Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) 2005

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Commencement see section 2

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Schedule 1
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The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) 2005.

(2) In this Act, the Injury Prevention, Rehabilitation, and Compensation Act 2001 is called "the principal Act".

2 Commencement

(1) Sections 3(3), (4), and (6), 4, 5, 6, 7, 9 to 20, 24 to 33, 35, 36 to 43, 46 to 49, 52(2), 55, 56(1), 59, 60(1) to (5) and (7), Schedule 1, and Part 2 of Schedule 2 come into force on 1 July 2005.

(2) Sections 3(2), (5), and (7), 52(1), and 53 come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions and different purposes, including different dates for different repeals set out in section 3(2)(a) to (t).

(3) Sections 44 and 56(2) come into force on 1 April 2006.

(4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Substantive amendments to principal Act

3 Interpretation

(1) Section 6(1) of the principal Act is amended by repealing the definition of **acupuncturist**, and substituting the following definition:

"**acupuncturist** means—

"(a) a member of the New Zealand Register of Acupuncturists Incorporated; or

"(b) a member of the New Zealand Acupuncture Standards Authority Incorporated who—

"(i) is a qualified health professional registered to practise in some other medical discipline in New Zealand who holds a recognised postgraduate qualification in acupuncture of a minimum of 120 credits (1 year full time) at Level 8 or above on the New Zealand Register of Quality Assured Qualifications; or

"(ii) holds a National Diploma in Acupuncture (Level 7) or equivalent according to the criteria for the New Zealand Register of Quality Assured Qualifications".

(2) Section 6(1) of the principal Act is amended—

(a) by repealing the definition of **acupuncturist**:

(b) by repealing the definition of **audiologist**:

(c) by repealing the definition of **chiropractor**:

(d) by repealing the definition of **clinical dental technician**:

(e) by repealing the definition of **dental technician**:

(f) by repealing the definition of **dentist**:

(g) by repealing the definition of **health practitioner**:

(h) by repealing the definition of **medical laboratory technologist**:

(i) by repealing the definition of **medical practitioner**:

(j) by repealing the definition of **medical radiation technologist**:

(k) by repealing the definition of **midwife**:

(l) by repealing the definition of **nurse**:

(m) by repealing the definition of **occupational therapist**:

(n) by repealing the definition of **optometrist**:

(o) by repealing the definition of **osteopath**:

(p) by repealing the definition of **pharmacist**:

(q) by repealing the definition of **physiotherapist**:

(r) by repealing the definition of **podiatrist**:

(s) by repealing the definition of **registered health professional**:

(t) by repealing the definition of **speech therapist**.

(3) Section 6(1) of the principal Act is amended by repealing the definitions of **medical error** and **medical mishap**.

(4) Section 6(1) of the principal Act is amended by repealing the definition of **personal injury caused by medical misadventure**.

(5) Section 6(1) of the principal Act is amended by repealing the definition of **registered health professional**, and substituting the following definition:

"**registered health professional** means a registered health professional of a type defined in regulations made under this Act".

(6) Section 6(1) of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:

"**treatment injury** has the meaning set out in section 32".

(7) Section 6(1) of the principal Act is amended by repealing the definition of **treatment provider**, and substituting the following definition:

"**treatment provider** means a treatment provider of a type defined in regulations made under this Act".

4 Earnings as an employee: what it does not include

Section 11(1) of the principal Act is amended by adding the word "; or" and adding the following paragraph:

"(h) any pension that is paid in the circumstances set out in any of the following provisions:

"(i) section DF 4 of the Income Tax Act 1994 or section DC 2 of the Income Tax Act 2004:

"(ii) section DF 8A or section DF 8B of the Income Tax Act 1994 or section DC 3 of the Income Tax Act 2004:

"(iii) section FF 17 of the Income Tax Act 1994."

5 New section 13 substituted

The principal Act is amended by repealing section 13, and substituting the following section:

"13 **Earnings of private domestic workers**

The Corporation must treat the earnings of a private domestic worker as earnings as an employee."

6 New section 19 substituted

The principal Act is amended by repealing section 19, and substituting the following section:

"19 **Key terms in this Part**

This Part uses and defines the following key terms:

"**accident** (which is defined in section 25)

"**mental injury** (which is defined in section 27)

"**motor vehicle injury** (which is defined in sections 29(2) and 35)

"**personal injury** (which is defined in section 26)

"**personal injury caused by a work-related gradual process, disease, or infection** (which is defined in section 30)

"**treatment injury** (which is defined in section 32)

"**work-related personal injury** (which is defined in sections 28 and 29(1))."

7 Cover for personal injury suffered in New Zealand (except mental injury caused by certain criminal acts)

(1) Section 20(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) personal injury that is treatment injury suffered by the person:".

(2) Section 20(2) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

"(c) treatment injury in circumstances described in section 32(7):".

(3) Section 20(2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

"(d) personal injury that is a consequence of treatment given to the person for another personal injury for which the person has cover:".

(4) Section 20(2) of the principal Act is amended by repealing paragraph (f), and substituting the following paragraph:

"(f) personal injury caused by a gradual process, disease, or infection that is treatment injury suffered by the person:".

(5) Section 20(2) of the principal Act is amended by repealing paragraph (i), and substituting the following paragraph:

"(i) personal injury that is a cardio-vascular or cerebrovascular episode that is treatment injury suffered by the person:".

8 New section 21A inserted

The principal Act is amended by inserting, after section 21, the following section:

"21A **Cover under Accident Rehabilitation and Compensation Insurance Act 1992 for mental injury caused by certain criminal acts**

"(1) This section applies to persons who suffered personal injury that is mental or nervous shock suffered as an outcome of any act of any other person, which act—

"(a) was performed on, with, or in relation to the claimant (but not on, with, or in relation to any other person); and

"(b) was within the description of any offence listed in the First Schedule of the Accident Rehabilitation and Compensation Insurance Act 1992 (the **1992 Act**); and

"(c) was performed before 1 July 1992 (including before 1 April 1974) and was performed—

"(i) in New Zealand; or

"(ii) outside New Zealand, and the claimant was ordinarily resident in New Zealand within the meaning of the 1992 Act when the act was actually performed.

"(2) For the purpose of subsection (1),—

"(a) the personal injury is deemed to have been suffered on the date of the first treatment that the claimant received for that personal injury as that personal injury; and

"(b) that first treatment must have been received on or after 1 July 1992 and before 1 July 1999; and

"(c) the treatment must have been of a kind for which the Corporation was required or permitted to make payments either directly under regulations made under the 1992 Act or under an agreement or contract or arrangement under section 29A of the 1992 Act, irrespective of whether or not it made any payment in the particular case.

"(3) For the purposes of subsection (1), it is irrelevant—

"(a) that no person can be, or has been, charged with or convicted of the offence; or

"(b) that the alleged offender is incapable of forming criminal intent; or

"(c) whether or not the person who suffered the personal injury was ordinarily resident in New Zealand within the meaning of the 1992 Act when the personal injury is deemed to have been suffered.

"(4) Persons to whom this section applies are deemed to have had cover under the 1992 Act for the personal injury described in subsection (1), and the following provisions apply:

"(a) payments made by or through the Corporation (or a subsidiary of the Corporation) or the Department of Labour to those persons for a personal injury described in subsection (1), whether made before or after the commencement of this section, are deemed to be entitlements paid under the 1992 Act to the extent that the correct amounts were paid:

"(b) for the purpose of paragraph (a), it does not matter whether or not the payment is a payment made in the belief that section 8(3) of the 1992 Act provided cover:

"(c) entitlements available as a result of cover deemed by this section are subject to Part 13 of the Accident Insurance Act 1998 and Part 11 of the Injury Prevention, Rehabilitation, and Compensation Act 2001:

"(d) Part 5 applies to decisions made by or on behalf of the Corporation between 15 July 2003 and the commencement of this section on claims made under section 8(3) of the 1992 Act for which cover is deemed by this section, and Part 5 applies as if those decisions had been made on the date of the commencement of this section.

"(5) However, the following provisions apply to civil proceedings brought before or after the commencement of this section seeking general damages for mental or nervous shock suffered by a person as an outcome of any act described in subsection (1) (**the proceedings**):

"(a) if the plaintiff received judgment in the proceedings, in his or her favour, before the commencement of this section, the plaintiff does not have cover under this section for the injury or injuries to which the proceedings relate:

"(b) if the proceedings were filed, but not heard, before the date of introduction of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2)

2005, nothing in this section prevents the proceedings from being heard or prevents a court from awarding the plaintiff general damages for the mental or nervous shock:

"(c) if the plaintiff continues the proceedings, the plaintiff must declare to the court any payments and entitlements received from the Corporation for the personal injury for which damages are sought, and the court must take those payments and entitlements into account in awarding the plaintiff any damages:

"(d) on the date judgment is given in the proceedings, the plaintiff—

"(i) does not have cover under this section for the injury or injuries to which the proceedings relate; and

"(ii) must advise the Corporation of the judgment:

"(e) if the plaintiff loses cover by virtue of paragraph (a) or paragraph (d), the Corporation may not recover any part of an amount that is deemed by subsection (4)(a) to be an entitlement paid to the plaintiff under the 1992 Act."

9 Cover for personal injury suffered outside New Zealand (except mental injury caused by certain criminal acts)

(1) Section 22 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

"(3) A person has cover for treatment injury if he or she suffers the personal injury on or after 1 July 2005 as a result of treatment given to him or her while outside New Zealand, but only if the circumstances described in subsection (4) exist."

(2) Section 22(4)(b) of the principal Act is amended by omitting the words "medical misadventure", and substituting the word "treatment".

(3) Section 22 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

"(5) Section 38 describes how the date on which the person suffers the personal injury referred to in subsection (4)(c) is determined."

10 Accident

(1) Section 25(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

"(a) a specific event or a series of events, other than a gradual process, that—

"(i) involves the application of a force (including gravity), or resistance, external to the human body; or

"(ii) involves the sudden movement of the body to avoid a force (including gravity), or resistance, external to the body; or

"(iii) involves a twisting movement of the body:".

(2) Section 25(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:

"(b) the inhalation of any solid, liquid, gas, or foreign object on a specific occasion, which kind of occurrence does not include the inhalation of a virus, bacterium, protozoan, or fungus, unless that inhalation is the result of the criminal act of a person other than the injured person:

"(ba) the oral ingestion of any solid, liquid, gas, fungus, or foreign object on a specific occasion, which kind of occurrence does not include the ingestion of a virus, bacterium, or protozoan, unless that ingestion is the result of the criminal act of a person other than the injured person:".

11 Work-related personal injury

Section 28(5) of the principal Act is amended by omitting the words "personal injury caused by medical misadventure", and substituting the words "treatment injury as defined in section 32".

12 Personal injury caused by work-related gradual process, disease, or infection

Section 30 of the principal Act is amended by inserting, after subsection (4), the following subsection:

"(4A) This Act covers personal injury caused by a work-related gradual process, disease, or infection only if—

"(a) the exposure to the gradual process, disease, or infection actually occurred in New Zealand; or

"(b) the person concerned was ordinarily resident in New Zealand when the exposure actually occurred."

13 New sections 32 to 34 substituted

The principal Act is amended by repealing sections 32 to 34, and substituting the following sections:

"32 **Treatment injury**

"(1) **Treatment injury** means personal injury that is—

"(a) suffered by a person—

"(i) seeking treatment from 1 or more registered health professionals; or

"(ii) receiving treatment from, or at the direction of, 1 or more registered health professionals; or

"(iii) referred to in subsection (7); and

"(b) caused by treatment; and

"(c) not a necessary part, or ordinary consequence, of the treatment, taking into account all the circumstances of the treatment, including—

"(i) the person's underlying health condition at the time of the treatment; and

"(ii) the clinical knowledge at the time of the treatment.

"(2) **Treatment injury** does not include the following kinds of personal injury:

"(a) personal injury that is wholly or substantially caused by a person's underlying health condition:

"(b) personal injury that is solely attributable to a resource allocation decision:

"(c) personal injury that is a result of a person unreasonably withholding or delaying their consent to undergo treatment.

"(3) The fact that the treatment did not achieve a desired result does not, of itself, constitute **treatment injury**.

"(4) **Treatment injury** includes personal injury suffered by a person as a result of treatment given as part of a clinical trial, in

the circumstances described in subsection (5) or subsection (6).

"(5) One of the circumstances referred to in subsection (4) is where the claimant did not agree, in writing, to participate in the trial.

"(6) The other circumstance referred to in subsection (4) is where—

"(a) an ethics committee—

"(i) approved the trial; and

"(ii) was satisfied that the trial was not to be conducted principally for the benefit of the manufacturer or distributor of the medicine or item being trialled; and

"(b) the ethics committee was approved by the Health Research Council of New Zealand or the Director-General of Health at the time it gave its approval.

"(7) If a person (**person A**) suffers an infection that is a treatment injury, cover for that personal injury extends to—

"(a) person A's spouse or partner, if person A has passed the infection on directly to the spouse or partner:

"(b) person A's child, if person A has passed the infection on directly to the child:

"(c) any other third party, if person A has passed the infection on directly to that third party:

"(d) person A's child or any other third party, if—

"(i) person A has passed the infection directly to his or her spouse or partner; and

"(ii) person A's spouse or partner has then passed the infection directly to the child or third party.

"33 **Treatment**

"(1) For the purposes of determining whether a treatment injury has occurred, or when that injury occurred, **treatment** includes—

"(a) the giving of treatment:

"(b) a diagnosis of a person's medical condition:

"(c) a decision on the treatment to be provided (including a decision not to provide treatment):

"(d) a failure to provide treatment, or to provide treatment in a timely manner:

"(e) obtaining, or failing to obtain, a person's consent to undergo treatment, including any information provided to the person (or other person legally entitled to consent on their behalf if the person does not have legal capacity) to enable the person to make an informed decision on whether to accept treatment:

"(f) the provision of prophylaxis:

"(g) the failure of any equipment, device, or tool used as part of the treatment process, including the failure of any implant or prosthesis (except where the failure of the implant or prosthesis is caused by an intervening act or by fair wear and tear), whether at the time of giving treatment or subsequently:

"(h) the application of any support systems, including policies, processes, practices, and administrative systems, that—

"(i) are used by the organisation or person providing the treatment; and

"(ii) directly support the treatment.

"(2) Subsection (1) does not affect the application of the definition of **treatment** in section 6(1) for purposes other than those stated in subsection (1).

"(3) Subsection (2) is for the avoidance of doubt.

"34 **Cover for personal injury caused by medical misadventure before 1 July 2005**

"(1) This section applies to—

"(a) claims for cover for personal injury caused by medical misadventure that were lodged with the Corporation before 1 July 2005, but have not been determined; and

"(b) claims for cover for personal injury caused by medical misadventure that were declined by the Corporation before 1 July 2005, but are lodged again on or after that date as claims for cover for treatment injury (and not lodged as claims referred to in subsection (4)).

"(2) Claims lodged in the circumstances described in subsection (1) must be determined under the relevant provisions in force immediately before 1 July 2005.

"(3) Reviews and appeals must be dealt with under the relevant provisions of Part 5 in force immediately before 1 July 2005, if the decision being reviewed or appealed—

"(a) was made before 1 July 2005; or

"(b) is one to which subsection (2) applies.

"(4) Subsection (1)(b) does not apply in relation to a claimant if,—

"(a) before 1 July 2005, the Corporation declined the claimant's claim for cover for personal injury caused by medical misadventure because there was no personal injury; and

"(b) on or after 1 July 2005, the claimant lodges a claim for cover for treatment injury in respect of a personal injury that—

"(i) occurred after the decision to decline the earlier claim (whether before or after 1 July 2005); and

"(ii) arises out of the circumstances on which the earlier claim was based."

14 New section 38 substituted

The principal Act is amended by repealing section 38, and substituting the following section:

"38 **Date on which person is to be regarded as suffering treatment injury**

"(1) The date on which a person suffers a treatment injury is the date on which the person first seeks or receives treatment for the symptoms of that personal injury.

"(2) Subsection (1) applies even if it was not known, at the time the treatment was first sought or received for the symptoms, that previous treatment was the cause of the symptoms.

"(3) In subsection (1), **treatment** (where that term appears for the second time) means treatment of a type that the person is entitled to under this Act or a former Act.

"(4) This section is subject to clause 55(3) of Schedule 1 (which relates to the entitlement to lump sum compensation for treatment injuries in the circumstances described in that provision)."

15 Responsibilities of Corporation after claim lodged

Section 50 of the principal Act is amended by inserting, as subsection (2), the following subsection:

"(2) If the claim is for cover for a treatment injury, the Corporation must provide the claimant with information on the role of the Health and Disability Commissioner under the Code of Health and Disability Services Consumers' Rights."

16 Time for making claim

Section 53 of the principal Act is amended by adding the following subsection:

"(4) Despite subsection (3), if a claim is for a treatment injury, a person must lodge the claim under section 48,—

"(a) in the case of a claim for cover, within 12 months after the later of—

"(i) the date that the personal injury was first considered by a registered health professional to be a treatment injury; or

"(ii) the date that the person suffered the treatment injury (as determined under section 38):

"(b) in the case of a claim for an entitlement, within 12 months after the later of—

"(i) the date on which the need for the entitlement arose; or

"(ii) if the need for entitlement arose before the injury was diagnosed as being a treatment injury, and a claim for cover for that injury has been lodged with the Corporation, the date on which the Corporation accepted the claim for cover."

17 Steps Corporation takes to action complicated claims for cover

Section 57(1)(c) of the principal Act is amended by omitting the words "medical misadventure", and substituting the word "treatment".

18 New section 62 substituted

The principal Act is amended by repealing section 62, and substituting the following section:

"62 **Decision on claim for treatment injury**

"(1) When investigating a claim for cover for a treatment injury, the Corporation may seek clinical advice if the Corporation considers the advice will assist it in determining the claim.

"(2) Subsection (1) does not prevent the Corporation from seeking advice in other situations.

"(3) Subsection (2) is for the avoidance of doubt."

19 Corporation must give notice of decisions

Section 64 of the principal Act is amended by repealing subsection (3).

20 New section 68 substituted

(1) The principal Act is amended by repealing section 68, and substituting the following section:

"68 **Corporation provides entitlements in accordance with this Act**

"(1) The Corporation provides entitlements to claimants in accordance with this Act.

"(2) If any provision of this Act requires the Corporation to provide an entitlement (regardless of how that requirement is expressed), the Corporation is required to provide the entitlement only to the extent required by this Act.

"(3) However, the Corporation may, at its own discretion, provide an entitlement or a payment to a claimant if it is satisfied that—

"(a) the entitlement or payment could be provided but for a requirement in section 127(4) or section 129 or section 379(2), or in any of clauses 4, 13, 15, 17, 19(3)(e), 19(3)(i), 19(3)(j), 22(1), 22(2)(b), 22(2)(c), 22(2)(e), or 22(2)(f) of Schedule 1; and

"(b) the provision of the entitlement or payment would be consistent with the purpose of this Act.

"(4) The exercise of a discretion under subsection (3) is subject to section 134(1A)."

(2) To avoid doubt, the discretion under section 68(3) (as substituted by subsection (1)) applies only to the provision of entitlements for periods starting on or after the date on which this section comes into force.

21 Corporation to determine incapacity of claimant who, at time of incapacity, was earner

(1) The heading to section 103 of the principal Act is amended by omitting the words "**at time of incapacity, was earner**", and substituting the words "**at time of personal injury, was earner or on unpaid parental leave**".

(2) Section 103 of the principal Act is amended by adding the following subsections:

"(4) The references in subsections (1) and (2) to a personal injury are references to a personal injury for which the person has cover under this Act.

"(5) Subsection (4) is for the avoidance of doubt."

22 Corporation to determine incapacity of claimant who, at time of incapacity, had ceased to be an employee, was a potential earner, or had purchased weekly compensation under section 223

Section 105 of the principal Act is amended by adding the following subsections:

"(3) The references in subsection (2) to a personal injury are references to a personal injury for which the person has cover under this Act.

"(4) Subsection (3) is for the avoidance of doubt."

23 When claimant's vocational independence to be assessed

Section 109(2)(b) of the principal Act is amended by omitting the words "since the previous determination", and substituting the words "due to the injuries that were assessed in the previous vocational independence or capacity for work assessment".

24 Corporation may suspend, cancel, or decline entitlements

Section 117 of the principal Act is amended by inserting, after subsection (3), the following subsections:

"(3A) If the Corporation declines, under subsection (3), to provide an entitlement for any period, the Corporation must start providing the entitlement again if satisfied that—

"(a) subsection (3) no longer applies to the claimant; and

"(b) the claimant is eligible to the entitlement.

"(3B) The Corporation is not required to make any payment of the entitlement for the period during which it was declined under subsection (3), even though it may have started providing the entitlement again under subsection (3A). However, the Corporation may make such payment if the Corporation believes that—

"(a) exceptional circumstances exist; and

"(b) it would be inequitable to refuse to do so.

"(3C) An entitlement that has been declined for any period under subsection (3) must be provided by the Corporation, with effect from the beginning of that period, if—

"(a) the Corporation's decision to decline to provide the entitlement for that period is—

"(i) revised under section 65; or

"(ii) quashed on review or appeal; and

"(b) the claimant was otherwise entitled to receive the entitlement for that period."

25 Who may apply for review

(1) Section 134 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) However, a decision of the Corporation regarding the exercise of discretion under section 68(3) is not reviewable under Part 5."

(2) Section 134 of the principal Act is amended by repealing subsection (4) (which relates to review applications by registered health professionals or organisations).

26 How to apply for review

Section 135(3) of the principal Act is amended by inserting, after the words "subsection (2)(f) and (g)", the words "and any time frame prescribed in regulations made under section 328A for the lodgement of a review application".

27 New section 135A inserted

The principal Act is amended by inserting, after section 135, the following section:

"135A **Time frame for lodging review application where alternative dispute resolution conducted about same matter**

"(1) This section applies to a review application about a matter if an alternative dispute resolution procedure is conducted about the same matter.

"(2) A review application to which this section applies must be lodged within the relevant time frame stated in section 135(2) unless regulations made under section 328A prescribe otherwise."

28 Persons entitled to be present and heard at hearing

Section 142 of the principal Act is amended by repealing paragraphs (b) and (c) (which relate to the rights of registered health professionals or organisations at review hearings).

29 Who may appeal against review decision

Section 149 of the principal Act is amended by repealing subsection (5) (which relates to the right of appeal to a District Court of registered health professionals or organisations).

30 Application and source of funds

Section 167 of the principal Act is amended by adding the following subsection:

"(4) The funds in the Employers' Account must also be applied to meet the costs of entitlements for personal injury caused by work-related gradual process, disease, or infection if—

"(a) the employment task, or employment in the particular environment, giving rise to that personal injury was performed or occurred on or after 1 July 1999; and

"(b) the claimant was an employee when performing that task or in that environment (regardless of whether the claimant was an employee at the date on which the personal injury is regarded as having been suffered)."

31 New section 168A inserted

The principal Act is amended by inserting, after section 168, the following section:

"168A **Private domestic workers to pay levies**

"(1) A private domestic worker must pay, in accordance with this Act and regulations made under this Act, levies to fund the Employers' Account.

"(2) A levy must relate to a prescribed period.

"(3) A private domestic worker must pay the levy by the date specified for payment, whether in an invoice or another appropriate document given to the private domestic worker by the Corporation or an agent of the Corporation, being a date not less than 2 months after the date of the invoice or other appropriate document.

"(4) Levies are to be paid under this section at a rate or rates prescribed in regulations made under this Act, and must be related, in whole or in part, to the amount of earnings received for that period as a private domestic worker or deemed by regulations made under this Act to have been received for that period as a private domestic worker.

"(5) Nothing in this Act requires a private domestic worker to pay an employer levy on his or her relevant earnings that exceed the specified maximum. For the purpose of this subsection, the relevant earnings are the person's earnings as a private domestic worker together with his or her earnings as an employee (other than as a private domestic worker).

"(6) Sections 170, 171, and 173 apply to private domestic workers as if they were both the employer and the employee, and references to section 168 in those sections must, in relation to private domestic workers, be read as references to this section."

32 Employer levy not payable on earnings over specified maximum

Section 172(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) each employer may apply in writing to the Corporation for a pro rata refund of the excess levy paid, to be calculated according to the following formula:

$$\frac{a}{b} \times c$$

where—

a is the total earnings on which the levy is paid by the employer in respect of that employee

b is the total earnings on which the levy is paid by all employers in respect of that employee

c is the total excess levy paid by all employers in respect of that employee."

33 Application and source of funds

Section 192 of the principal Act is amended by adding the following subsection:

"(6) The funds in the Residual Claims Account must also be applied to meet the costs of entitlements for personal injury caused by work-related gradual process, disease, or infection if—

"(a) the employment task, or employment in the particular environment, giving rise to that personal injury was performed or occurred before 1 July 1999; and

"(b) the claimant was an employee or self-employed when performing that task or in that environment (regardless of whether the claimant was an employee or self-employed at the date on which the personal injury is regarded as having been suffered)."

34 Liability to pay Residual Claims levy

The principal Act is amended by repealing section 193(9)(b) (which relates to Residual Claims levies payable by shearing contractors).

35 Application and source of funds

Section 201 of the principal Act is amended by adding the following subsection:

"(4) The funds in the Self-Employed Work Account must also be applied to meet the costs of entitlements for personal injury caused by work-related gradual process, disease, or infection if—

"(a) the employment task, or employment in the particular environment, giving rise to that personal injury was performed or occurred on or after 1 July 1999; and

"(b) the claimant was self-employed when performing that task or in that environment (regardless of whether the

claimant was self-employed at the date on which the personal injury is regarded as having been suffered)."

36 Effect of agreement

(1) Section 210 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) A person who purchases weekly compensation under section 209, suffers personal injury in a particular cover period for which there is an agreement under section 209, and then, when that agreement no longer has effect, suffers incapacity or subsequent incapacity arising from that personal injury, is entitled to receive the following amount of weekly compensation for loss of earnings:

"(a) the amount specified in an agreement made under section 209 that is in force at the time the incapacity commences; or

"(b) the amount calculated under Schedule 1, if no agreement under section 209 exists at the time the incapacity commences."

(2) Subsection (3) applies to persons who,—

(a) before the commencement of this section, suffered personal injury in a particular cover period for which there was an agreement under section 209 of the principal Act and then, in a different cover period, suffered incapacity or subsequent incapacity arising from that personal injury; and

(b) immediately before the commencement of this section, were receiving weekly compensation for that incapacity or subsequent incapacity.

(3) Persons to whom this section applies are entitled to continue receiving weekly compensation as if subsection (1) had not been enacted.

37 Application and source of funds

Section 218(1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

"(d) a treatment injury."

38 Persons eligible to purchase weekly compensation

Section 223 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) The application may be made only by a person who—

"(a) makes the application while still in employment or within 1 month after ceasing employment; and

"(b) pays the levy when required to do so."

39 Application and source of funds

Section 227 of the principal Act is amended by omitting from subsections (1) and (3)(a) the words "medical misadventure", and substituting in each case the word "treatment".

40 Application and source of funds

(1) Section 228 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) The purpose of the Medical Misadventure Account is to finance entitlements provided under this Act in respect of—

"(a) treatment injury (other than the excluded kind of injury specified in subsection (3)); or

"(b) personal injury caused by medical misadventure for which cover was accepted before 1 July 2005 or is accepted in accordance with section 34."

(2) Section 228 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

"(3) The excluded kind of injury is treatment injury, where the treatment is provided for a work-related personal injury."

(3) Section 228(4) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

"(a) entitlements in respect of persons who have cover for treatment injury (other than the excluded kind of injury specified in subsection (3)); and".

41 Levy categories and rates

(1) Section 229(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

"(a) prescribe levies in relation to treatment injury:".

(2) Section 229(4) of the principal Act is amended by omitting the words "medical misadventure", and substituting the word "treatment".

42 Residual Claims levy and employer levy payable by employers on disposal or cessation of business or when ceasing to employ

Section 232(2) of the principal Act is amended by omitting the word "Commissioner" wherever it appears, and substituting in each case the word "Corporation".

43 Levies payable to Commissioner and Corporation by self-employed person or private domestic worker who ceases to derive earnings as such

(1) Section 233 of the principal Act is amended by omitting from the heading the words "**Commissioner and**".

(2) Section 233(1)(b) of the principal Act is amended by omitting the word "Commissioner", and substituting the word "Corporation".

44 New section 244 substituted

The principal Act is amended by repealing section 244, and substituting the following section:

"244 **Amounts of levy exempt from payment**

"(1) This section applies if—

"(a) an invoice is issued for the purpose of this Act (whether or not only for that purpose or also for the purpose of any other enactment) that shows an amount payable under this Act for a single type of levy or for 2 or more different types of levy; and

"(b) the amount invoiced for the purpose of this Act does not exceed the relevant exempt amount set by regulations made under this Act for the purpose of this section.

"(2) If this section applies,—

"(a) no person is liable to pay the amount of the levy or levies shown on the invoice for the purpose of this Act; and

"(b) no person is liable to pay any penalties under this Act in respect of non-payment of the levy or levies."

45 Management of Accounts

Section 274 of the principal Act is amended by inserting, after subsection (3), the following subsections:

"(3A) The costs of claims for personal injury caused by work-related gradual process, disease, or infection to which section 167(4) or section 192(6) or section 201(4) applies may be apportioned to the Employers' Account, the Residual Claims Account, and the Self-Employed Work Account in a way that the Corporation considers appropriate having regard to the exposure period of the claimant to the injury-causing agent.

"(3B) The Minister may, without complying with section 270(2), direct the Corporation to attribute in full, or apportion in part, to the Non-Earners' Account the costs of lump sum compensation for permanent impairment caused by gradual process, disease, or infection."

46 Disclosure of information by Corporation for benefit purposes

Section 281(1) of the principal Act is amended by adding the following paragraph:

"(c) an allowance established by regulations made under section 303 of the Education Act 1989."

47 New section 284 substituted

The principal Act is amended by repealing section 284, and substituting the following section:

"284 **Reporting of risk of harm to public**

"(1) This section applies to information collected by the Corporation in the course of processing claims—

"(a) for treatment injury; or

"(b) for personal injury of a type described in section 20(2)(d); or

"(c) for personal injury caused by medical misadventure; or

"(d) that are in the nature of claims for treatment injury, but are caused by a person who is not a registered health professional.

"(2) If the Corporation believes, from information referred to in subsection (1), there is a risk of harm to the public, the Corporation must report the risk, and any other relevant information,

to the authority responsible for patient safety in relation to the treatment that caused the personal injury."

48 Section 285 repealed

The principal Act is amended by repealing section 285 (which relates to personal injuries in the nature of medical misadventure).

49 New section 286 substituted

The principal Act is amended by repealing section 286, and substituting the following section:

"286 **Corporation to provide information to Department of Labour**

"(1) The Corporation must provide to the chief executive of the Department of Labour any information held by the Corporation under this Act that—

"(a) relates to—

"(i) employers; or

"(ii) workplaces; or

"(iii) claims for work-related personal injury; and

"(b) is of a type specified for the purpose of this section in an agreement between the Corporation and the chief executive.

"(2) The chief executive may use the information only for 1 or more of the following purposes:

"(a) to support the Department of Labour in its administration of any provisions of the relevant Acts:

"(b) to support the department's responsibilities for workforce development and employment creation:

"(c) to ensure appropriate co-ordination of activities with the Corporation and other relevant agencies.

"(3) The power conferred on the chief executive by subsection (2) includes (without limitation) power to provide information received under this section to any agency designated under section 28B of the Health and Safety in Employment Act 1992, but only for the purpose of supporting the agency's functions under that Act.

"(4) The Corporation must provide the information in accordance with the agreement with the chief executive.

"(5) In subsection (2), **relevant Acts** means—
"(a) Disabled Persons Employment Promotion Act 1960:
"(b) Employment Relations Act 2000:
"(c) Equal Pay Act 1972:
"(d) Hazardous Substances and New Organisms Act 1996:
"(e) Health and Safety in Employment Act 1992:
"(f) Holidays Act 2003:
"(g) Immigration Act 1987:
"(h) Machinery Act 1950:
"(i) Minimum Wage Act 1983:
"(j) Parental Leave and Employment Protection Act 1987:
"(k) Volunteers Employment Protection Act 1973:
"(l) Wages Protection Act 1983."

50 Service agreement for purchase of public health acute services and other health services

Section 301 of the principal Act is amended by adding the following subsections:

"(4) The service agreement may also provide for the Crown to refund to the Corporation any amount overpaid by the Corporation in a previous financial year for public health acute services.

"(5) Subsection (4) is for the avoidance of doubt."

51 Proceedings for personal injury

Section 317(4) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) any of sections 92B, 92E, 92R, 122, 122A, 122B, 123, or 124 of the Human Rights Act 1993."

52 Regulations relating to definitions

(1) Section 322(1) of the principal Act is amended by repealing paragraphs (e) and (f), and substituting the following paragraphs:

"(e) defining a type or types of registered health professional for the purposes of this Act:

"(f) defining a type or types of treatment provider for the purposes of this Act:

"(fa) defining a health occupational group or part of a health occupational group for the purposes of this Act:".

(2) Section 322(1) of the principal Act is amended by repealing paragraph (g).

(3) At any time before the commencement of subsection (1), the Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations for 1 or more of the following purposes:

(a) defining a type or types of registered health professional for the purposes of the principal Act:

(b) defining a type or types of treatment provider for the purposes of the principal Act:

(c) defining a health occupational group or part of a health occupational group for the purposes of the principal Act.

(4) The Minister may not make any recommendation under subsection (3) without first consulting the persons or organisations the Minister considers appropriate, having regard to the subject-matter of the proposed regulations.

(5) Any consultation undertaken by or on behalf of the Minister before the commencement of this subsection about the making of regulations for any purpose referred to in subsection (3) is to be treated as consultation for the purpose of subsection (4).

(6) On the commencement of subsection (1), any regulations then in force under subsection (3) continue to have effect as if they were made under section 322(1) of the principal Act.

53 Section 322A repealed

The principal Act is amended by repealing section 322A (which relates to the definition of **health practitioner**).

54 Regulations relating to rehabilitation

Section 324(2)(a) of the principal Act is amended by repealing subparagraph (ii) (which relates to the provision of copies of draft regulations relating to rehabilitation).

55 New section 328A inserted

The principal Act is amended by inserting, after section 328, the following section:

"328A **Regulations relating to alternative dispute resolution**

"(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for 1 or more of the following purposes:

"(a) setting out a framework or rules (or both) governing the conduct of alternative dispute resolution:

"(b) requiring the Corporation to pay costs to claimants at the appropriate rate or scale specified in the regulations, which costs may apply whether or not regulations are for the time being in force under paragraph (a):

"(c) prescribing the time frames for the lodging of review applications about matters under Part 5 that undergo an alternative dispute resolution procedure, which time frames may be longer (but not less) than those set out in section 135(2).

"(2) In the absence of regulations for the time being in force under subsection (1)(a), the use of alternative dispute resolution and the manner in which it is to be conducted is a matter for agreement between the Corporation and the claimant."

56 Regulations relating to levies

(1) Section 329(b) of the principal Act is amended by omitting the words "sections 193 and 202", and substituting the words "sections 168A and 193".

(2) Section 329 of the principal Act is amended by adding the following paragraph:

"(o) prescribing exempt amounts of levy for the purpose of section 244, which amounts may differ depending on whether the amount invoiced is for—

"(i) a single type of levy; or

"(ii) 2 or more different types of levies; or

"(iii) both."

57 Consultation requirements for regulations relating to levy setting

Section 331(2)(a) of the principal Act is amended by repealing subparagraph (ii) (which relates to the provision of copies of draft regulations relating to levy setting).

58 Cessation of weekly compensation under any former Act because of capacity for work

Section 369 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) An assessment of capacity to work that was commenced under a former Act and not completed before the commencement of this Act may be completed under the former Act and have effect as if it were an assessment of vocational independence under this Act."

59 New section 377 substituted

The principal Act is amended by repealing section 377, and substituting the following section:

"377 **Independence allowance for personal injury suffered before 1 July 1999**

"(1) On the commencement of this section, sections 441 and 442 of the Accident Insurance Act 1998 cease to have effect.

"(2) A person who suffered personal injury before 1 July 1999 is entitled to be assessed for an independence allowance under Part 4 of Schedule 1 of the Accident Insurance Act 1998, irrespective of when the claim for cover for the personal injury was or is lodged, subject to the modifications set out in subsection (3).

"(3) The modifications are that—

"(a) any assessment or reassessment must be done on the basis of whole-person impairment for the combined effect of all injuries suffered before 1 July 1999 for which the person has cover; and

"(b) the percentage of impairment for which any lump sum compensation was received under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982, or both, must be

deducted from the percentage of combined whole-person impairment assessed in accordance with paragraph (a); and

"(c) the independence allowance based on the first assessment is payable as from,—

"(i) in the case of a person who has received lump sum compensation under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982, or both, the date of the application for an independence allowance; or

"(ii) in any other case, the later of the date on which the claim for cover was lodged or 1 July 1992."

60 Further amendments to principal Act

(1) Schedule 1 of the principal Act is amended in the manner set out in Schedule 1.

(2) The amendments set out in Schedule 1 that relate to clauses 38, 38A, 39, 40(2), and 41 of Schedule 1 of the principal Act apply only to claims for weekly compensation that are made on or after the date of commencement of subsection (1).

(3) Clause 36(4) of Schedule 1 of the principal Act is amended by inserting, after the word "or (b)", the word "or (c)".

(4) Clause 44 of Schedule 1 of the principal Act is amended by repealing subclause (4), and substituting the following subclause:

"(4) Unless the personal injury is a motor vehicle injury, a work-related personal injury, or a treatment injury, payments under this clause come from the Earners' Account."

(5) Clause 55 of Schedule 1 of the principal Act is amended by repealing subclause (3) and substituting the following subclause:

"(3) A person who suffers treatment injury or personal injury caused by medical misadventure is not entitled to lump sum compensation for permanent impairment under this schedule if the date of the treatment which caused the personal injury was before 1 April 2002."

(6) The principal Act is amended in the manner set out in Part 1 of Schedule 2.

(7) The principal Act is amended in the manner set out in Part 2 of Schedule 2.

61 Amendments to principal Act and Injury Prevention, Rehabilitation, and Compensation Amendment Act 2005

(1) Clause 66 of Schedule 1 of the principal Act is amended by inserting, after the word "spouse's" in both places where it occurs, the words "or partner's".

(2) Clause 69 of Schedule 1 of the principal Act is amended by inserting, after the word "spouse's" in both places where it occurs, the words "or partner's".

(3) The Injury Prevention, Rehabilitation, and Compensation Amendment Act 2005 is consequentially amended by omitting, from Part 3 of the Schedule, the words "Section 66(4) and (5) and section 69(1) and (2)."

Part 2
Miscellaneous provisions

62 References to At Work Insurance Limited

(1) The Income Tax Act 1994 is amended by omitting from Schedule 18 the item "At Work Insurance Limited".

(2) The Income Tax Act 2004 is amended by omitting from Schedule 18 the item "At Work Insurance Limited".

(3) The State-Owned Enterprises (At Work Insurance Limited) Order 1999 (SR 1999/64) is revoked.

63 New Zealand Superannuation Act 2001 amended

(1) Section 7(2) of the New Zealand Superannuation Act 2001 is amended by omitting the words "clauses 25, 68, or 72 of Schedule 1 of the Accident Insurance Act 1998", and substituting the words "clause 52 or clause 68 or clause 72 of Schedule 1 of the Injury Prevention, Rehabilitation, and Compensation Act 2001".

(2) Section 15(1) of the New Zealand Superannuation Act 2001 is amended by repealing the definition of **earner premium**.

(3) Section 16(a) of the New Zealand Superannuation Act 2001 is amended by omitting the words "earner premium", and substituting the words "earner levies".

(4) Section 16 of the New Zealand Superannuation Act 2001 is amended by adding, as subsection (2), the following subsection:

"(2) In this section, **earner levies** means the levies payable under section 219(1) and (2) of the Injury Prevention, Rehabilitation, and Compensation Act 2001."

64 Revocation of spent regulations

The following regulations are revoked:

(a) the Workers' Compensation Order 1969 (SR 1969/13):

(b) the Accident Rehabilitation and Compensation Insurance (Motor Spirits Excise Duty) Order 1998 (SR 1998/271).

65 Regulations relating to levies for Employers' Account and Self-Employed Work Account

(1) This section applies to the regulations relating to Employers' Account levies, and the regulations relating to Self-Employed Work Account levies, that are in force under section 329 of the principal Act when this section comes into force.

(2) The Governor-General may, by Order in Council, make regulations amending the regulations to which this section applies for 1 or more of the following purposes:

(a) to remove references to private domestic workers from regulations relating to Self-Employed Work Account levies:

(b) to apply the regulations relating to Employers' Account levies to private domestic workers:

(c) to make any other changes necessary or desirable to make the regulations consistent with the provisions of this Act relating to private domestic workers.

(3) Neither section 330 nor section 331 of the principal Act applies to regulations made under subsection (2).

s 60(1)

Schedule 1
Amendments to Schedule 1 of principal Act

Clause 4(1)

Omit the words "is not liable to" and substitute the words "is not required to".

Clause 13

Omit from subclauses (2), (3), (4), and (5) the words "is not liable to" and substitute in each case the words "is not required to".

Clause 15

Omit from subclauses (2), (3), and (4) the words "is not liable to" and substitute in each case the words "is not required to".

Clause 17(2)

Omit the words "is not liable to" and substitute the words "is not required to".

Clause 19(3)

Omit from paragraphs (e) and (i) the words "not liable to" and substitute in each case the words "not required to".

Repeal paragraph (j) and substitute:

"(j) not required to repair or replace any home or modifications that are not insured and that are damaged."

Clause 22

Omit from subclause (1) the words "is not liable to" and substitute the words "is not required to".

Omit from subclause (2)(b) and (c) the words "not liable for" and substitute in each case the words "not required to meet".

Omit from subclause (2)(e) and (f) the words "not liable to" and substitute in each case the words "not required to".

Clause 38

Repeal and substitute:

"38 **Weekly earnings if earner had earnings as self-employed person immediately before incapacity commenced: calculations**

"(1) The weekly earnings of an earner who had earnings as a self-employed person immediately before the incapacity commenced are,—

Clause 38—continued

"(a) for the first 4 weeks after the first week of incapacity, the greater of the relevant amount calculated under subclause (2) or the amount under subclause (3):

"(b) for any period of incapacity after the 4 weeks referred to in paragraph (a), the relevant amount calculated under subclause (2).

"(2) The amounts that apply under this subclause are,—

"(a) for claimants who first commenced receiving earnings as self-employed persons in the tax year in which the incapacity commenced, the amount calculated using the following formula:

$$\frac{a}{b}$$

where—

a is the total of the claimant's earnings as an employee in the 52 weeks immediately before the incapacity commenced

b is the number of full or part weeks during which the claimant earned those earnings as an employee:

"(b) for claimants for whom the relevant year was the first year during which they received earnings as a self-employed person, the amount calculated using the following formula:

$$\frac{a + b}{c}$$

where—

a is the claimant's total earnings as an employee in the 52 weeks immediately before his or her incapacity commenced

b is the claimant's earnings as a self-employed person in the relevant year

Clause 38—continued

c is the combined number of full or part weeks during which the claimant earned those earnings as an employee and the number of weeks that the Corporation considers fairly and reasonably represents the number of weeks or part weeks during which the claimant earned those earnings as a self-employed person in the relevant year, up to a combined maximum of 52 weeks or the total number of weeks in the claimant's relevant year if the relevant year is more than 52 weeks:

"(c) for all other claimants, the amount calculated using the following formula:

$$\frac{a}{c} + \frac{b}{d}$$

where—

a is the claimant's total earnings as an employee in the 52 weeks immediately before his or her incapacity commenced

b is the claimant's earnings as a self-employed person in the relevant year

c is 52

d is the number of weeks in the relevant year.

"(3) The amount that applies under this subclause is the amount of minimum weekly earnings as determined under clause 42(3), if the claimant is an earner who is liable to pay the minimum levy set out in regulations made for the purposes of section 202.

"(4) A claimant is eligible for the greater of—

"(a) the amount calculated under subclause (2) with the inclusion of earnings as an employee in the calculation; and

"(b) the amount calculated under subclause (2) with the exclusion of earnings as an employee from the calculation.

"(5) If the claimant's weekly earnings are calculated under subclause (2) with the inclusion of his or her earnings as an employee, the claimant is not also eligible to have his or her weekly earnings calculated under clauses 33 to 36.

Clause 38—continued

"(6) This clause applies to claims for weekly compensation made on or after 1 July 2005, whether made in respect of a period of incapacity that started before the day on which this clause comes into force or that starts on or after that day.

"38A **Weekly earnings if self-employed claimant had earnings as a shareholder-employee in the relevant year**

"(1) This clause applies if the claimant—

"(a) had earnings as a self-employed person immediately before the commencement of his or her incapacity; and

"(b) did not have earnings as a self-employed person in the relevant year; and

"(c) did have earnings as a shareholder-employee in the relevant year; and

"(d) had been employed continuously even though the claimant changed from receiving earnings as a shareholder-employee to receiving earnings as a self-employed person.

"(2) The claimant's weekly earnings must be calculated under clause 38(2) using the claimant's earnings as a shareholder-employee as if they were the claimant's earnings as a self-employed person in the relevant year."

Clause 39

Repeal and substitute:

"39 **Weekly earnings if claimant had earnings as shareholder-employee immediately before incapacity commenced**

"(1) The weekly earnings of a claimant who had earnings as a shareholder-employee immediately before his or her incapacity commenced are the higher of—

"(a) the relevant amount calculated under clause 34 or clause 36, whichever is applicable; and

"(b) the relevant amount calculated under subclause (2).

"(2) The amounts to be calculated under this subclause are,—

"(a) for claimants who first commenced receiving earnings as a shareholder-employee in the tax year in which the incapacity commenced, the amount calculated using the following formula:

Clause 39—continued

$$\frac{a}{b}$$

where—

a is the total of the claimant's earnings as an employee in the 52 weeks immediately before the incapacity commenced

b is the number of full or part weeks during which the claimant earned those earnings as an employee:

"(b) for claimants for whom the relevant year was the first year during which they received earnings as a shareholder-employee, the amount calculated using the following formula:

$$\frac{a + b}{c}$$

where—

a is the claimant's total earnings as an employee in the 52 weeks immediately before his or her incapacity commenced

b is the claimant's earnings as a shareholder-employee in the relevant year

c is the combined number of full or part weeks during which the claimant earned those earnings as an employee and the number of weeks that the Corporation considers fairly and reasonably represents the number of weeks or part weeks during which the claimant earned those earnings as a shareholder-employee in the relevant year, up to a combined maximum of 52 weeks or the total number of weeks in the claimant's relevant year if the relevant year is more than 52 weeks:

"(c) for all other claimants, the amount calculated using the following formula:

$$\frac{a}{c} + \frac{b}{d}$$

where—

a is the claimant's total earnings as an employee in the 52 weeks immediately before his or her incapacity commenced

Clause 39—continued

b is the claimant's earnings as a shareholder-employee in the relevant year

c is 52

d is the number of weeks in the relevant year.

"(3) A claimant is eligible for the greater of—

"(a) the amount calculated under subclause (2) with the inclusion of earnings as an employee in the calculation; and

"(b) the amount calculated under subclause (2) with the exclusion of earnings as an employee from the calculation.

"(4) If the claimant's weekly earnings are calculated under subclause (2) with the inclusion of their earnings as an employee, the claimant is not also eligible to have his or her weekly earnings calculated under clauses 33 to 36.

"(5) If a claimant's weekly earnings as a shareholder employee are calculated under subclause (2), the same earnings cannot be used as earnings as an employee for the purposes of clauses 33 to 36.

"(6) This clause applies to claims for weekly compensation made on or after 1 July 2005, whether made in respect of a period of incapacity that started before the day on which this clause comes into force or that starts on or after that day."

Clause 40(2)

Repeal and substitute:

"(2) The claimant's weekly earnings must be calculated under clause 39(2) using the claimant's earnings as a self-employed person as if they were earnings as a shareholder-employee in the relevant year."

Clause 41

Repeal and substitute:

"41 **Calculations for multiple employment situations**

"(1) Claimants to whom clause 38 applies, and to whom clauses 33 to 36 apply because they have earnings as an employee at the time their incapacity commences, may—

"(a) have their weekly earnings calculated under clause 38 with the inclusion of their earnings as an employee; or

Clause 41—continued

"(b) have their weekly earnings calculated under clause 38 excluding their earnings as an employee, but may also have their employee earnings calculated under clauses 33 to 36 and aggregated under subclause (5).

"(2) If a claimant's weekly earnings are calculated in accordance with subclause (1)(a), the same earnings cannot be used as earnings as an employee for the purposes of any other calculation of an amount of weekly earnings.

"(3) Claimants to whom clause 39 applies, and to whom clauses 33 to 36 apply because they have earnings as an employee at the time their incapacity commences, may—

"(a) have their weekly earnings calculated under clause 39 with the inclusion of their earnings as an employee; or

"(b) have their weekly earnings calculated under clause 39 excluding their earnings as an employee, but may also have their employee earnings calculated under clauses 33 to 36 and aggregated under subclause (5).

"(4) If a claimant's weekly earnings are calculated in accordance with subclause (3)(a), the same earnings cannot be used as earnings as an employee for the purposes of any other calculation of an amount of weekly earnings.

"(5) If a claimant is not prohibited from doing so by subclause (2) or subclause (4), and would have more than 1 amount of weekly earnings from different employment situations because of the operation of clause 34 or clause 36 or clause 38 or clause 39, the claimant's weekly earnings are to be calculated by doing the relevant calculations under those clauses separately and then aggregating the results.

"(6) However, a claimant's weekly earnings calculated under clause 34 or clause 36 must not be aggregated with the claimant's weekly earnings under clause 39 if the claimant's weekly earnings under clause 39 are his or her earnings under clause 34 or clause 36."

Clause 42

Repeal subclauses (3) to (6) and substitute:

"(3) The minimum weekly earnings are—

"(a) for a person under 18 years of age, the amount as at 1 July each year which is the greater of—

Clause 42—continued

"(i) the minimum weekly wage for a person under the age of 18 years under the Minimum Wage Act 1983; or

"(ii) 125% of the rate for a single person under the age of 18 years of invalid's benefit under the Social Security Act 1964; or

"(iii) the higher of the amounts calculated under subparagraphs (i) and (ii) as at 1 July in the preceding year.

"(b) for a person over 18 years of age, the amount as at 1 July each year which is the greater of—

"(i) the minimum weekly wage for a person over the age of 18 years under the Minimum Wage Act 1983; or

"(ii) 125% of the rate for a single person over the age of 18 years of invalid's benefit under the Social Security Act 1964; or

"(iii) the higher of the amounts calculated under subparagraphs (i) and (ii) as at 1 July in the preceding year."

Clause 43(3)

Repeal paragraph (a) and substitute:

"(a) unless paragraph (b) applies, 3 months if the employee had entered into an employment agreement, or had arranged to enter into an employment agreement, before the incapacity commenced; or".

Clause 52

Omit from subclause (1)(a) the word "is" and substitute the words "first becomes".

Omit from subclause (1)(a) the word "immediately".

Insert in subclause (3), before the words "becomes entitled", the word "first".

Insert in subclause (6), before the words "becomes entitled", the word "first".

Clause 55(2)

Add:

"(c) the date on which the personal injury first resulted in the person's incapacity."

Clause 67(5)

Omit the words "is not liable to" and substitute the words "must not".

Schedule 2

s 60(6), (7)

Further amendments to principal Act

Part 1
Amendments that come into force on the day after the date of Royal assent

Section 87

Repeal subsection (2) and substitute:

"(2) The Corporation must provide the vocational rehabilitation for the minimum period necessary to achieve its purpose, but must not provide any vocational rehabilitation for longer than 3 years (which need not be consecutive)."

Section 118(1)

Omit the words "is not liable to" and substitute the words "must not".

Section 119(1)

Omit the words "is not liable to" and substitute the words "must not".

Section 120(1)

Omit the words "is not liable to" and substitute the words "must not".

Section 121(1)

Omit the words "is not liable to" and substitute the words "must not".

Section 127

Omit from subsections (1), (2), and (3) the words "is not liable to" and substitute in each case the words "must not".

Section 128

Omit the words "is not liable to" and substitute the words "must not".

Section 167

Insert in subsection (1), after the words "to employees", the words "and private domestic workers".

Omit from subsection (2)(a) the expression "section 168" and substitute the words "sections 168 and 168A".

Insert in subsection (3)(a), after the words "of employees", the words "and private domestic workers".

Part 1—*continued*

Section 169(2)

Omit the expression "section 168" and substitute the words "sections 168 and 168A".

Section 193

Repeal subsection (8).

Add to subsection (9) the word "; and" and also add:

"(d) a private domestic worker."

Add:

"(10) Sections 195 and 196 apply to private domestic workers as if they were both the employer and the employee."

Section 200

Insert, after subsection (1):

"(1A) Nothing in this Act requires a private domestic worker to pay a Residual Claims levy on his or her relevant earnings that exceed the specified maximum. For the purpose of this subsection, the relevant earnings are the person's earnings as a private domestic worker together with his or her earnings as an employee (other than as a private domestic worker)."

Section 201

Repeal subsection (2)(b).

Repeal subsection (3)(b).

Section 233

Omit from the heading the words "**or private domestic worker**".

Repeal subsection (3).

Section 235(1)

Insert in paragraph (a), after the words "self-employed persons", the words "and from private domestic workers".

Insert in paragraph (b), after the words "self-employed persons", the words ", from private domestic workers,".

Section 324(3)(d)(i)

Omit the words "is not liable to" and substitute the words "must not".

Section 327

Repeal paragraph (e).

Section 329(b)

Omit the expression "193" and substitute the expression "168A".

Part 1—*continued*

Section 379

Omit from subsection (1) the words "is not liable to" and substitute the words "must not".

Part 2
Amendments that come into force on 1 July 2005

Section 127

Omit from subsection (4) the words "is not liable to" and substitute the words "is not required to".

Section 129(2)

Omit the words "is not liable to" and substitute the words "is not required to".

Section 379(2)

Omit the words "is not liable to" and substitute the words "is not required to".

Legislative history

2 August 2004	Introduction (Bill 165–1)
5 August 2004	First reading and referral to Health Committee
17 December 2004	Reported from Health Committee (Bill 165–2)
3 May 2005	Second reading
4 May 2005	Committee of the whole House
5 May 2005	Third reading
10 May 2005	Royal assent

This Act is administered in the Department of Labour.