



COVERSHEET

Minister	Hon Matt Doocey	Portfolio	ACC
Title of Cabinet paper	Seeking Feedback on Recommended Additions to Schedule 2, List of Occupational Diseases – Approval to Consult	Date to be published	10 December 2024

List of documents that have been proactively released		
Date	Title	Author
October 2024	<i>Seeking Feedback on Recommended Additions to Schedule 2, List of Occupational Diseases – Approval to Consult</i>	<i>Office of the Minister for ACC</i>
23 October 2024	<i>SOU-24-MIN-0126 Minute of Decision</i>	<i>Cabinet Office</i>

Information redacted

YES / NO (please select)

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Office of the Minister for ACC

Chair, Cabinet Social Outcomes Committee

Seeking Feedback on Recommended Additions to Schedule 2, List of Occupational Diseases – Approval to Consult

Proposal

- 1 I am seeking Cabinet agreement to release a discussion document to launch a public consultation seeking feedback on potential additions to Schedule 2 of the *Accident Compensation Act 2001* (the AC Act).
- 2 The recommended additions come from a panel of independent health experts following their evidence review of a list of occupational diseases.

Relation to government priorities

- 3 The proposals in this paper are related to the Government priority of delivering better public services.

Executive Summary

- 4 The Accident Compensation Scheme (AC Scheme) provides cover for work-related gradual process, disease, or infections (WRGPDI). These are personal injuries caused by exposure to an employment task or environment.
- 5 Claimants have two routes for accessing AC Scheme cover for WRGPDI:
 - 5.1 demonstrating that an employment task or environment with a particular property causes or contributes to the cause of a personal injury (section 30(2) of the AC Act), or
 - 5.2 the illness being included on Schedule 2, the AC Act's list of Occupational Diseases.
- 6 Schedule 2 is a more streamlined route for accessing AC Scheme cover. This list was originally based on the International Labour Organization's List of Occupational Diseases (the ILO List) and was last updated in 2008 (two years prior to the ILO List's last revision).
- 7 In September 2022, following the acknowledgement that it had been over 10 years since the last update to Schedule 2, Cabinet agreed to introduce a framework for regularly reviewing Schedule 2 [CAB-22-MIN-0388 refers].
- 8 The first review under this framework commenced in January 2023 when the former Minister for ACC informed the House of Representatives that the review was set to occur. Following my taking over of the ACC portfolio, I

agreed to continue the project as it supports my ACC portfolio priority of ensuring ACC's regulations are efficient, effective, and current.

- 9 Part of the review involved MBIE contracting Allen + Clarke to procure and manage a panel of independent health experts (the panel) to undertake an evidence review and make recommendations for additions to Schedule 2. Their evidence review is now complete, and the panel recommended fourteen additions for inclusion on Schedule 2.
- 10 For this stage of the review, I am proposing to publish a discussion document seeking feedback on the panel's recommended additions to Schedule 2.

Background

Why does the Accident Compensation Scheme cover occupational diseases?

- 11 The Accident Compensation Scheme (AC Scheme) provides cover for injuries caused by a work-related gradual processes, diseases, or infections (WRGPDI) as a result of a work-related task or environment. Cover for WRGPDI acknowledges that not all injuries take immediate effect, some worker activities have a higher risk than others, and that workers may have little control over their work tasks or environments that can cause disease, illness, or injury.
- 12 Cover for occupational diseases is also a requirement under the International Labour Organization's (ILO) Convention 42, to which New Zealand is a party, for members to provide compensation to workers incapacitated by occupational diseases.

How is cover provided for WRGPDI under the AC Act?

- 13 Claimants can seek AC Scheme cover for WRGPDI through two routes:
 - 13.1 the first is through a three-step test set out in section 30(2) of the AC Act. This test involves demonstrating that an employment task or environment with a particular property causes or contributes to the cause of a personal injury.
 - 13.2 the second is through an illness being included in the Schedule 2 list of occupational diseases. This is a more efficient cover route as the diseases on the list already have a proven causal link to exposure to a substance or specific work task.

Why is Schedule 2 being reviewed?

- 14 In determining whether a review should occur under the new framework, officials provided three key reasons as to why a review was necessary:
 - 14.1 developments in occupational diseases knowledge – the principal reason for determining that a review of Schedule 2 should occur was to consider (at minimum) the diseases and relevant exposures added to

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the ILO List in 2010 (two years after the most recent update to Schedule 2),

- 14.2 length of time since the previous review of, or update to, Schedule 2 – when designing the review framework, officials recommended that a review of Schedule 2 occurs every five years to reflect the period of time in which epidemiological knowledge has developed enough to determine whether additions to Schedule 2 would be appropriate, and
- 14.3 the variety of WRGPDI claims that have a 50% or above acceptance rate (using the three-step test) – data provided by ACC indicated that over a five-year period, a variety of conditions considered under the test consistently maintained an acceptance rate of 50% or higher.
- 15 The work to update Schedule 2 is important because the AC Scheme, in its function as New Zealand’s worker compensation scheme, must accurately reflect the occupational exposures faced by New Zealand’s workforce and work as efficiently as practicable.
- 16 This work is being undertaken as part of my ACC portfolio priority to ensure ACC’s regulations are efficient, effective, and current, and also relates to the Government’s wider priority of delivering better public services.

What work on the review has been undertaken to date?

- 17 In 2022, a framework to review Schedule 2 was developed and subsequently approved by Cabinet [SWC-22-MIN-0163 refers]. The framework requires MBIE to assess if a review is required every five years. There are seven stages in the review process ranging from the initial determination that a review is required to evaluation of the framework itself.
- 18 In December 2022, officials from MBIE and ACC determined that a review of Schedule 2 should be undertaken, and in January 2023 the then Minister for ACC informed the House of Representatives that this would occur. Officials then ran a public consultation through April to May 2023 seeking the public’s suggested additions to Schedule 2.
- 19 Following this, MBIE contracted Allen + Clarke to procure and manage a panel of independent health experts (the panel), and support them in undertaking an evidence review on the public’s suggested additions, alongside the ILO List (as revised in 2010), and the Safe Work Australia Deemed Diseases List.

Recommended additions to Schedule 2 to publicly consult on

- 20 The panel recommended fourteen disease/exposure pairings for inclusion in Schedule 2. This includes nine new entries and additions to five existing entries. All fourteen pairings were recommended with unanimous support by the panel.

21 **Table One** below outlines the fourteen pairings recommended for inclusion on Schedule 2 by the independent panel.

Table One: The panel's recommended additions to Schedule 2

<i>New entry</i>	Erionite and malignant mesothelioma
	Infrared radiation and heat-induced cataracts
	Nickel or its toxic compounds and nasal cancer
	Ammonia or its toxic compounds and chronic corneal ulcer
	1,2-Dichloropropane or its toxic compounds and cholangiocarcinoma
	Butadiene or its toxic compounds and leukaemia
	Trichloroethylene or its toxic compounds and kidney cancer
<i>New entry with specific occupation or process</i>	Welding and ocular melanoma
	Firefighting and mesothelioma
<i>Add to existing entry in Schedule 2</i>	Potroom emissions and asthma (amend entry 37 which is currently: <i>Occupational asthma diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited to, isocyanates, certain wood dusts, flour dusts, animal proteins, enzymes, and latex</i>).
	Asbestos and laryngeal cancer (amend entry 2 which is currently: <i>Lung cancer or mesothelioma diagnosed as caused by asbestos</i>).
	Asbestos and ovarian cancer (amend entry 2 which is currently: <i>Lung cancer or mesothelioma diagnosed as caused by asbestos</i>).
	Vinyl chloride or its toxic compounds and hepatocellular carcinoma (amend entry 21 which is currently: <i>Angiosarcoma of the liver diagnosed as caused by vinyl chloride monomer</i>).
<i>Add to existing entry with specific occupation</i>	Firefighting and bladder cancer (amend entry 33 which is currently: <i>Bladder carcinoma diagnosed as caused by 2-naphthylamine, benzidine, 4-aminobiphenyl, N, N-Bis (2-chloroethyl)-2-naphthylamine, other aromatic amines, or poly-cyclic aromatic hydrocarbons</i>).

Panel rationale for recommended additions

- 22 Each of the fourteen pairings recommended for inclusion on Schedule 2 demonstrated strong, consistent, well-defined relationships between the exposure and development of the corresponding disease/illness. There was also biological plausibility that exposure to the substance could cause the corresponding disease/illness and increased levels of exposure were associated with an increased risk of developing the disease/illness (commonly referred to as a dose-response relationship).

Firefighting and welding

- 23 While section 336 of the AC Act does allow for specific occupations, industries, or processes to be included on Schedule 2, the current list only includes agents, dusts, compounds, substances, radiations, or things (e.g., mercury, lead, and arsenic). It does not currently specify specific occupations or processes.
- 24 The reason the panel recommended firefighting and welding for specific inclusion in Schedule 2 was because, in both instances, the panel concluded there was a significant level of evidence linking the occupation and process to the corresponding illness and that it was not practical to separate out individual agents in the exposures and link these to the development of a disease or another illness.
- 25 I am aware that including specific occupations and processes on Schedule 2 raises the risk of restricting access to cover if the corresponding illness is also linked to other occupations which face similar occupational hazards to that of welding or firefighting. This can be mitigated by enabling access to cover through the three-step test in section 30(2) of the AC Act. However, there could be a perceived unfairness for providing a streamlined cover route to welding and firefighting specifically and not other occupations.
- 26 Therefore, publicly consulting on these recommendations is crucial to ensure that we are testing these sensitivities to best understand their impact on New Zealand's workforce.

Purpose of undertaking public consultation

- 27 I am now seeking your approval to publish a discussion document to launch a public consultation with the purpose of seeking feedback on the panel's recommended additions to Schedule 2.
- 28 I am publicly consulting on these proposals because, given the legislative vehicle for updating Schedule 2 is an Order in Council, this is the primary opportunity for the public to provide input on the panel's recommended additions to Schedule 2. Additionally, engaging the public at this stage and seeking their feedback will better inform decisions in the next stage of the review.

- 29 Section 336(2) of the AC Act sets out requirements for consulting the persons or organisations considered appropriate with regard to the subject matter. I am satisfied that this public consultation will fulfil the requirements of section 336(2).
- 30 As per the discussion document (attached as **Annex One**), I am particularly interested in testing the appropriateness and practicality of each addition, and to get the public's views on the impact each addition could have on raising awareness around occupational exposures faced by New Zealand's workforce.

Stakeholder engagement

- 31 Given interest in current AC Scheme settings for WRGPDI cover, I consider it appropriate to seek a range of stakeholder views on the panel's proposed additions to Schedule 2.
- 32 Stakeholder groups such as the ACC Futures Coalition, the New Zealand Professional Firefighters Union, and Sawmill Workers Against Poisons have historically raised concerns, on behalf of their members, regarding current AC Scheme settings for WRGPDI cover. Key concerns include the evidential burden when making a claim for WRGPDI cover and the need to ensure ACC is considering the most up to date scientific evidence when assessing claims.
- 33 The public consultation seeks to reassure these groups that their concerns are being heard and that their suggestions from the previous consultation have been taken into account. Additionally, holding public consultation reiterates that this review process is taking a transparent and well considered approach to updating Schedule 2.

Public Consultation Process

- 34 I propose consulting for a period of four weeks. I will release the discussion document on, or shortly after, 29 October 2024 (dependent on Cabinet authorisation). The document will be released via MBIE's website.
- 35 MBIE, with ACC's support, will proactively contact stakeholders and interested parties. These stakeholders include, but are not limited to the New Zealand Professional Firefighters Union, Envirocom NZ Ltd, Perioperative Nurses College of the New Zealand Nurses Organisation, and The Employers and Manufacturers Association.

Cost-of-living Implications

- 36 It is unlikely these proposals will have a significant impact on New Zealanders' cost-of-living. If updates are made to Schedule 2, this will primarily impact the ease of accessing AC Scheme cover.

Financial Implications

- 37 I will include the financial implications of the final proposed additions to Schedule 2 when I return to Cabinet for the next stage of the review. These are likely to be minimal and will only impact the Work Account (funded by levies paid by employers).

Legislative Implications

- 38 There are no legislative implications arising from the proposed release of the discussion document.
- 39 Any updates to Schedule 2 will require Cabinet approval through a separate Order in Council process which will be sought in the next stage of the review.

Impact Analysis

- 40 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 41 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not yet apply to this proposal, as it is in the discussion document phase. The CIPA team will be consulted again when the proposal reaches the Cabinet paper phase and prepare a CIPA assessment.

Population Implications

- 42 Updates to Schedule 2 may enable people with WRGPDI's to access a more efficient route for AC Scheme cover, as there is an opportunity to include disease and exposure pairings which are not currently included.
- 43 There is also the potential that adding entries to Schedule 2 could raise awareness of the types of WRGPDI that ACC covers.
- 44 While the panel was asked to apply an intersectional and gender equitable lens to the review, they found insufficient evidence to be able to consider gender as a factor while undertaking evidence analysis. This is because there is little research on the types of diseases experienced by those in female-dominated industries, representative of a wider system inequity in occupational disease research.
- 45 MBIE will review Schedule 2 every five years to allow time for the evidence base to develop to support updates to the list.

Human Rights

- 46 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.

Use of external Resources

- 47 As the Schedule 2 review framework (as agreed to by Cabinet) includes obtaining independent advice from health experts, MBIE contracted Allen + Clarke in July 2023 to procure and manage the panel of independent health experts and present a final report with the panel's findings and recommendations. This contract ran from July to November 2023 and the total cost for two consultants and their medical experts was \$70,000.
- 48 The reason this stage of the review was contracted out was to maintain the independence of the panel's recommendations and ensure the evidence review was completed as a scientific evaluation, separate from any policy considerations.

Consultation

- 49 The following agencies and Crown entities have been consulted on this paper: ACC, the Treasury, WorkSafe, the Ministry of Health, Te Whatu Ora, Whaikaha, The Ministry of Social Development, The Ministry for Women, the Inland Revenue Department, the Ministry of Education, the Department of Conservation, the Department of Internal Affairs, Local Government New Zealand, the Ministry of Defence, the National Emergency Management Agency, New Zealand Police, Fire and Emergency New Zealand, and the Ministry for Primary Industries. The Department of Prime Minister and Cabinet and Te Puni Kokiri have been informed of this proposal.

Communications

- 50 If Cabinet agrees to the proposal, I intend to make a media statement announcing the consultation. The discussion document will be released on MBIE's website and ACC will also publicise the consultation document on its website and will notify relevant stakeholders of its release.

Proactive Release

- 51 I propose to proactively release this paper, along with the accompanying Cabinet minutes and relevant supporting documentation, on MBIE's website within 30 working days of the final decision being made by Cabinet subject to any appropriate redactions.

Recommendations

I recommend that the Cabinet Social Outcomes Committee:

- 1 **note** that in September 2022, Cabinet agreed to the review framework for Schedule 2 [CAB-22-MIN-0388 refers];
- 2 **note** that in January 2023 the former Minister for ACC informed the House of Representatives that a review of Schedule 2 would occur and, following my taking over of the portfolio, I agreed to continue this review;
- 3 **note** that, following public consultation and receiving final policy advice from MBIE and ACC, I intend to seek final policy decisions from Cabinet on the amendments to Schedule 2;
- 4 **approve** public consultation on all fourteen of the independent panel of health expert's recommended additions to Schedule 2;
- 5 **approve** the release of the attached discussion document titled '*Seeking feedback on the proposed additions to Schedule 2 of the Accident Compensation Act 2001*';
- 6 **note** that I have a requirement under section 336(2) of the *Accident Compensation Act 2001* to only make a recommendations to amend Schedule 2 after consulting the persons or organisations I consider appropriate and that by undertaking this public consultation I am fulfilling these requirements;
- 7 **authorise** the Minister for ACC to make minor amendments to the discussion document before release if required.

Authorised for lodgement

Hon Matt Dooney

Minister for ACC