers opt to pay by an instalment plan,
 - 2.2 provide that the Act include a transitional provision 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
 - 2.3 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.
- 3 Cabinet also agreed to the use of urgency **Legal professional privilege** .
- 4 The Amendment Bill has a priority category 3 on the 2024 Legislation programme (must be passed by the end of 2024).

Background

- 5 ACC offers a range of instalment plan options for businesses and self-employed people to pay their levies, rather than in one annual lump sum as is usual, including three-, six-, or ten-month instalment plans.
- 6 The Act allows ACC to charge those that use these instalment plan options an administration fee to recover its costs¹. Since at least 2004, ACC has charged businesses and self-employed people that use the ten-month instalment plan

¹ Section 234(2) allows ACC to charge “a reasonable fee to recover its costs of collecting any levy instalments”.

debit interest as part of the administration fee. This is to compensate for the loss of any income ACC would have earned from investing the funds.

- 7 This is because 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”.
- 8 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 of 2.73 per cent, and the practice of charging debit interest goes back to at least 2004.
- 9 ACC has also taken the position that it was able to charge debit interest as part of an instalment plan under sections 234(1),² or to collect interest due under 250(3)³ on any levies not paid immediately because of an instalment plan.
- 10 There are compelling reasons for charging debit interest where appropriate. 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.
- 11 Instalment plans are beneficial for those that opt to use them, as it is likely to cost the levy payer less than alternative sources of finance. Charging debit interest also ensures other levy payers are not cross subsidising those on instalment plans.

Legal advice - privileged

- 12 Legal professional privilege

[Redacted]

[Redacted]

[Redacted]

² Section 234(1) provides that “the Corporation may collect any levy by instalments if the person liable to pay the levy agrees.”

³ Section 250(3) states that a person who owes a late levy to ACC is liable to pay ACC “interest assessed at the rate and applied by the method (if any) prescribed by regulations made under this Act, which is payable on—
(a) any unpaid levy; and
(b) any unpaid instalment payment in respect of any levy; and
(c) any unpaid interest that has been charged already.”

15 Legal professional privilege [redacted]

Legal professional privilege

[redacted]

[redacted]

Need for legislation - privileged

18 Legal professional privilege [redacted]. Regulations will be made to set the rate of debit interest, and the circumstances under which ACC may waive debit interest charges. Legal professional privilege [redacted]. An Amendment Bill to the Act is required to progress these legislative changes.

19 The attached draft Amendment Bill would:

- 19.1 validate ACC’s long-standing practice of charging debit interest where a levy payer pays on an instalment plan;
- 19.2 provide explicit legal authority for ACC to charge, and waive, debit interest when levies are paid by instalments;
- 19.3 allow for debit interest rate charges for instalment plans to be set in regulations ensuring that levy payers pay a transparent and fair amount;
- 19.4 allow for regulations permitting the waiver of interest on instalments (in whole or in part) in prescribed circumstances; and
- 19.5 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).

20 As a transition, until regulations are made, I propose that the Amendment Bill specify the rate of debit interest to be the rate at which it is currently being charged. This is 2.73 per cent of the total amount due for the ten-month instalment plan. The initial rates for the three- and six-month plans would be 0 per cent.

- 21 The draft Amendment Bill contains a general validation provision. Legal professional privilege
Legal professional privilege

Impact on businesses

- 22 The Amendment Bill would have no immediate impact on costs borne by those on instalment plans. It 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. I anticipate that any adjustments would be subject to public consultation as part of ACC's three-yearly levy rounds though there is scope for this specific matter to be consulted on outside that round.

- 23 Confidential advice to government

- 24 Interest is currently only charged on ten-month plans, but the Amendment Bill provides for an ability to charge interest on any instalment plan in future.

Budget night legislation

- 25 Legal professional privilege
propose the amendments are made under urgency at the earliest opportunity, which is Budget night 2024.

Possible contentious aspects of the Amendment Bill:

Retrospective legislation

- 26 The Amendment Bill retrospectively validates ACC's past practice in charging debit interest. This may result in pushback from levy payers who have paid debit interest in the past, as the ability to challenge those payments will be removed.
- 27 The validation of past practice is proposed because the practice of charging interest on levy instalments is reasonable Legal professional privilege. It is fair across levy payers, and it offers credit at a rate lower than alternative sources of finance. Levy payers who used instalment plans to delay payment of annual levies also benefitted because they did not have to pay penalty interest under s250 at significantly higher rates (which would have occurred if they did not pay via an agreed instalment plan, and instead paid late without agreement). If those levy payers retained a right to challenge the low rates of interest that they did pay, that may give them a financial

advantage over levy payers who chose to pay their levies in full when first due.

- 28 There would also be considerable difficulties for ACC to consider repayment of debit interest given the time elapsed and difficulty with record keeping.
- 29 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.

Lack of public consultation

- 30 There has been no public consultation on this approach. Legal professional privilege

[Redacted]

- 31 The Amendment Bill initially only sets the debit interest rates to their current values, so there will be no immediate changes for businesses. Any future changes to the debit interest rates would be subject to public consultation as part of ACC’s levy rounds.

Potential to raise debit interest rates

- 32 As noted above, the Amendment Bill allows for future updates to the debit interest rates through Regulations as part of ACC’s levy reviews. Confidential advice to government

[Redacted]

[Redacted]

Impact Analysis

- 34 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time of Cabinet’s March 2024 decision.

Compliance

- 35 The Amendment Bill complies with each of the following:
- 35.1 principles of the Treaty of Waitangi;
 - 35.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 35.3 the disclosure statement requirements, a departmental disclosure is attached to this paper in Appendix One;

- 35.4 the principles and guidelines set out in the Privacy Act 2020;
- 35.5 relevant international standards and obligations;
- 35.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Legislative Implications

36 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.

37 Legal professional privilege

38 Clarifying amendments such as the ones proposed in this Amendment Bill can sometimes result in uncertainty in other regimes that have not yet legislated to avoid the doubt.

Consultation

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

40 Legal professional privilege

Binding on the Crown

41 The Amendment Act will bind the Crown.

Creating new agencies or amending law relating to existing agencies

42 The Amendment Bill does not create any new agencies.

43 It will create an explicit ability for ACC to charge debit interest on payments of levies by instalments.

Allocation of decision-making powers

44 The Amendment Bill does not involve the allocation of decision-making powers between the executive, the courts, or tribunals.

Associated regulations

45 No regulations will be needed to bring the Amendment Bill into operation.

- 46 The Amendment Bill will allow for the rate of debit interest on instalment plans can be updated via the Injury Prevention, Rehabilitation and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002 in future.
- 47 The Amendment Bill will also allow for new regulations to be made, which will set out the circumstances under which debit interest charges can be waived.

Other instruments

- 48 No other instruments will be needed to support the Amendment Bill's operation.

Definition of Minister or department

- 49 The Amendment Bill does not contain a definition of a Minister, department, or chief executive or any equivalent positions.

Commencement of legislation

- 50 The Amendment Bill will commence on the date the Bill receives Royal Assent.

Parliamentary stages

- 51 I propose that the Amendment Bill be introduced into the House on 30 May 2024 as part of Budget night legislation, and pass all stages on that day under urgency. It would not be referred to Select Committee.

Proactive Release

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

Recommendations

The Minister for ACC recommends that the Committee:

- 1 **note** that the Accident Compensation (Interest on Instalments) Bill holds priority category 3 on the 2024 Legislation programme (must be passed by the end of 2024);
- 2 **note** that the Accident Compensation (Interest on Instalments) Amendment Bill will amend the Accident Compensation Act 2001;
- 3 **approve** the Accident Compensation (Interest on Instalments) Amendment Bill for introduction;
- 4 **agree** that the Accident Compensation (Interest on Instalments) Amendment Bill be introduced on 30 May 2024 as part of Budget night legislation; and

5 **agree** that the Government propose that the Accident Compensation (Interest on Instalments) Amendment Bill be:

5.1 passed in all stages under urgency as part of Budget night 2024 legislation; and

5.2 enacted by 30 May 2024.

Authorised for lodgement

Hon Matt Dooney

Minister for ACC