



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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**REGULATORY IMPACT  
STATEMENT FOR THE  
ACCIDENT COMPENSATION  
AMENDMENTS TO BE  
INCLUDED IN THE  
REGULATORY SYSTEMS  
AMENDMENT BILL (2)**

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## AGENCY DISCLOSURE STATEMENT

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business, Innovation and Employment (MBIE). It provides an analysis of options to amend the Accident Compensation Act 2001 (the AC Act) through the Regulatory Systems Amendment Bill (2) (RSB).
2. Information regarding the number of people that proposal one would affect is limited. Although the Accident Compensation Corporation (ACC) has provided an estimate of the number of people that make the election between weekly compensation and New Zealand Superannuation, the number of people that would be affected by the proposed change to the transitional provision is unknown. This number is assumed to be small, as ACC has estimated that approximately 150 people per year make the election and the number of those that would have been injured in the 12 months before turning 65 would be a small percentage of the total number of people who make the election.
3. The analysis of the proposal relating to the Accident Compensation Appeal Authority (the Authority) assumes that there will not be a significant increase in the number of Appeals lodged with the Authority. An increase may mean the transfer of these cases to the District Court Registry (DC Registry) would have a more significant effect than currently estimated, which could require more resources from the DC Registry and may affect timeliness. It is not possible to know with certainty if this would happen, however based on the age of the appeals and the decreasing numbers of appeals that are being lodged this risk is considered to be low.
4. The option of transferring all Accident Compensation appeals to the Authority was not considered because the one member Authority does not have the capacity to accommodate the high number of Accident Compensation appeals and the cost of expanding the current capacity of the Authority in order to do this would be too significant.
5. Formal public consultation on the proposal to remove the election requirement has not been carried out. However, it is an issue that has been consistently raised by stakeholders through complaints to the Human Rights Commission and a number of letters to the Minister for ACC. There is the possibility that at least one of these complaints to the Human Rights Commission could be escalated to the Human Rights Review Tribunal. Overall the feedback we have received from stakeholders is that they object to the election requirement.
6. The proposal to disestablish the Authority was included in several public discussion documents when it was originally included in the Courts and Tribunals Enhances Services Bill and the overwhelming feedback was that stakeholders do not want specialist tribunals, but that they want a consistent process of appeal through the courts.
7. Both of these proposals have been part of wide departmental and Ministerial consultation, as they were initially proposed as part of a stand-alone Accident Compensation Amendment Bill. In addition the RSB will be released as an exposure draft following Cabinet approval, which will provide sufficient time for public scrutiny and comment before the select committee process.



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05/12/16

## EXECUTIVE SUMMARY

8. This Regulatory Impact Statement (RIS) outlines the proposed package of amendments to the Accident Compensation Act 2001 (the AC Act) to be included in the Regulatory Systems Amendment Bill (2) (RSB).
9. The overall objective of the proposed amendments are to maintain the effectiveness and efficiency of the regulatory system. Each proposal was assessed against the following criteria:
  - To ensure that ACC clients receive fair compensation for loss from injury
  - To provide coherent and consistent entitlement
  - To promote administrative efficiency
  - To ensure cost effectiveness.
10. The RIS considers two proposals:
  - To remove the election between weekly compensation and New Zealand Superannuation (NZS), including amending the transitional provision related to it
  - To disestablish the Accident Compensation Appeal Authority (the Authority).
11. The two preferred options for proposal one is for people who become entitled to weekly compensation when close to or over 65 years old to not be required to elect between weekly compensation and NZS for the last 12 months of their entitlement. The second preferred option for proposal one is to ensure all people are entitled to a maximum of 24 months of weekly compensation and NZS. This will ensure that the transitional provisions for those reaching New Zealand Superannuation Qualification Age (NZSQA) are defensible, consistent and provide fair compensation for loss from injury.
12. The preferred option for proposal two is to disestablish the Authority and transfer all new cases to the District Court Registry, because maintaining the Authority adds unnecessary complexity to the appeal and review process and is not administratively efficient. Having a central, consistent, process of appeal is more efficient and will make it easier for people to navigate without effecting peoples substantive rights.
13. The preferred options would require changes to the AC Act followed by minor changes to operational policy accompanied by internal communications to staff processing claims. The RSB is proposed for introduction in 2017 and all proposals have been assessed as appropriate for inclusion in this legislative vehicle.
14. The Ministry of Business, Innovation and Employment (MBIE) will work with other sector agencies, particularly ACC and the Ministry of Justice, to ensure the legislative changes have the desired effect. MBIE will also monitor the effectiveness of the amendments proposed in this paper, as part of its wider stewardship of the legislation that it administers.

## OBJECTIVES OF THE ACCIDENT COMPENSATION AMENDMENTS IN THE REGULATORY SYSTEMS BILL

15. The overarching objective of the amendments to the AC Act is to maintain the effectiveness and efficiency of the Accident Compensation regulatory system.
16. In order to achieve this objective, the options for each of the proposals have been assessed against the following criteria to recognise the trade-offs at stake:
  - To ensure that ACC clients receive fair compensation for loss from injury – *as outlined in the purpose statement in the AC Act.*

- To provide coherent and consistent entitlement – *this is to ensure predictability of service for people and would also minimise the likelihood of dispute.*
- To promote administrative efficiency – *to reduce the cost of ACC to deliver services and improve the ease of navigating services.*
- To ensure cost effectiveness – *ensuring the cost impact for levy payers is minimal is important for the financial sustainability of the scheme.*

## **PROPOSAL ONE: WEEKLY COMPENSATION AND NEW ZEALAND SUPERANNUATION**

### ***Section One: Election requirement***

#### **Status Quo**

17. The AC Act provides weekly compensation to people who are injured and cannot continue work. This is paid at 80% of the persons pre-injury wages.
18. Schedule 1 clause 52 of the AC Act specifies that a person’s entitlement to weekly compensation ends when the person reaches the New Zealand Superannuation qualification age (NZSQA)<sup>1</sup>. The Human Rights Review Tribunal has considered this issue generally and stated that NZSQA is an appropriate proxy for ‘end of working life’. A person’s earnings will generally come to a natural end at their retirement from the workforce. Therefore as weekly compensation is a compensation for lost wages, logically, compensation should end at that point.
19. However, as an acknowledgement that some people continue to work past NZSQA, the AC Act does provide some transitional provisions for people who are first injured, near, at or past NZSQA. Under these provisions a person is eligible for weekly compensation for up to two to three years depending on a person’s age at first entitlement for weekly compensation<sup>2</sup>.
20. As part of this transitional provision there is a requirement for a person to elect between receiving weekly compensation and New Zealand Superannuation (NZS). Generally after one year of receiving both weekly compensation and NZS a person will have to elect between the two.
21. Table 1 below outlines how the interaction between weekly compensation and NZS applies in different scenarios. Scenarios B and C (shaded grey boxes) are the situations in which the election requirement applies.
22. It should be noted that Table 1 below outlines the maximum eligibility of weekly compensation for people who become eligible for weekly compensation at, near or above NZSQA. Most people do not require maximum entitlement of weekly compensation as they return to work. In 2013/14 68% of injured people returned to independence within 70 days of being injured, and 93% within 9 months.

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<sup>1</sup> The AC Act refers to New Zealand Superannuation qualification age which is currently 65 years.

<sup>2</sup> There are some complexities regarding the transitional provision, which are discussed from paragraph 35.

Table 1: Election between weekly compensation and New Zealand Superannuation

Scenario	Time of eligibility to weekly compensation	When the persons weekly compensation ends
A.	An earner is injured and becomes eligible for weekly compensation any time before their 64 <sup>th</sup> birthday.	<p>If the person has received weekly compensation for more than 24 months their entitlement ends.</p> <p>If they have received weekly compensation for less than 24 months they elect and can receive weekly compensation until they have received a total of 24 months.</p>
B.	A person is injured and becomes eligible for weekly compensation between their 64 <sup>th</sup> and 65 <sup>th</sup> birthday.	<p>A person is eligible for weekly compensation until their 65<sup>th</sup> birthday.</p> <p>They are then eligible for weekly compensation and NZS for up to 12 months. When they turn 66 years old they must elect between receiving weekly compensation and NZS for the next 12 months.</p> <p>After those 12 months they are only eligible for NZS.</p>
C.	A person is injured and becomes eligible for weekly compensation any time after their 65 <sup>th</sup> birthday.	<p>A person is eligible for weekly compensation and NZS for 12 months. After 12 months they must elect between receiving weekly compensation and NZS for the next 12 months.</p> <p>After those 12 months they are only eligible for NZS.</p>

## Problem definition

### *Fair compensation*

23. The requirement for people to elect between weekly compensation and NZS as a transition between the two entitlements does not have a strong rational basis.
24. In order for a person to be eligible for weekly compensation they must have been in paid employment immediately prior to their injury that left them incapacitated for employment. In the case of superannuitants if that person had not become incapacitated they would have continued to receive their earnings and their NZS.
25. In most cases they lose out on a year of NZS that they would have received had they not been injured. Although people may elect to receive NZS it is more likely that they will elect weekly compensation as shown in Table 2 below.

Table 2: Comparison between the rates of election between weekly compensation and NZS

Calendar year	New Zealand Superannuation elected	Weekly compensation elected	Total
2008	21	122	143
2009	49	167	216
2010	29	143	172
2011	29	121	150
2012	21	91	112
2013	31	104	135
2014	24	94	118

26. NZS is not means tested in any other case. A superannuitant is allowed to earn any income in addition to their NZS. All people who elect weekly compensation are losing their entitlement for this otherwise universal entitlement without any clear justification. As weekly compensation is compensation for lost wages requiring an election between the compensation for lost wages and NZS, unfairly disadvantages people that are incapacitated over those that are not.

*Inconsistency in entitlement*

27. This clause will become the only election requirement in the AC Act. The AC Act provides weekly compensation for five years to the spouse or partner of a person who dies from a fatal injury<sup>3</sup>. However once the spouse or partner reaches NZSQA they must elect between weekly compensation and NZS after one year of receiving both.
28. This election for surviving spouses was the subject of a complaint to the Human Rights Review Tribunal (the HRRT). The HRRT determined that this election was discriminatory on the basis of age, as surviving spouses receiving weekly compensation before NZSQA received a full five years. Cabinet has agreed in principle to amend the AC to allow superannuitants to remove the election and allow surviving spouses to receive both NZS and weekly compensation for the full five year period at the next legislative opportunity<sup>4</sup> [CAB-15-MIN-0149 refers].
29. As it is proposed that the election requirement for surviving spouses will be removed, this will mean that the election requirement in the AC Act will be for people who are injured at, near or above NZSQA. This would create inconsistency in approach to people reaching NZSQA. Inconsistency in entitlements can create uncertainty and complexity for people and increase the likelihood of disputes (e.g. complaints to the Minister for ACC and to the Human Rights Review Tribunal).

**Regulatory Impact Analysis**

30. Options considered include:
- **The status quo:** People that become eligible for weekly compensation within the 12 months before they reach NZSQA receive weekly compensation until 65 and then receive weekly compensation and NZS for 12 months before they are required to elect. People who become eligible for weekly compensation any time after 65 must elect 12 months after receiving both weekly compensation and NZS.
  - **Option one:** People are not required to make any election between weekly compensation and NZS and are entitled to a maximum of 24 months of both.

<sup>3</sup> The spouse or partner must have been entitled to cover for personal injury in order for the surviving spouse to be entitled to weekly compensation.

<sup>4</sup> This amendment is intended to be progressed through the Regulatory Systems Bill 2.

31. Table 3 below illustrates the difference between the two options in relation to the circumstances of the person. The key difference between the two options is underlined.

Table 3: Comparison between options

	The person is injured and becomes eligible for weekly compensation any time before their 64 <sup>th</sup> birthday	The person is injured and becomes eligible for weekly compensation between their 64 <sup>th</sup> and 65 <sup>th</sup> birthday.	The person is injured and becomes eligible for weekly compensation any time after their 65 <sup>th</sup> birthday.
<b>Status Quo: Election required</b>	<p>If the person has received weekly compensation for more than 24 months their entitlement ends.</p> <p>If they have received weekly compensation for <u>less than 24 months they</u> elect and if they elected to receive weekly compensation they are entitled to weekly compensation until they have received a total of 24 months.</p>	<p>A person is eligible for weekly compensation until their 65<sup>th</sup> birthday.</p> <p>They are then <u>eligible for weekly compensation and NZS for 12 months</u>. When they turn 66 years old they must elect between receiving weekly compensation and NZS for the next 12 months.</p> <p>After those final 12 months they are only eligible for NZS.</p>	<p>A person is <u>eligible for weekly compensation and NZS for 12 months</u>. After 12 months they must elect between receiving weekly compensation and NZS for the next 12 months.</p> <p>After those 12 months they are only eligible for NZS.</p>
<b>Option One: No election requirement<sup>5</sup></b>	<p>If the person has received weekly compensation for more than 24 months their entitlement ends.</p> <p>A person is eligible for weekly compensation until their 65<sup>th</sup> birthday. If they have received weekly compensation for <u>less than 24 months they can receive weekly compensation and NZS until they have received a total of 24 months</u>.</p>	<p>A person is eligible for weekly compensation until their 65<sup>th</sup> birthday.</p> <p>They are then eligible for <u>weekly compensation and NZS for up to 24 months</u>.</p> <p>After this time they are only eligible for NZS.</p>	<p>A person is <u>eligible for weekly compensation and NZS for up to 24 months</u>.</p> <p>After those 24 months they are only eligible for NZS.</p>

32. It should be noted that for Option One consequential amendments would be made to the Veterans Support Act 2014 (sections 65 and 104) and the New Zealand Superannuation and Retirement Income Act 2001 (section 7) which were modelled off the AC Act weekly compensation and NZS provisions to ensure alignment across legislation.

<sup>5</sup> This option assumes no change to the transitional provisions; however this is discussed from paragraph 35. If the transitional proposal was to change this could affect the amount of weekly compensation that people eligible for weekly compensation between their 64<sup>th</sup> and 65<sup>th</sup> birthdays would receive. Although connected to this proposal it does not substantively affect this proposal or the analysis against the criteria.



33. The following scale has been used in assessing the options against the criteria:

- ✓ Objective is likely to be met
- ✓✗ Objective is likely to be partially met
- ✗ Objective is not likely to be met

34. Table 4 shows the options analysis.

Table 4: Options analysis for the election requirement

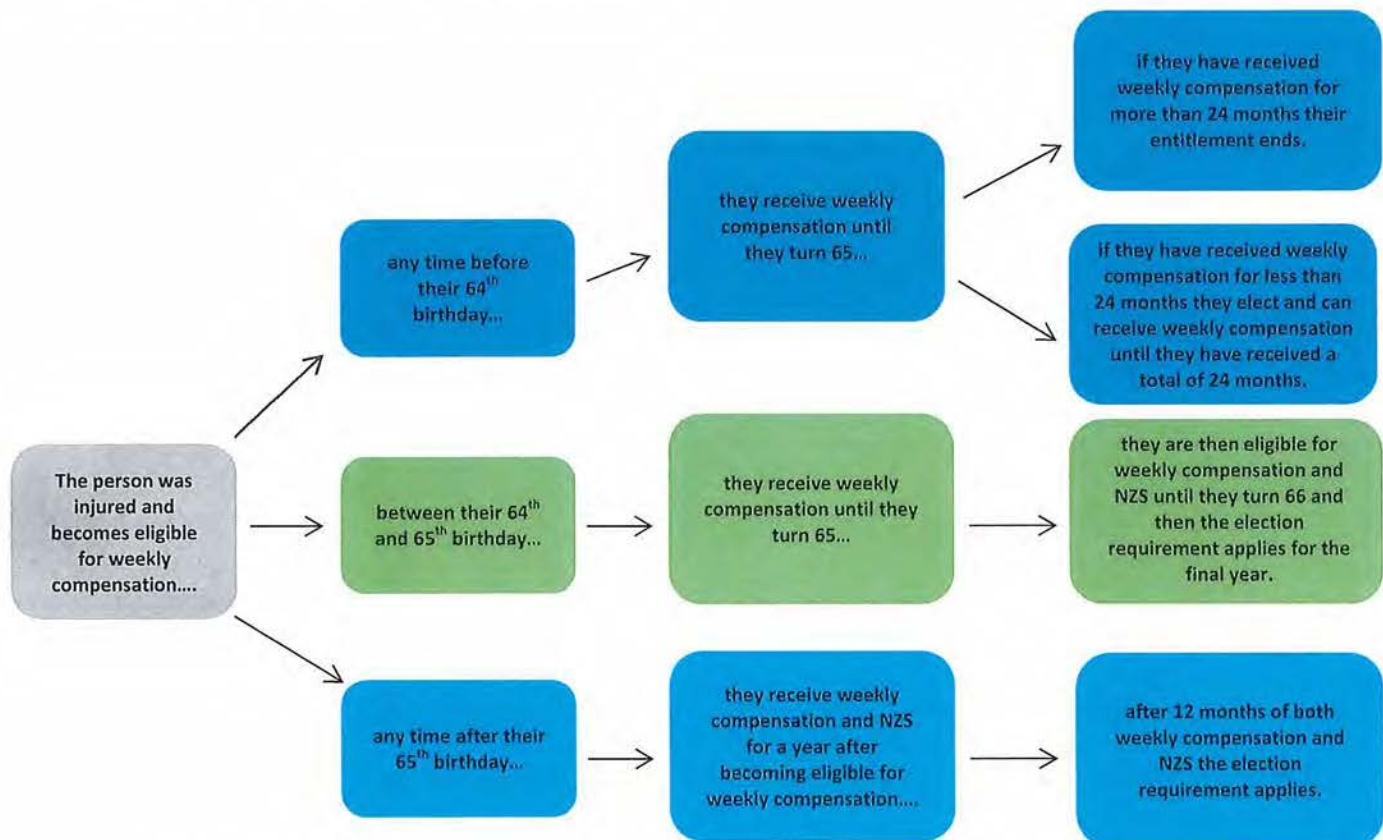
Criteria	Status Quo: People that are eligible for weekly compensation must elect between receiving NZS and weekly compensation after 12 months of receiving both, or twelve months after turning 65.	Option One – preferred option: People are not required to make any election between weekly compensation and NZS and so are entitled to a minimum of 24 months of both.
<i>Ensure that ACC clients receive fair compensation for loss from injury</i>	<p>People who become eligible for weekly compensation and are required to make the election are not being compensated fairly for loss of income. Most people elect to receive weekly compensation and lose a year of NZS that they would have received had they not been injured.</p> <p>Those who elect to receive NZS are also not being fairly compensated. The loss of weekly compensation for people past NZSQA is contradictory to the purpose of this entitlement to compensate for lost wages while recognising that people work past NZSQA.</p>	<p>✓</p> <p>Removing the election requirement would meet the objective. Weekly compensation is intended to be compensation for lost wages. It therefore is reasonable that people would be able to receive both weekly compensation and NZS as they would have been allowed to receive both their wages from employment and NZS had they not been injured.</p> <p>This option would provide people with fair compensation for loss of income regardless of their entitlement to NZS.</p>
<i>Provide coherent and consistent entitlement</i>	<p>With the proposed removal of the election requirement for surviving spouses, which has been agreed to in principle by Cabinet, this election requirement will be the only one in the AC Act.</p> <p>Maintaining this election will continue to create confusion for people trying to understand their entitlements. This is then likely to lead to disputes about entitlement, for example mediation with ACC clients, complaints to the Minister for ACC, and complaints to the Human Rights Review Tribunal.</p>	<p>✓</p> <p>It is difficult for people to understand why they are required to elect between weekly compensation and superannuation, and is likely to be more so, if only the election requirement for surviving spouse weekly compensation is removed. Removing the election requirement will promote consistency of entitlements across the AC Act and will provide people with clearer expectations of what their entitlement will be.</p>
<i>Promote administrative efficiency</i>	<p>Maintaining the status quo is likely to require a small, but not insignificant administrative burden on ACC as this will be the only election requirement that will need to be delivered by ACC's operations.</p>	<p>✓</p> <p>The amendment will promote administrative efficiency for both ACC and MSD, with fewer forms to process and reduced time spent on complaints and enquiries about the election requirement.</p>
<i>Ensure cost effectiveness</i>	<p>No additional cost.</p>	<p>✗</p> <p>The cash cost of this proposal is expected to be low. ACC estimates that on average 150 people are required to make the election each year and of this group, 80% of people choose to receive weekly compensation. Cash cost to ACC (2019-2025) would be \$1.16 – \$1.55 million per annum. This increase in cost is able to be absorbed by the current levy rates and will not impact on the Non-Earners' Account.</p> <p>The cost to the Ministry of Social Development would be \$2.98 million in 2019 to around \$3.6 million in 2024. The cost impact for Veterans' Affairs has been included in these figures.</p>

## Section Two: Transitional provision

### Status Quo

35. Clause 52 of Schedule 1 of the AC Act outlines the transitional provision for people who are first entitled to weekly compensation at, near or above NZSQA.
36. Figure 1 below shows how the boundary between weekly compensation and NZS currently applies. The green boxes outline the transitional provision. It should be noted that the analysis below assumes the status quo applies in regards to the election requirement discussed from paragraph 17.

Figure 1: Boundary between weekly compensation and NZS

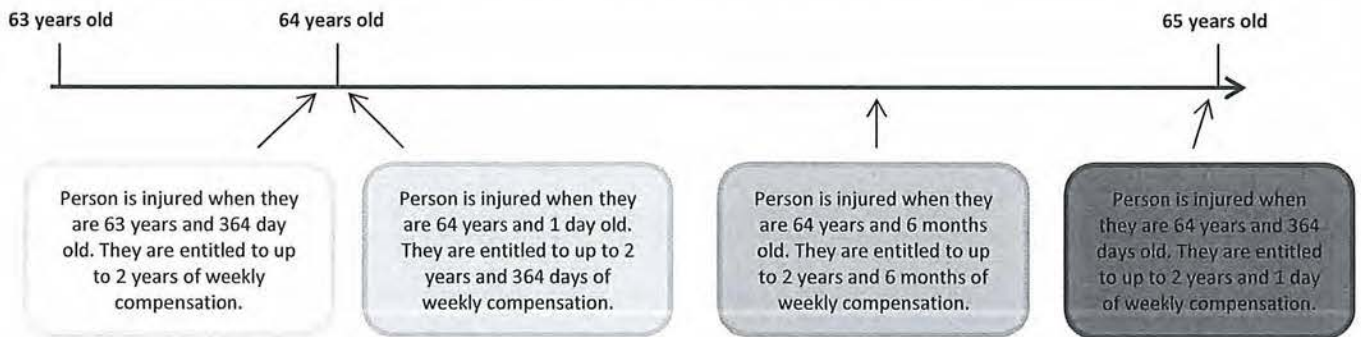


37. Currently most people can receive two years of weekly compensation after NZSQA<sup>6</sup> (assuming they elect to receive weekly compensation not NZS). However, people who are injured in the 12 months before their 65<sup>th</sup> birthday (as set out in the green boxes in Figure 1 above) can access up to 12 months more weekly compensation than those in either of the scenarios in the blue boxes in Figure 1.
38. Although these people can receive up to 12 months more weekly compensation, exactly how much more depends on when in the 12 months after their 64<sup>th</sup> birthday they become eligible. This can be described as a sliding scale of entitlement – the closer to their 65<sup>th</sup> birthday that they are injured the less additional weekly compensation they can receive. This means that those people that are injured closest to their 64<sup>th</sup> birthday are better off than those injured closer to their 65<sup>th</sup> birthday.

<sup>6</sup> If they become eligible for weekly compensation before their 64<sup>th</sup> birthday and have received weekly compensation for less than 24 months, they elect and if they elected to receive weekly compensation they are entitled to weekly compensation until they have received a total of 24 months.

39. Figure 2 below explains the sliding scale of entitlement to weekly compensation for people who are subject to this transitional provision. It assumes that all people would elect to receive weekly compensation rather than NZS.

Figure 2: Sliding scale of entitlement to weekly compensation based on age at first entitlement



40. As outlined in the Agency Disclosure Statement it isn't known how many people a year are injured in the 12 months prior to their 65th birthday. In addition to this, it is unknown how much more weekly compensation on average the people who fall into this category receive, so it is difficult to estimate how many people benefit and to what degree from this transitional provision. However it is likely that these people would be a small percentage of the people covered by the first section of proposal one (discussed from paragraph 17) and therefore will affect less than 150 people per year.

### Problem definition

41. Those who are injured when they are 63 years and 364 days old could receive less weekly compensation than those injured when they are 64 years old, simply because they became eligible for weekly compensation one day earlier. Those in the first group can receive up to 2 years of weekly compensation, whereas those in the latter group can receive up to 3 years of weekly compensation.
42. This transition disadvantages certain people based on their age. There is no clear rationale for this inconsistent treatment, as there is no reason that 64 year olds would require more weekly compensation than 63 or 65 year olds. This transitional provision is inconsistent with the principle of the AC Act to provide fair compensation for loss from injury.
43. The nature of the Accident Compensation scheme (the scheme) requires a balance between fair entitlements and financial sustainability. This means that there must be boundaries between those that are entitled to ACC services and those that are not. Due to this the scheme is under constant pressure to expand its boundaries to provide services to more individuals. It is therefore important for any boundaries in the scheme to be defensible and consistent.
44. In this case not amending this transitional provision will create an inconsistency that cannot be justified and would create difficulty for people in understanding the scheme and their entitlements. This could also trigger complaints to ACC, the Minister for ACC and the Human Rights Commission, as in the case of the surviving spouse election requirement.

## Regulatory Impact Analysis

45. Options considered include:
- **The status quo:** All people who are injured and become eligible to weekly compensation between their 64<sup>th</sup> and 65<sup>th</sup> birthday could be entitled to up to 12 months more weekly compensation than those injured at age 63 or 65.
  - **Option one (preferred option):** All people who are injured and become eligible for weekly compensation after the age of 63 are entitled to a maximum of 24 months of weekly compensation.
46. As is consistent with previous changes to the AC Act, Option one would not be retrospective and would apply from when the proposed amendments are enacted. The transitional provisions will be structured to ensure that peoples existing rights will not be affected.
47. It should be noted that for Option one consequential amendments would also be made to the Veterans Support Act 2014 (sections 65 and 104) which was modelled off the AC Act weekly compensation and NZS provisions to ensure alignment across legislation.
48. The following scale has been used in assessing the options against the criteria:
- ✓ Objective is likely to be met
  - ✓x Objective is likely to be partially met
  - x Objective is not likely to be met
49. Table 5 shows the options analysis.

Table 5: Options analysis for the transitional provision

Criteria	Status Quo: All people who are injured and become eligible to weekly compensation between their 64 <sup>th</sup> and 65 <sup>th</sup> birthday could be entitled to up to 12 months more weekly compensation than those injured at age 63 or 65.	Option One (preferred option): All people who are injured and become eligible for weekly compensation after the age of 63 are entitled to a maximum of 24 months of weekly compensation.
<p>Ensure that ACC clients receive fair compensation for loss from injury</p>	<p>The current transition provision does not provide fair compensation for loss of income, as some people can receive up to 12 months more weekly compensation than others without a justification.</p> <p>This is not consistent with the principle of the AC Act to provide fair compensation under the scheme.</p>	<p>✓ Amending the transitional provision will ensure that everyone injured at, near or above NZSQA will receive the same amount of weekly compensation. This will maintain fairness in entitlement across the AC Act. This option will ensure that everyone in the same situation is entitled to the same amount of compensation.</p> <p>This option will also maintain the longstanding 24 month entitlement as a transition from employment to NZS in the case where someone becomes entitled to weekly compensation.</p>
<p>Provide coherent and consistent entitlement</p>	<p>The inconsistency in entitlement to weekly compensation based on age at first entitlement to weekly compensation cannot be justified. This will likely lead to disputes about the limits of cover and entitlement for those injured on the boundary of entitlement to NZS. The current transitional provision lacks coherence in its treatment of different groups based on age, which causes unpredictability in service for people.</p>	<p>✓ Ensuring that all people are able to access weekly compensation for the same length of time means that people are less unable to dispute the limits on entitlements as they are justifiable and consistent across the AC Act.</p> <p>This option will improve ease of interaction with ACC for people as they will be able to easily understand their entitlements.</p>
<p>Promote administrative efficiency</p>	<p>The current transitional provision creates administrative complexity as there is not a consistent approach for all people injured at, near, or above NZSQA. This has a cost for ACC to provide adequate operational processes to ensure that every person is treated correctly under the AC Act based on their exact age at date of entitlement to weekly compensation.</p>	<p>✓ Amending this transitional provision to ensure consistency of entitlement will simplify ACC's operations and allow for more efficiency. This, in turn, will benefit people receiving services from ACC in regards to timeliness and ease of interaction.</p>
<p>Ensure cost effectiveness</p>	<p>No additional cost.</p>	<p>✓ There is likely to be a small cost savings as ACC will no longer be paying up to 12 months more of weekly compensation to people who become eligible for weekly compensation in the 12 months before turning 65. Although the exact effect of this change is difficult to estimate, the number of people that are injured between their 64 and 65<sup>th</sup> birthdays will be a small percentage of the number of people who make the election (about 150 per year).</p>

# PROPOSAL TWO: ACCIDENT COMPENSATION APPEAL AUTHORITY

## Status Quo

50. Two jurisdictions currently consider accident compensation appeals, but under different legislative processes. These are:
  - **The Accident Compensation Appeals District Court Registry (DC Registry)** hears claims made under the Accident Compensation Act 2001. Cases are heard by a District Court Judge.
  - **The Accident Compensation Appeal Authority (the Authority)** hears appeals under the repealed Accident Compensation Acts 1972 and 1982. Cases are heard by a one member authority<sup>7</sup>.
51. The Authority is administered by the Ministry of Justice and the costs are reimbursed by ACC. Currently there are four active cases before the Authority and seven new appeals have been received to date this year.
52. The cost of administering the Authority has varied significantly over time. In 2010/11 the cost was \$45,118, in 2013/14 the cost was \$197,391 and in 2014/15 the cost was \$102,630.
53. A proposal to disestablish the Authority was original included in the Courts and Tribunals Enhanced Services Bill. This was part of a proposal to establish a stand-alone Accident Compensation Tribunal (the Tribunal) which would hear all Accident Compensation appeals. The decision on whether to establish a Tribunal has been deferred until 2019.
54. During the consultation on the proposed Tribunal the majority of the feedback received was that stakeholders do not want specialist tribunals, but would prefer a consistent process of appeal through the courts. In addition during the Independent Review of the Acclaim Otago (Inc) July 2015 Report into Accident Compensation Dispute Resolution Processes the feedback from the majority of stakeholders was that the Authority should be disestablished.

## Problem Definition

55. The Tribunal is a historic entity that hears a very small number of appeals. While it is difficult to estimate the future volumes of disputes, the current rate is likely to decline further given that the injuries that fall under the repealed 1972 and 1982 Acts would now be more than 24 years old. The administrative burden in having two different bodies hear appeals under Accident Compensation legislation is significant, especially as there are so few cases that fall under the repealed Acts. The cost of maintaining the Authority is no longer in line with the value that the Authority brings to the dispute resolution services.
56. Although both jurisdictions provide for the substantive rights of people, having the two jurisdictions can also complicate the process for people attempting to lodge appeals. In order for people to understand the appeals process they need to understand the role of the different bodies and then their respective requirements and processes of appealing a decision.

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<sup>7</sup> The Appeal Authority is appointed by the Governor-General on the recommendation of the Minister for Justice, and must be a barrister or solicitor of the High Court with at least 7 years' experience.

## Regulatory Impact Analysis

57. Options considered are:
- **The status quo:** preserve the Authority to continue to hear appeals under the repealed Accident Compensation Act 1972 and 1982 and all other Accident Compensation Appeals are heard by the DC Registry.
  - **Option one (preferred option):** disestablish the Authority and transfer all new cases to the DC Registry.
58. The option of transferring all Accident Compensation appeals to the Authority was not considered because the one member Authority does not have the capacity to accommodate the high number of Accident Compensation appeals and the cost of expanding the current capacity of the Authority in order to do this would be too significant.
59. The options analysis in Table 6 assumes that there will not be a significant increase in the number of Appeals lodged with the Authority. An increase may mean the transfer of these cases to the DC Registry would have a more significant effect than currently estimated, which could require more resources from the DC Registry and may affect timeliness. It is not possible to know with certainty if this would happen, however based on the age of the appeals and the decreasing numbers of appeals that are being lodged this risk is considered to be low.
60. The following scale has been used in assessing the options against the criteria:
- ✓ Objective is likely to be met
  - ✓ x Objective is likely to be partially met
  - x Objective is not likely to be met
61. Table 6 shows the options analysis.

Table 6: Options analysis for the Accident Compensation Appeal Authority proposal

Criteria	Status Quo: preserve the Authority to continue to hear appeals under the repealed Accident Compensation Act 1972 and 1982 and all other Accident Compensation Appeals are heard by the DC Registry.	Option One (preferred option): disestablish the Authority and transfer all new cases to the DC Registry.
<i>Ensure that ACC clients receive fair compensation for loss from injury</i>	N/A	N/A
<i>Provide coherent and consistent entitlement</i>	Both the DC Registry and the Authority uphold the substantive rights of people when hearing Accident Compensation appeals. However by having two separate bodies to hear appeals this creates inconsistency in process, specifically in who hears cases (District Court Judge vs a one member Authority).	✓ Having all Accident Compensation appeals channelled through the DC Registry will ensure that all people are subject to the same processes, interact with the same body when appealing decisions, and appeals are all heard by District Court Judges. Overwhelmingly stakeholders have provided feedback that they want consistent processes and for appeals to be heard by District Court Judges, as there is the perception that judges make more authoritative and independent decisions.



<p><i>Promote administrative efficiency</i></p>	<p>Maintaining both the DC Registry and the Authority is no longer the most efficient method of providing dispute resolution services. There is an administrative cost to ACC to pay the Ministry of Justice for the administration of the separate Authority for such a small number of cases.</p> <p>Having both the DC Registry and the Authority adds confusion to the appeals process as people must understand the requirements under each body.</p>	<p>✓</p> <p>There are not enough cases a year to justify the specialised Authority. It would be more administratively efficient if the few remaining cases that fall under the repealed Acts were transferred to the DC Registry which already has in place the resources and processes to hear these cases. This option would remove the administrative cost for the ACC and the Ministry of Justice to oversee the Authority.</p> <p>It would also make it easier for people to navigate the appeals process as they would only need to understand and interact with the DC Registry.</p>
<p><i>Ensure cost effectiveness</i></p>	<p>Maintaining a separate authority is no longer cost effective and the costs of the Authority are passed on to levy payers. As the costs of the Authority have varied significantly over time, it is difficult for both ACC and the Ministry of Justice to predict operating costs year to year.</p>	<p>✓</p> <p>It is estimated that there would be a cost savings to ACC, as the cost of running the Authority in 2014/15 was \$102,630. As there is so few cases being heard by the Authority it is expected that the increase in cost for the DC Registry of hearing the transferred cases will be insignificant.</p>

## CONSULTATION

62. Formal public consultation on the proposal to remove the election requirement has not been carried out. However, it is an issue that has been consistently raised by stakeholders through complaints to the Human Rights Commission and a number of letters to the Minister for ACC. There is the possibility that at least one of these complaints to the Human Rights Commission could be escalated to the Human Rights Review Tribunal. Overall the feedback we have received from stakeholders is that they object to the election requirement.
63. The proposal to disestablish the Authority was included in several public discussion documents when it was originally included in the Courts and Tribunals Enhances Services Bill and the overwhelming feedback was that stakeholders do not want specialist tribunals, but that they want a consistent process of appeal through the courts.
64. These proposals have been part of wide departmental and Ministerial consultation, as these proposals were initially proposed as part of a stand-alone Accident Compensation Amendment Bill. In addition it is proposed to release the RSB as an exposure draft following Cabinet approval. This will also provide sufficient time for public scrutiny and comment before the select committee process.

## IMPLEMENTATION

65. The preferred package would require changes to the AC Act followed by changes to operational policy.
66. ACC is responsible for operationalising the amendments. The changes to ACC's systems and processes are expected to be minor and easy to implement and will be accompanied by internal communications to staff processing claims
67. The RSB is proposed for introduction in 2017 and all proposals have been assessed as appropriate for inclusion in this legislative vehicle. Changes would apply from the date that the legislation comes into effect and not retrospectively.
68. This may be challenged by some applicants already in the system (e.g. people who have just made an election to receive weekly compensation instead of NZS). However, this is consistent

with approaches taken previously with changes to the AC Act. Effective communications to those people who first become entitled to weekly compensation close to, on or after NZSQA will help to clarify entitlements and avoid confusion.

69. Consequential amendments to the New Zealand Superannuation and Retirement Income Act 2001 and the Veterans Support Act 2014 would be required for proposals relating to the relationship between weekly compensation and NZS to maintain its alignment with the weekly compensation provisions in the AC Act.

## **MONITORING, EVALUATION AND REVIEW**

70. MBIE will work with other sector agencies (particularly ACC and the Ministry of Justice) to monitor the effects of the amendments proposed in this RIS.
71. The weekly compensation amendments will target a known inconsistency within the AC Act. A measure of the success of these amendments will be a reduction in the number of complaints to the Human Rights Commission and no further cases in the Human Rights Review Tribunal.
72. A strategic evaluation of the interface between weekly compensation and NZS in the context of the aging population is proposed over the next 12 months to assess how the increased numbers of people who are working past NZSQA will affect the sustainability of the Scheme. MBIE's ability to undertake a review at that time will depend on available resources and other competing priorities.
73. Data provided to MBIE by ACC and the Ministry of Justice on DC Registry processes including the number of accident compensation appeals and average wait times will provide insight as to whether the disestablishment of the Authority has put any additional pressure on the DC Registry.
74. The decision to defer the proposed Accident Compensation Tribunal will be re-visited in 2019. This will provide MBIE with an opportunity to review the accident compensation dispute resolution system, including how the recommendations from the recent Independent Review of Acclaim Otago's report into Accident Compensation Dispute Resolution Processes have affected the system.