Accident Insurance (Transitional Provisions) Bill

Government Bill

As reported from the Committee on the Bill

Commentary

Recommendation

The Committee on the Bill has examined the Accident Insurance (Transitional Provisions) Bill and the majority of the committee recommends that it be passed with the amendments shown in the bill. The committee, by majority, supports the amendments to the bill. However, the committee is divided on whether the bill should proceed.

Conduct of the examination

The Accident Insurance (Transitional Provisions) Bill was introduced on 22 December 1999 and referred on the same day to the committee specially appointed by the House to consider the bill. The closing date for submissions was 31 January 2000. We received and considered 1057 submissions, including 167 oral submissions, from interested groups and individuals. A number of form letters were included in the submissions. Hearing of evidence took approximately 52 hours and consideration took 24 hours. The committee travelled to Auckland on two occasions to hear evidence.

We received advice from the Department of Labour and the Accident Compensation Corporation (ACC). Additional advice was

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received from the Treasury. The appointment of an independent adviser was rejected by the majority of the committee.

This commentary provides a brief summary of the purpose and key features of the bill and sets out the details of our consideration and the major issues we addressed.

Background

This Government's intention is to implement Government policy to reinstate the ACC as the sole provider of workplace accident insurance. The bill forms the first part of a two-step process to implement the Government's accident compensation, rehabilitation and injury prevention policies. The second bill, to be introduced later this year, will aim to implement the remaining aspects of Government policy (in relation to injury prevention, cover and entitlement issues).

The Government's commitment to removing the competitive model for workplace accident insurance is based on its view that a single public fund model will best deliver on the Government's objectives of improving injury prevention incentives, improving rehabilitation outcomes for injured people, and compensating injured people in a fair manner.

The committee received evidence from some industries showing a steady decline in workplace accidents from 1994 onwards.

The majority of the committee supports the Government's view that this steady improvement in workplace safety can best be met by workplace insurance being returned to a single provider, augmented with comprehensive health and safety procedures.

The bill amends the Accident Insurance Act 1998 to achieve the following Government objectives by 1 July 2000:

- Removing competition from workplace accident insurance;
- Returning responsibility to ACC for all workplace accident insurance; and
- Re-establishing the Accredited Employers Programme.

Main provisions

To manage the transition between the enactment of the bill and the date when ACC becomes responsible for insuring all employers, the bill has provisions that come into effect on two key dates—1 April 2000 and 1 July 2000.

Certain aspects of the bill are intended to come into force on 1 April 2000. The intent is that the private insurance market should be limited from the earliest date possible, 1 April 2000, before being completely removed on 1 July 2000.

The following provisions will take effect from 1 April 2000:

No new insurance contracts (Clause 4)

The bill provides that no new accident insurance contracts may be written by private insurers and ACC will automatically cover all uninsured employers.

No compensation will be payable to insurers (Clause 8)

No compensation will be payable by the Crown to any person for any loss or damage arising from the enactment or operation of the bill. This will specifically preclude, for example, insurers from seeking or being granted compensation for the removal of competition.

New Employers' Account (Clause 11)

A new Employers' Account will be established. It will receive premiums from employers and will fund statutory entitlements to injured workers. The existing Self-employed Work Account and Residual Claims Account will remain in operation.

Employers' premiums to be on a fully-funded basis

As new premium regulations must be in place from 1 April, the bill will allow the statutory consultation period under the principal Act to be waived. Employers' Account premiums will be set on a fully funded basis and on an industry risk basis to ensure that cross subsidies between different types of industries with different accident risks are minimised. Individual employees will have their levy adjusted on the basis of their observed/confirmed safety management practices.

Accredited Employers Programme (Clause 12)

This programme will allow an employer, having first met the framework criteria, to enter into an agreement with ACC that the employer manage and directly fund some or all entitlements of injured employees for a set period of time.

ACC structure (Clause 14)

ACC will no longer be required to have a claims and case management subsidiary. Whether it has a subsidiary structure in place will be made discretionary, thereby allowing flexibility in how it arranges its business structures.

The following provisions will take effect from 1 July 2000:

- All existing accident insurance contracts will terminate from the close of 30 June 2000.
- Insurers will continue to manage out existing claims that occurred prior to this date (this includes incurred but not reported claims).
- ACC will automatically cover all employers and self-employed persons and private domestic workers for work-related personal injury for the cover period beyond 1 July 2000.
- Insurers will be required to refund any premiums received in advance from employers for the period after the cancellation of the contract.
- As insurers will have the responsibility to continue to manage claims incurred prior to 1 July 2000, and ACC or another registered insurer may take on insurers' liabilities, the regulatory rules around the funding of insolvencies, funding of the Regulator, and the Non-Compliers Fund will be maintained in an amended form.

Issues arising in submissions

The majority of the submitters opposed the purpose of the bill and submitted that any change must ensure that a new accident compensation system be more responsive to stakeholders than previously.

Issues relating to the second bill

We were aware that this bill was the first of two bills dealing with accident compensation issues. Many submitters contributed to the second bill and the committee agreed that these comments would be referred to the select committee at the time of the second bill.

Employers' obligations (transitional)

The bill preserves the obligations of employers to existing accident insurance contracts. Any employers who terminate their policy, or have their policy terminated, prior to 30 June 2000, have an obligation under section 175 of the Accident Insurance Act to notify their employees at least 10 days prior to termination.

Private insurance companies' obligations

The bill preserves the liabilities of private insurance companies to meet their ongoing obligations to claimants injured (reported or incurred) during the currency of their insurance contracts. Private insurance companies can sell their future liabilities to either another private insurance company or the corporation. If it transfers, the insurer has an obligation to notify any third parties affected by the transfer. If an insurer who takes on liabilities revises an agreed Individual Rehabilitation Plan, the employer must notify any service provider affected by the change. (Sections 72 and 73 of the principal Act already require notice to the claimant)

ACC'S obligations

ACC is obliged to ensure continuity of care for claimants and can meet this obligation either by continuing existing contractual arrangements or negotiating more favourable arrangements.

Timeframe

A number of submissions commented on the time frame for implementation of the legislation. We acknowledge the restricted time frame for submissions and hearings, but also note the limited scope of the bill and the fact that the substantive issues raised are either at odds with the purpose of the bill, or are responded to either in this bill or the second bill.

Transitional issues

We are confident that the transitional issues raised in the submissions are addressed.

Compensation issues (Clauses 8 and 9)

The bill is explicit on compensation issues and we are confident, given the lack of submissions querying this, that these issues are addressed.

Employers' Account

A significant number of submissions expressed concern that the Employers' Account would be used to cross-subsidise the other ACC accounts. This query demonstrates a lack of understanding of the primary legislation and we are assured by that primary legislation that the cross-subsidisation issue is invalid.

ACC accountability and management

A number of submitters expressed concern about ACC's accountability, management and service delivery. We agreed that the new scheme must ensure that both efficient and effective service must be delivered to all stakeholders, including a change of culture of ACC's management and staff—in particular, in its speedy response to stakeholders. The efficiency and effectiveness of the scheme should be benchmarked internationally. Specific comments on future practices have been made during the course of the proceedings and will be referred to the Minister.

Application and source of fund

We agree with submissions that represented the view that with specific accounts, such as the Employers' Account, funds received must remain in that account for the sole delivery of provisions deemed suitable for that account.

Industry classification

We agree with the submissions that represented the view that in the past some industry classification under the ACC scheme has been inappropriate. We urge the Government to ensure that any such inappropriate industry classification allocation does not occur again. We further note that the individual risk adjusting of employers' levy on the basis of observed/confirmed safety management practices and accident safety record was raised by many submitters. An employer's safety management practice is addressed in this bill.

Collection of information

We endorse the collection of injury statistics as a vital tool in developing a comprehensive injury prevention strategy. We ask that the Government ensure that the continuation of the collection of such a database is viewed as such a tool.

Accredited employer issues

Many of the submissions we received represented views on the accredited employer framework. We acknowledge the Government's decision to determine the framework following the submission process and ask that the Government take these submissions into account during this determination.

Concept of social insurance

The aim of the legislation is to restore a single public model for workers' compensation. The bill is the first of two Government ACC bills, which aim to ensure that the social contract entered into by New Zealanders 26 years ago is honoured. This social contract removed the right to sue for personal injury, whilst "guaranteeing" that New Zealanders received an injury prevention and rehabilitation (including compensation) scheme which delivered, efficiently and fairly, in return for that loss of the right to sue.

It was clear to the majority of the select committee members that the notion of social insurance has been undermined, or lost sight of, over recent years, and that, for many submitters, insurance covering workplace accidents had no different meaning than that of any other type of insurance. The majority of the committee regrets this loss of understanding. This first bill is the first step in rebuilding social insurance in New Zealand.

The vision espoused in the Woodhouse report of community responsibility, comprehensive entitlement, complete rehabilitation, real compensation and administrative efficiency is a vision we share and one that we urge the Government to deliver within this bill and the next bill.

It was also clear to the majority of the committee that the original goals of the Woodhouse report, of injury prevention and rehabilitation, have not been adequately delivered. It is our clear and expressed view that these priorities must be restored. It is also understood and agreed that the efficiency of delivery of the scheme

is important, and that all stakeholders must receive such efficient service.

The bill ensures that the incentives driving the scheme are those that will also drive injury prevention and rehabilitation. It acknowledges the deficiencies in the experience rating system that both ACC in the past, and private insurance companies currently, offer. Instead it offers a direct financial incentive for employers who show safety management practices in their individual business. It provides additional recognition to employers who show commitment to rehabilitation procedures in their workplaces. The bill retains the existing level of entitlement for compensation for those who are injured in their workplace.

Accredited Employer Programme

The bill restores the Accredited Employer Programme (AEP), which was removed by the Accident Insurance Act (1998). Whilst considerable support for this re-introduction was made in submissions, concerns were expressed by submitters about it, in particular the level of entry to the scheme and the auditing and monitoring of such a scheme.

We appreciate and acknowledge that the Government determined that decisions would not be made on the framework of the AEP until submissions on the bill had been heard. We ask that the Government take note of the views of the submitters when confirming the framework. We ask the Government to ensure that the accredited employers show commitment and ability to deliver on the injury prevention and rehabilitation provisions of the legislation, and to ensure that, while it may be viewed as an employer's contract with the ACC, the workforce is actively involved in the delivery of these provisions. We also expressed concerns about the possibility of employers using this scheme as an opportunity to withdraw from their responsibilities and obligations to their workforce, and ask that the Government ensure that the framework is rigorous and eliminates this possibility.

We believe that the removal of a minimum number of employees, or grouping together of employers, as entry criteria to the AEP could be used as an opportunity to contract out claims management. This could have an adverse effect on employees as could the five-year period for the AEP. Therefore this five-year period should be seen as the upper limit and not the norm.

New provisions for the self-employed

We recommend a number of amendments to the bill, in response to submissions received. The most significant of these amendments is the inclusion of new provisions for the self-employed. This amendment provides the opportunity for self-employed people to elect in advance the level of cover for weekly compensation, including the cost of any necessary replacement labour. This issue has been one of on-going concern for many years for self-employed people, and we acknowledge and have responded to, those consistent representations.

At Work Insurance Ltd

There are new provisions to deal explicitly with At Work Insurance Ltd's transition from the workplace accident insurance market. The intention is to disestablish At Work and to transfer its assets and liabilities to ACC.

Differences in views of accident compensation delivery

We also acknowledge with regret the division that occurred in proceeding with this bill. It is antagonistic to the process of comprehensive injury prevention programmes and successful rehabilitation that such division occurs. It is our wish that legislative procedures lead the change in this divisive behaviour and a further wish that the aims of the scheme, the goals of the scheme, and the delivery of the scheme are shared and delivered by all stakeholders.

Bill of Rights issues

The committee was advised that the Ministry of Justice reviewed the bill to determine any potential conflicts with the New Zealand Bill of Rights Act 1990 and did not identify any such potential conflicts.

Statistics

A number of submitters who oppose the bill presented statistics to us portraying information about accident numbers, fatality numbers, dispute numbers and employer costs. We were concerned that some mis-information was presented to the select committee on behalf of the private insurance industry, and that not all statistics were the result of genuine or serious analysis. Of even more concern to us is the fact that such mis-information is being portrayed in the media as fact. This undermines the importance of the injury prevention and

rehabilitation role of the scheme and does little to progress the important public debate.

Regulations Review Committee report

We support the amendment recommended by the Regulations Review Committee that any regulations made under clause 7 should expire after five years of the commencement of that provision.

Improvements in workplace safety

What became clear to the majority of the committee in the committee's proceedings from the evidence received was the steady drop in workplace accidents since 1994 as a direct result of the introduction of health and safety legislation. This has been the greatest and most significant factor in reducing workplace accidents.

Minority report from National Party Opposition members

Introduction

National members do not agree with the purpose of the bill. We believe there has been little evidence presented to the select committee to justify overturning the removal of competition from the 1998 Accident Insurance Act, as proposed in the transitional bill.

We have considered the points made by 1,057 submissions and rigorously questioned 169 oral submissions within the strict time constraints set down for the committee. Eighty six percent of submissions were opposed to the bill.

Time for the hearing of evidence from submitters was much too short. We considered it was difficult to fully explore the evidence presented by many submitters due to the time constraints. However, we take a position in support of the overwhelming majority of submissions that were either in whole or in part opposed to the progress of this bill.

Our members were impressed by the calibre of evidence opposing this bill, presented from such diverse groups as the business community, churches and other religious organisations, social service agencies and non-profit organisations. We were particularly impressed with the evidence from two Government owned entities, @Work

NZ, and New Zealand Post. Both expressed views opposed to the passage of the bill.

We are disappointed that we were unable to make greater use of official advice to the committee. We commend the work of the Department of Labour and the ACC for their advice to the committee but wish it recorded that our desire was to hear a perspective on a number of issues from Treasury. In the event, although Treasury was meant to provide input, we spent a very small amount of our consideration time hearing their advice. We remain unhappy that some of the advice called for was not timely in arriving. From the outset we had sought to take advice independent of government agencies but the committee decided against this.

One of the prime objectives for Government having a role in prescribing outcomes for New Zealanders who are injured at work must be to increase workplace safety, reducing the number of accidents, and reducing the severity of those accidents. We do not believe that this bill will advance that cause at all.

We did however hear considerable evidence that over the last few years where we have progressively moved to incentivised arrangements where employers see a direct benefit for keeping work places safer there has been a lowering of workplace accident statistics.

Private participation in workplace insurance provision has now been running for just nine months, yet it is our conclusion from submissions presented to the committee that the even more direct involvement of employers with the insurer, recognising the individual workplace risk, has created a significant re-emphasis on keeping workplaces safer. We agree with the many submitters who suggested that the current arrangements should be allowed to run on for another two years. Their argument in general was that nine months is too short a time to gauge any statistics of value. They further asserted anecdotal evidence was so favourable that the continuation of current arrangements would not adversely affect any worker. In fact as innovation and service become the points of difference between insurers it may materially advantage them.

Purpose

We are disappointed that the Government has chosen to move so quickly to remove competition from work place accident insurance when there was evidence to continue with the existing regime. We believe there is little evidence that a single publicly funded model

will be any better in the future than it has been in the past. Benefits to injured New Zealanders, as initially intended by Woodhouse, have subsided considerably in the last twenty odd years. This has largely been due to the primary legislation that has governed the scheme.

It was the National Government's decision in 1998 to involve the private sector in assisting with the provision of workplace accident insurance. In the short period that private insurers have had an opportunity to work alongside the Government in providing statutory accident cover it appears the financial security of those companies is such that premiums would be likely to come under considerable downward pressure.

Evidence presented to the committee by the Government's own insurer @Work indicated that if they were able to continue writing accident insurance contracts beyond 1 April 2000, the rate at which they would strike the average premium would fall below one dollar.

Ministerial statements indicate future ACC premium of $1.05 to $1.10. This is substantially above the predicted premium of @Work. We believe in any event that the suggested premiums of ACC have only been achievable due to the presence of competition. It is our view that any suggestion ACC can meet the private provider is deeply flawed. As a result of this bill there will be no private market. Thus ACC will have no domestic competitors against which they can be measured.

The real effect of the evidence presented by insurers leads us only to the conclusion that as downward premium pressure continues the opportunity would have presented for the Government to increase statutory benefits for injured New Zealanders. We do not believe that the purpose of this bill is the best way to see New Zealanders injured at work adequately compensated and rehabilitated.

No new contracts

Clause Four Part One

This part of the bill deals with the removal of competition for workplace insurance. We accept officials' advice that accident insurance as defined in this part of the bill is consistent with the definition given in the 1998 Act. We do however have a concern that this term

could indicate a contradiction to the possibility of private participation in the Accredited Employers' Scheme discussed later in this report.

ACC arrangements with insurers

Clause 6 allows the ACC or any other insurer to take on insurers' obligations by agreement. The bill requires that while private insurers may no longer offer contracts for workplace accident cover beyond 1 April 2000, the obligation that they have assumed during the preceding ten months for long-term injuries remains with them. It is right and proper that the obligation for accidents that occurred or began during this insurance period is continued. However we have concerns that in the future injured New Zealanders may need to trace gradual process conditions to this nine-month period and there would be a process of assessment of benefit entitlement from that point which would involve a private insurer. We see this as a particularly messy arrangement for working New Zealanders. We would contend that the corporation should acquire for an agreed sum, the obligations undertaken by private insurers. We accept the law will require ACC to manage any such claims.

No compensation

Clause 8 states no compensation is payable by the Crown to insurers or others who suffer various losses as a result of enactment and operation of the Act. We have a concern that New Zealand's international business reputation could be damaged by this clause. Insurers who entered the accident insurance market on 1 July 1999 did so in good faith. The law of the day allowed them to do so, and many felt obliged to offer such insurance in order to maintain their customer bases.

We acknowledge that the then Labour opposition stated that should they become government they would remove competition from such provision. We are sure the current Government would find it most irksome if every time they enacted a new piece of legislation, the Opposition simply announced their intention to repeal it and the general public gave equal if not more credence to the word of the opposition than the Government.

The private insurers acted quite properly and appropriately in entering this market according to the law of the day. It is evident from submissions that they have over the past nine months offered good

service to their clients and have a right to expect compensation for compulsory acquisition of their business.

Dissolution of @Work Insurance—new clause ten

The National opposition considers this a most inappropriate placement for provisions to wind up an SOE. We are most annoyed that the Government has chosen to include these provisions in Part One of this bill. We are left with no alternative other than to conclude that they do not wish to have any more debate in the House on this matter than they can avoid. There however are issues that should be discussed and we will be seeking extended time on the part-by-part debate in order that they are covered.

Employers' Account

Clause 11 establishes the Employers' Account. We are pleased that the new act will require that this account is to be fully funded. We agree that premiums should be set to take this into account. However we would recommend that ACC considers recent private market participation experience and recognise that all arguments suggesting that private market premiums have been lowered through loss leading has been totally debunked. As insurers told us, they were cognisant of the then Labour Opposition's intentions for nationalisation and therefore it would have been foolish for them to loss lead with the possibility of their being required to exit the market, a factor considered when they set premiums. The premiums paid by many since 1 July 1999 have been lower than those previously struck by ACC.

Rates of premiums

New section 218C enables ACC to estimate amounts of premiums to be paid. We are aware that this has in the past caused considerable difficulties for employers who have a seasonal work force and would hope that ACC may be able to develop more sophisticated methods of invoicing for premium where employers face this difficulty.

Industry classifications vs individual risk

We are pleased that the select committee has agreed with the National Party that individual risk rating for businesses is a far better

means for constructing a fair premium than the old industry classifications. These classifications have caused some embarrassing anomalies in the past, the most prominent recently pointed out by the Independent Women's Refuge, who under the old ACC regime were paying a premium at the same rate as combat soldiers. Their savings through individual risk rating by their private insurer have been considerable and we would expect that, as ACC embraces this new method of premium calculation, many small business and not-for-profit organisations will benefit.

We will be interested to see if ACC are able to develop risk rating methods as sophisticated and diverse as the private sector. It was our contention from the outset that if ACC is to be a different organisation in the year 2000 than when it last administered work place accident insurance, then they would need the green light to consider individual risk rating. We are pleased the Government agreed with us.

IRD, ACC

A new section 218F enables ACC to receive, and the IRD to pass over, information that will be useful to ACC in the operation of their business. There is however a fundamental issue of efficiency versus convenience that should be understood in relation to this clause. If the objective of getting safer work places in New Zealand is to be achieved, then those who are responsible for work places need to be involved. There is a requirement that all employers pay ACC premiums. Our contention would be that most will do so willingly because they want to have their workers covered. However in enabling ACC to simply collect relevant information like employee earning levels and employers currently operating, there could be a lessening of the relationship between the accident compensation and rehabilitation service provider and the employer. We would not want to see ACC simply acting in a perfunctory role using statutory provision for information gathering as their only means of establishing their client base. We think the more personal relationships that have started to develop during the time of private participation should be adopted and continued by ACC.

Accredited employers

We are most concerned that in the absence of a framework which would clearly set out how the new accredited employers programme

is intended to operate, there has been much misinformation and supposition about the specifics of this programme. We would contend that if the framework enables significant levels of risk sharing for extended periods of time up to sixty months, then in fact large employers will benefit considerably.

However the benefits of self-risk in the work place in our opinion should not be limited simply to large employers. We were delighted that the select committee agreed with us on this point and reference to a specified number of employees being in the framework has been removed from the bill. However we note that should the Minister, who is empowered under this bill to establish the framework choose to put in a minimum employee provision then that would not be inconsistent with any part of the bill.

We have a concern about the potential for the accredited employers' programme to eventually cover, as ACC has advised us, up to fifty percent of the work force. This would mean the remaining fifty percent of the work force would be employed by smaller work places and form a much smaller risk pool than would be the case if the accredited employer scheme were not in existence. This inevitably will create an upward pressure on premiums and we foresee a point where there are very significant advantages for large employers but only rising premiums for small employers. We hope that some of this effect might be offset by the individual work place risk assessment.

We had extensive discussions with advisors about the possibility of employers who have an accreditation agreement assuming risk for payment of all ACC benefits for a given period of time, offsetting that risk with a private insurance contract. We were assured that this Bill does not prohibit this. As we understand it an employer who has an accreditation agreement that allows 100% assumption of risk for say five years could offset that risk with a private insurance contract.

We think that undermines the concept of a single publicly funded provider. We further believe that the Accredited Employers Programme is vindication that the private sector can be involved in provision of benefits to injured New Zealanders.

We also heard that there could be up to 13 registered rehabilitation service providers working with accredited employers, to manage the rehabilitation of workers who are injured in work places covered by these schemes. This would effectively mean that apart from the monitoring and auditing function enabled in the Bill, the private

sector would be providing all services relating to accident insurance cover for a given number of businesses inside the Accredited Employers Programme.

We questioned ACC on the procedure that happens at the end of an accredited period where ACC assumes responsibility for on-going cover. We asked what would happen in the case of someone who was severely injured during the period of self risk. We were told that ACC would make an actuarial calculation about the lifetime cost of the given accident and the employer would pay that sum to ACC. We were concerned that this calculation may in fact miss the mark and not fulfil the requirements of the Bill for the employer's account to be fully funded.

We are concerned that the bill does not refer to a workplace's accident history in the criteria that needs to be met before an accreditation agreement can be considered. We believe past workplace safety attitudes and records would give fair indication of commitment to future improvement and should be a factor in the AEP arrangements.

It has been most frustrating being required by Government to participate in the passing of the Bill which removes private sector involvement from accident insurance cover while at the same time enables an Accredited Employer Programme that could see considerable private sector involvement in the provision of accident insurance cover. Without greater detail of the framework our job was made all the more difficult.

We are concerned that ACC may not be able to get a satisfactory framework in place for those who are interested in participating in the Accredited Employers Programme reaching an accreditation agreement with ACC to be effective from 1 July 2000.

The National Opposition would wish to note that it was the Accredited Employers Programme and its successes that encouraged the then Government to proceed with private participation in the provision of accident cover. The previous experience with an Accredited Employer Programme clearly demonstrated that employers enjoy having a direct relationship between the cost of their premiums and the workplace safety provisions that they make for the employees.

It is our belief that it was the Accredited Employers Programme that hastened the decline of industrial accidents in New Zealand. It is further our belief that the extension of potential to risk share through the private sector participation has further assisted in reducing work

place accidents. It is our belief that an Accredited Employer Programme should proceed with the passing of this bill and we will encourage the Government to construct a framework that is flexible and enables the most innovative approaches possible to the reduction of work place accidents and most desirable rehabilitation.

New provisions for the self-employed

We are pleased that the Government is going to allow ACC to make more reasonable arrangements with self-employed New Zealanders for work related accidents. We do see though, some irony in ACC becoming a competitor with the private sector.

Most self-employed New Zealanders have income protection insurance policies with the private sector. Typically these policies will have a designated amount of benefit in the event of the insuree being unable to work through either injury or illness. The rate at which the benefit is paid is determined by the amount of premium the self-employed chooses to pay. This is a generally workable arrangement which most self-employed would be satisfied with. Enabling ACC to compete in this market is something that perplexes us.

We would have thought it more appropriate to allow self-employed New Zealanders to opt out of ACC if they are able to prove that they have adequate private protection for their work place and ordinary time accidents.

We find it amusing that in a Bill designed to remove private sector competition from ACC there is provision for ACC to compete with the private sector.

If this provision proceeds, we would recommend that the formula proposed is amended. The proposal that income is assessed nett of business costs ignores the fact that for various reasons, some New Zealanders will work for very low income as they build a business that will have a capital pay-off some time in the future.

The problem they would face with this method of calculation is that in order to maintain the progress of their capital accumulation they may well have to pay some others to operate their business at levels they themselves would not choose.

We asked ACC about this but we are not confident that they fully understood the difficulty that some self-employed would face.

We gave the example of someone who might buy a lawn mowing franchise. Typically they would pay something in the order of

$70,000 for such franchise and in many cases they will make that purchase by mortgaging the house to get the money.

Their cost of capital therefore is quite high and taken out of the gross income stream of the business would leave a very low nett annual income. Yet anyone who operates one of those franchises knows that if they work it diligently it is likely to grow and that at the time of sale there will be a capital pay back.

We believe the proposed arrangement by ACC based on income nett of business costs would in fact seriously disadvantage some self-employed.

For that reason we don't believe many self-employed New Zealanders will turn to ACC for this type of cover and we think that those who have got excited about its potential have done so without realising its severe limitations.

Conclusion

New Zealand is unique in the world in so much as we have a twenty-four hour no fault accident compensation regime. As a result we are not a litigious society. New Zealanders who become injured as a result of an accident have an expectation that they will receive weekly compensation and high quality rehabilitation. We will concede that over the years accident compensation has come under considerable pressure and that delivery of both compensation and rehabilitation may not have been to the levels desired.

It was certainly our concern in supporting the 1998 legislation that enabled private sector participation in work place accident insurance to see that a wider spreading of the obligation to provide statutory compensation would lead to lower cost and set up an environment where increased benefits were well received by both employers and employees.

During the hearing of evidence on this bill, the Society of Actuaries told the committee that as a history of private involvement grows and downward pressure on premium continues, then the actual premium increase needed to achieve increased benefits including lump sums would not be great provided there was some acceptable but reasonably tight prescription around those benefits.

We believe the concept of the State prescribing and describing the benefits and rehabilitation expectations for injured New Zealanders is a right and proper one. We do not accept though that the State

must be the deliverer of all services relating to those benefits and rehabilitation expectations.

We are told by the Government they intend introducing a second ACC bill later this year. There has been much speculation about what that bill may contain. It is almost certain though we believe it will see a return to some form of lump sum payment to injured New Zealanders. While we would reserve our position on the appropriateness of that we would make the comment that the private market was clearly setting itself up to deliver at minimal cost that type of benefit to working New Zealanders. We have no confidence that a return to a single monopoly provider will be so successful and ACC so changed and newly effective, efficient and accountable that the Government will be able to prescribe increased compensation benefits at manageable cost to New Zealanders.

Accordingly we do not support the progress of this bill.

Minority report of ACT New Zealand

Recommendation

ACT New Zealand recommends that the Accident Insurance (Transitional Provisions) Bill should not proceed.

If a majority of the House support the removal of a competitive market in workplace accident insurance and the re-establishment of a state monopoly then the Bill should be delayed to allow time for the whole scheme to be evaluated and all options considered.

Conclusion

It is clear that the three principles of prevention, rehabilitation and compensation contained in the original Woodhouse Report can be achieved through either a private, competitive market or a state monopoly provider. The question is simply which model achieves the best outcomes for workers and is the most cost effective for employers and the economy at large.

While the efforts of public education by the ACC over recent years have shown some improvement in workplace safety, it is our view that the results over the last 7 months of a competitive market have shown continued and accelerating improvements. There is no compelling reason to declare that the competitive market has failed and

therefore there is no rational reason to revert to a state run monopoly. Historically the ACC has not provided the level of service and efficiency that is currently provided by private insurers.

ACT believes that the improvements in workplace health and safety indicated by the reduction in both fatalities and time off work have come about from the strong incentives through individual work site assessment and rating. Any return to the broad industry risk groups proposed for the ACC's pricing method will reduce the incentives and is likely to erode the gains which have been made.

The intended reintroduction of the Accredited Employers Programme (AEP), while supported in principle is greeted with considerable caution. The framework details for this programme are to be contained in subsequent regulations. Submitters fear that this framework could be introduced without adequate consultation and may preclude many employers. The use of "industry" or "risk" classes without the refinement of experience rating will see a return to the risks and problems associated with cross subsidisation.

Conduct of the examination

ACT believes that the bill was rushed into the first session of the new Parliament after the Election, and submissions were invited through advertisements in the daily press during Christmas and the New Year period while many people were still on holiday.

Nevertheless over 1000 submissions were received with some 169 submitters being heard by the committee.

Some 86 percent of the submissions were opposed to the bill proceeding but the reporting date to the House of 29 February precluded adequate questioning of submitters. In addition there was inadequate time allocated for the committee to pursue issues of vital importance to the bill with officials and advisors. For example, the committee had resolved to receive advice from Treasury. That department's presence before the committee was confined to 20 minutes on the last day of consideration.

Key evidence submitted to the select committee

- It is recognised that New Zealand has a serious workplace fatality record, one of the worst in the developed world. While there has been a gradual reduction in workplace fatality claims over the last couple of years, it is ACT's view that

workplace fatality claims have halved since the introduction of the competitive model on 1 July 1999.

- The claim of cost shifting to other accident accounts in ACC was investigated and found to have no substance as the non-work account in ACC, the earners account has in fact also shown a reduction over this period. Similarly the health sector has not observed increased claims for illness treatments.
- Time off work claims have reduced by 20 percent with the introduction of the competitive model. These improvements mean that employees are recovering from their injuries faster and returning to paid employment earlier than had been the practice for many years.
- The committee heard evidence that the level of disputes from employers decisions in the competitive market was only 15 percent of what had been the situation under the ACC monopoly.
- Anecdotal evidence to the committee suggested that suppression of claims had been happening but this phenomenon was also occurring under the ACC monopoly system, particularly under the accredited employers scheme operating since 1992. It is noted that risk sharing employers paying for claims directly are still required to report accident claims to their insurer.
- Overwhelmingly the evidence showed that the annual premium savings between 20 and 70 percent were common under the competitive models. It is noted that factors such as experience rating and rebate, residual claims, risk sharing arrangements and burning clauses need to be considered for a valid comparison. These savings were made over all sectors of the economy including large corporates, small and medium size businesses, community service groups and the public sector of both central and local government agencies.
- It is our view that the international evidence makes no compelling case that overseas jurisdictions which rely on the state run monopoly are likely to be in better positions using a competitive market and private insurers for delivery; in fact on balance the available evidence suggests that state monopolies are likely to be more costly and less effective over time.

- It is our view that the evidence clearly showed that the introduction of incentive pricing based on risk assessment and experience rating has been the single biggest contributor to improved workplace safety since 1 July 1999. These features of pricing are not continued in this bill and it is therefore seen as a major retrograde step.
- The committee heard from many submitters that the private insurers were much more flexible than ACC in providing insurance arrangements to meet their particular situations, both as to benefits and payment arrangements.
- The NZIER report attached to the New Zealand Insurance Council submission showed that at the prices promised by ACC, there was a serious risk of deficits accumulating in the first four years of up to $400 million. These deficits would result in funding being diverted from other areas of priority government expenditure or we shall again see the emergence of a growing "tail" of unfunded liability.
- ACT believes that the social risks are that a return to state monopoly will result in the poor quality standards traditionally delivered by ACC and that the delivery of services to the injured workers will fall far short of the high standards which the private insurers have already set in the marketplace.
- We believe that there is justifiable concern that the ACC presents grave risk both operationally and financially to the Crown should it be unable to deliver on its promises of better service and outcomes for injured workers at a lower price than presently charged by private insurers.

Minority report of the New Zealand First Party

New Zealand First makes this minority report because of the unique position it occupies. This comes about because we opposed the 1998 Accident Insurance Bill for effectively the same reasons as Labour but now support its retention. The principle concerns at the time were, there was no provision to increase entitlements, the legislation was hastily driven, there was the perception that it would result in more litigation and that a private insurers regime would ultimately cost business and industry much more.

From the information made available to the select committee by submitters it appears:

- Entitlements can relatively easily be increased;
- The rehabilitation process is far more efficient and effective than that previously provided by ACC;
- Workplace insurance can be tailored to suit the needs of individual employers and employees;
- Private insurers have presented prompt and more caring responses to accident victims needs and requirements; and
- Costs to employers are drastically down.

The Labour/Alliance Government appears committed to abolishing the private insurers regime for two basic reasons: there is no choice for employees and the promise made to the electorate at the last election.

To revert to a single fund monopoly regime because employees under a private insurance regime allegedly have no choice in picking the insurer is an unusual response. It is particularly unusual when noting submitters from some unions stated they did not have time to shop around for a competitive price for their own workplace insurance. They simply insured with the state owned @Work although the premiums were higher than ACC's had been.

In fact, under the private insurers regime there is the ability for employees to have constructive input into both the level of insurance and selection of the insurer if the employer allows. Indeed, one submitter informed us his staff was directly involved in the selection of the insurer. Under a monopoly system the element of choice is very severely restricted.

Labour made a promise to the electorate that the 1998 bill would be repealed once it became government after the election. However that promise was qualified inasmuch statements were made in the House by various senior Labour MPs that a private insurance regime would not work for a number of reasons.

On 29 September 1998 the Hon Ruth Dyson when speaking in the second reading debate of the Accident Insurance Bill had, in part, this to say:

> *"After the election this Bill will be repealed. There is no place for private insurance companies in the provision of workplace accident compensation and rehabilitation cover. Such private provision is less efficient, more expensive, and reintroduces an adversarial and litigious nature to our workplace, which is both unhealthy and unhelpful."*

Hansard Vol. 572 Page 12649

Further, she went on to say:

> *"There is no economic or social sense in moving to competition in the provision of workplace accident compensation and rehabilitation cover. It will be expensive, inequitable, and offer no guarantee of serious competition or rehabilitation, let alone injury prevention."*
>
> Hansard Vol. 572 Page 12650

In the same debate the Hon Dr Michael Cullen said in his speech:

> *"One way or another we can be sure of something—there will be a great deal more litigation and more costs all round. The whole thing rests upon a simple single fallacy."*
>
> Hansard Vol. 572 Page 12655

Also in the same debate the Hon Pete Hodgson stated:

> *"We have ideology swamping common sense, and for that reason the incoming Labour-Alliance Government will knock this legislation on the head. We know that it is nonsense before it begins. There can be no doubt that it will need to be taken outside and shot at an early stage after the election, and we will do just that. One of the reasons that we will be doing it, and in fact the key reason we will be doing it, is that we know already from endless international experience that it will cost employers more money. We do not want that. We think that business ought to be able to get on. We think that adding to the cost of business will be bad for New Zealand enterprise, and that is one reason that we will knock this legislation on the head."*
>
> Hansard Vol. 572 Page 12660

From information tabled at the select committee New Zealand First believes none of these fears have been realised.

There have been claims that the private insurers are "loss leading"but there is no proof of that either. Indeed, the fact that many employers confidently expressed that they expected their premiums to reduce, suggests the reverse.

This is also supported by ACC's assertion that its new premiums will be in line with those charged by the private insurers.

Most of the submitters favoured the retention of the private insurers regime. Although there were several who confined their written submission to the bill, when questioned by the committee, many made it clear they preferred the current system. The vast majority

believes the current system has not had a long enough trial to be thoroughly evaluated.

One must accept these organisations know what they are doing and what is best for their respective companies and staff. Clearly the majority opinion was that financial incentives led to more efficient and effective accident prevention and thereby safer work environments. Government should listen to such people with open mind.

It is of concern to New Zealand First that these people are very largely going to have their wishes ignored.

Of concern also to New Zealand First is the lack of information about what actually will replace the current entitlement regime. It would have been preferable to have had one bill which disestablished the private insurers and which clearly detailed this new ACC entitlement regime.

For example, the potential reintroduction of lump sum payments should be confirmed (or denied) before the current regime is dismantled and a detailed costing supplied which shows how it will be funded.

Our final concern is over the apparent haste in which this whole matter is being addressed. There are many like New Zealand First, who when workplace insurance was handed to private insurers to administer, feared the worst. But it did not happen. In fact, in areas like improved preventative measures, more prompt action by case managers and insurers, better rehabilitation programmes, and reduced premiums there seems to be distinct improvements across all industries. This is according to the vast majority of submitters.

These assertions are also supported by the NZIER in its report to the NZ Insurance Council, which was made available to the select committee.

With such a record and support over so short a timeframe the system is at least worthy of a longer trial and being evaluated thoroughly. Additionally, New Zealand First is of the opinion that an efficient transition of workplace insurance back to ACC will take far longer than the time programmed. If we are correct in this assertion the likely sufferers and most inconvenienced will be accident victims.

New Zealand First sees accident insurance as an area of opportunity for improving the lot of many New Zealanders. Employment structures and technology have changed things enormously since the inception of accident compensation (on a no fault basis) in the early

70's. Now we have the opportunity to take a wider look at all the issues.

There is no doubt entitlements need to be increased in particular areas.

In summary therefore, New Zealand First is of the opinion that the best course of action for the select committee is to recommend the government:

- Leave the current regime in place (for at least a further 18 months);
- Review (and increase where necessary) accident compensation entitlements;
- Evaluate thoroughly the current regime and all additional options in order to embrace all society's concerns. This could perhaps be undertaken by a cross party, cross industry working party; and
- Implement the best option(s).

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act, — Text struck out unanimously

Struck out (majority)

Subject to this Act, — Text struck out by a majority

New (majority)

Subject to this Act, — Text inserted by a majority

〈*Subject to this Act,*〉 — Words struck out by a majority

〈Subject to this Act,〉 — Words inserted by a majority

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

Hon Dr Michael Cullen

Accident Insurance (Transitional Provisions) Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Accident Insurance (Transitional Provisions) Act **1999**.

(2) In this Act, the Accident Insurance Act 1998[1] is called "the principal Act".

[1] 1998 No 114

2 Commencement

(1) **Section 14(c)** ⟨*and Part 2 of the Schedule*⟩⟨, **Part 2 of Schedule 1, and Part 2 of Schedule 2**⟩ come into force on 1 July 2000.

New (majority)

(1A) **Section 10J** comes 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 bringing different provisions into force on different dates.

(2) The rest of this Act comes into force on 1 April 2000.

3 Purpose

The purpose of this Act is to remove the competitive provision of workplace accident insurance ⟨that was introduced by the principal Act⟩ and, instead, provide for the entire scheme to be delivered through a single public fund model, while ensuring that—

(a) claimants continue to have access to entitlements; and

(b) all persons who should be contributing to the cost of accident insurance do so; and

(c) the ⟨*Corporation*⟩ ⟨manager⟩ has the infrastructure and powers necessary for carrying out its functions (including the collection of premiums); and

(d) there is an orderly transition.

New (majority)

3A Interpretation

In this Act, unless the context otherwise requires, terms not defined in this Act but defined in the principal Act have, in this Act, the same meanings as in the principal Act.

Part 1
Removal of competition for workplace insurance

4 No new accident insurance contracts after 1 April 2000 and cancellation of contracts at close of 30 June 2000

(1) All accident insurance contracts in force at the close of 30 June 2000 are cancelled at the close of that date.

(2) An accident insurance contract that is entered into on or after 1 April 2000, or that was entered into before that date but comes into force on or after that date, has no effect.

(3) Despite **subsection (1)**,—

(a) the obligations of each party under a contract cancelled by that subsection, in respect of any period before that cancellation, continue to have effect after that cancellation; and

(b) in particular, the obligations of an insurer under a contract cancelled by that subsection, in respect of personal injury suffered before that cancellation, continue to have effect after that cancellation; and

(c) all provisions of the contract relevant to those obligations continue to have effect after that cancellation.

(4) The insurer under an accident insurance contract cancelled by **subsection (1)** must, as soon as practicable, refund any part of a premium received by the insurer in respect of the contract that relates to a period after the cancellation.

(5) The amount of any refund under **subsection (4)** must be determined—

(a) in accordance with the applicable provisions (if any) of the accident insurance contract; or

(b) if there are no such provisions, so as to reflect the respective risks of the parties; or

(c) if the parties are unable to determine the amount under **paragraph (a) or paragraph (b)**, as otherwise agreed by the parties.

5 ⟨*Corporation*⟩ ⟨Manager⟩ to provide cover

(1) On and from 1 April 2000, the ⟨*Corporation*⟩ ⟨manager⟩ provides cover and statutory entitlements under the principal Act in respect of work-related personal injury suffered on or after that date by persons who are not insured under an accident insurance contract at the ⟨*time*⟩ ⟨date⟩ of the injury.

(2) On and from 1 July 2000, the ⟨*Corporation*⟩ ⟨manager⟩ provides cover and statutory entitlements under the principal Act in respect of work-related personal injury, and all other personal injury, that occurs on or after that date.

6 ⟨*Corporation*⟩ ⟨Manager⟩ or any other insurer may take on insurer's obligations by agreement

(1) The ⟨*Corporation*⟩ ⟨manager⟩ or any other insurer may take on an insurer's obligations under an accident insurance contract by agreement with that insurer ⟨and for all purposes becomes the insurer⟩.

New (majority)

(1A) An insurer who transfers the insurer's obligations under an accident insurance contract to the manager or another insurer must give notice of the transfer to any third party who is providing services that are affected by the transfer.

(1B) If the manager or another insurer takes over another insurer's obligations under an accident insurance contract and intends to revise an agreed rehabilitation plan that has effect for the purposes of that contract, the manager or that other insurer, as the case may be, must give notice of the fact to every service provider who is affected by the change.

New (majority)

(1C) Nothing in the Privacy Act 1993 is to be regarded as preventing the disclosure of personal information to the manager or another insurer for the purposes of transferring an obligation under this section but otherwise that Act applies in respect of that personal information.

(1D) The obligations of At Work Insurance Limited under accident insurance contracts that are vested in the manager by **section 10D** are, for the purposes of **subsection (1B)** and sections 236(2), 247(4), 281A, 282(2) and (3), and 299(2) and (3) of the principal Act, to be regarded as having been taken on by the manager in accordance with **subsection (1)**.

(2) This section overrides any provision to the contrary in any accident insurance contract.

7 Transitional regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations prescribing transitional and savings provisions required or desirable because of the coming into force of this Act or provisions of it.

(2) Regulations made under **subsection (1)** may not have retrospective effect.

New (majority)

7A Expiry of section 7

Section 7 expires with the close of 31 March 2003.

8 No compensation for enactment of this Act

No compensation is payable by the Crown to any person for any loss or damage, or any taxation liability, arising from the enactment or operation of this Act.

9 No compensation for technical redundancy, etc

(1) This section applies if the whole or part of the business of a company that, before the commencement of this section, was a wholly-owned subsidiary of the ⟨*Corporation*⟩ ⟨manager⟩

is transferred to the ⟨*Corporation*⟩ ⟨manager⟩ (whether or not as a result of the liquidation of the company).

(2) An employee of the company who transfers to the ⟨*Corporation*⟩ ⟨manager⟩ on terms and conditions of employment that are no less favourable than the terms and conditions of employment applying to the employee immediately before the transfer is not entitled to any compensation for redundancy or any severance payment solely because—

(a) the position held by the person in the company has ceased to exist; or

(b) the person has ceased to be an employee of the company.

(3) No director of the company who ceases to hold office as such as a result of the transfer of the whole or part of the company's business is entitled to any compensation for ceasing to hold that office.

10 Effect of ⟨*this Part*⟩ ⟨sections 4 to 9⟩

⟨*This Part has*⟩ ⟨Sections 4 to 9 have⟩ effect despite anything in the principal Act or any other enactment or rule of law.

New (majority)

Disestablishment of At Work Insurance Limited

10A Interpretation of sections 10A to 10J

In this section and in **sections 10B to 10J**, unless the context otherwise requires,—

assets and **liabilities** have the same meanings as in section 29(1) of the State-Owned Enterprises Act 1986

Company means At Work Insurance Limited

excluded assets means assets of the Company that are specified as excluded assets by the shareholding Ministers by notice in the *Gazette* published before 1 July 2000

excluded liabilities means liabilities of the Company that are specified as excluded liabilities by the shareholding Ministers by notice in the *Gazette* published before 1 July 2000

New (majority)

instrument includes—

(a) any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed, or registered under any enactment; and

(b) any judgment, order, or process of a court

security means a mortgage, submortgage, or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability, whether upon demand or otherwise, present or future, and actual or contingent; and includes an agreement or undertaking to give or execute, whether upon demand or otherwise, any such security

shareholding Ministers means the Minister of Finance and the Minister of the Crown for the time being responsible for the Company

vested asset or liability means an asset or liability of the Company that is vested in the manager under **section 10D**.

10B At Work Insurance Limited to cease to be State enterprise

(1) The State-Owned Enterprises Act 1986 is amended by omitting from each of the First and Second Schedules the item "At Work Insurance Limited".

(2) Despite subsection (1), while Ministers of the Crown are shareholders in the Company on behalf of the Crown, sections 18, 19, and 22 of the State-Owned Enterprises Act 1986 continue to apply after the coming into force of this section as if—

(a) the Company were a State enterprise; and

(b) the Minister of Finance and the Minister responsible for the Company were the shareholding Ministers for the Company.

New (majority)

10C Annual report, accounts, and dividend

(1) Within 3 months (or such longer period as the shareholding Ministers may determine) after the end of the financial year ending 30 June 2000, the board of the Company must deliver to the shareholding Ministers—

(a) a report of the operations of the Company and those of its subsidiaries during that financial year; and

(b) audited consolidated financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position, and such other statements as may be necessary to show the financial position of the Company and its subsidiaries and the financial results of their operations during that financial year; and

(c) the auditor's report on those financial statements.

(2) The report under subsection (1)(a) must—

(a) contain such information as is necessary to enable an informed assessment of the operations of the Company and its subsidiaries, including a comparison of the performance of the Company and subsidiaries with such performance targets and reporting requirements as have been agreed between the shareholding Ministers and the Company; and

(b) state the dividend payable to the Crown by the Company for the financial year to which the report relates.

(3) Within 12 sitting days of receiving all the documents referred to in subsection (1), the responsible Minister for the Company must lay the documents before the House of Representatives.

10D Vesting of assets and liabilities of At Work Insurance Limited in the manager

(1) On the commencement of 1 July 2000, all assets and liabilities of the Company (other than excluded assets and excluded liabilities) vest, by virtue of this section, in the manager.

(2) The shareholding Ministers must, by notice in the *Gazette*, specify the amount that the Company must pay to the manager, or that the manager must pay to the Company, in

New (majority)

consideration for the vesting of assets and liabilities under **subsection (1)**.

10E Termination of trust deed

(1) In this section,—

trust deed means the deed dated 3 May 1999 entered into between the Company and the Trustee

Trustee means The New Zealand Guardian Trust Company Limited.

(2) The trust deed is revoked, and the floating charge and any other charges created by it are released, with effect from the end of 30 June 2000.

(3) From the end of 30 June 2000, the following liabilities of the Company to the Trustee are, to the extent that they are not satisfied by the Company, also liabilities of the Crown to the Trustee:

(a) any liability of the Company to the Trustee under the trust deed that has accrued on or before that date:

(b) any liability that, if the trust deed were not revoked by **subsection (2)**, the Company would have to the Trustee under the trust deed in respect of any matter occurring on or before that date.

10F Provisions relating to vesting of assets and liabilities

(1) Without limiting the generality of **section 10D**, the following provisions have effect on and from 1 July 2000—

(a) a reference (express or implied) to the Company in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed at any time in relation to a vested asset or liability is to be read and construed as a reference to the manager:

(b) all contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices, (whether or not in writing), entered into by, made with, given to or by, or addressed to the Company (whether alone or with any other person) in relation to a

New (majority)

vested asset or liability before 1 July 2000 and subsisting immediately before that day are, to the extent that they were previously binding on and enforceable by, against, or in favour of the Company, binding on and enforceable by, against, or in favour of the manager as fully and effectually in every respect as if, instead of the Company, the manager had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be:

(c) an instruction, order, direction, mandate, or authority given to the Company in relation to a vested asset or liability and subsisting immediately before 1 July 2000 is to be regarded as having been given to the manager:

(d) a security held by the Company as security for a vested asset or liability is to be available to the manager as security for the discharge of that asset or liability and, where the security extends to future or prospective assets or liabilities, is to be available as security for the discharge of assets or liabilities to the manager incurred on or after 1 July 2000; and, in relation to a security, the manager is to be entitled to all the rights and priorities (howsoever arising) and is to be subject to all liabilities to which the Company would have been entitled or subject if this Act had not been passed:

(e) all the rights and liabilities of the Company as bailor or bailee of documents or chattels in relation to a vested asset or liability are to be vested in and assumed by the manager:

(f) a negotiable instrument or order for payment of money in relation to a vested asset or liability which is drawn on or given to or accepted or indorsed by the Company or payable at a place of business of the Company will, unless the context otherwise requires, have the same effect on and after 1 July 2000 as if it had been drawn on or given to or accepted or indorsed by the manager instead of the Company or was payable at the place of business of the manager:

New (majority)

(g) nothing effected or authorised by **sections 10A to 10J**—

(i) is to be regarded as placing the Company, or the manager, or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or

(ii) is to be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or

(iii) is to be regarded as placing the Company, or the manager, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any assets or liabilities or (except as provided in **section 10I**) the disclosure of any information; or

(iv) will release any surety wholly or in part from all or any obligation; or

(v) will invalidate or discharge any contract or security:

(h) any action, arbitration or proceedings, or cause of action in relation to a vested asset or liability which immediately before 1 July 2000 is pending or existing by, against, or in favour of the Company or to which the Company is a party may be prosecuted, and without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of the manager.

(2) Any document (within the meaning of section 2(1) of the Evidence Amendment Act (No 2) 1980), matter, or thing in relation to a vested asset or liability, which if this Act had not been passed would have been admissible in evidence in respect of any matter for or against the Company will, on and after 1 July 2000, be admissible in evidence in respect of the same matter for or against the manager.

(3) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers is

New (majority)

obliged solely by reason of this Act to change the name of the Company to that of the manager in those books or registers or in any document.

(4) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer by the manager,—

(a) executed or purporting to be executed by the manager; and

(b) relating to any asset or liability held immediately before 1 July 2000 by the Company; and

(c) containing a recital that that asset or liability has become vested in the manager by virtue of this Act—

will, in the absence of evidence to the contrary, be sufficient proof that the asset or liability is vested in the manager.

10G Information relating to vested assets and liabilities

(1) The manager must, as soon as practicable and without charge, provide to the Company, or provide the Company with access to, any information relating to any vested asset or liability, or class of such assets or liabilities, that is requested by the Company at any time or times after 30 June 2000 for the purposes referred to in **subsection (2)** and that the manager either has in its possession or is entitled to obtain from any person.

(2) The Company may examine, investigate, and use any information referred to in **subsection (1)** for the purposes of completing its affairs and complying with its reporting and other obligations under any enactment.

10H Removal from register of insurers

The Company is removed from the register of insurers kept under section 202 of the principal Act with effect from the end of 30 June 2000.

New (majority)

10I Application of Privacy Act 1993

Nothing in this Part limits the Privacy Act 1993, except that—

(a) nothing in that Act is to be regarded as preventing the disclosure of information to the manager by virtue of the vesting of assets and liabilities by **section 10D**; and

(b) nothing in that Act is to be regarded as preventing the manager from providing to the Company, or providing the Company with access to, information under **section 10G**; and

(c) for the purposes of applying the Privacy Act 1993 to the Company, any information provided to the Company, or to which the Company has access, under **section 10G** is to be regarded as information of the Company.

10J Consequential amendments and revocation

(1) The Ombudsmen Act 1975 is amended by omitting from Part II of the First Schedule the item "At Work Insurance Limited".

(2) The Income Tax Act 1994 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 consequentially revoked.

Part 2
Amendments to Principal Act

11 New heading and sections 281A–281G inserted

The principal Act is amended by inserting, after section 281, the following heading and sections:

"Employers' Account

"281A **Application and source of funds**

"(1) The purpose of the Employers' Account is to finance statutory entitlements provided under this Act by the manager to employees for work-related personal injuries (other than entitlements funded from the Self-Employed Work Account or the Residual Claims Account).

"(2) The funds for the Employers' Account are to be derived—

"(a) from premiums payable under **section 281B**; and

"(b) from payments made to the manager in respect of obligations taken on by the manager under **section 6 of the Accident Insurance (Transitional Provisions) Act 1999** in relation to employers' accident insurance contracts.

"(3) The funds in the Employers' Account are to be applied to meet the costs of—

"(a) statutory entitlements of employees for work-related personal injuries (other than entitlements funded from the Self-Employed Work Account or the Residual Claims Account); and

New (majority)

"(aa) statutory entitlements in respect of obligations, under accident insurance contracts of employers, taken on by the manager under **section 6** of the Accident Insurance (Transitional Provisions) Act **2000**; and

"(b) administering the Account; and

New (majority)

"(ba) audits referred to in **section 281DA**; and

"(c) any other expenditure authorised by this Act.

"281B Employers to pay premiums

Struck out (majority)

"(1) Every employer who does not have an accident insurance contract as an employer must pay, in accordance with this Act and regulations made under this Act, premiums to fund the Employers' Account.

New (majority)

"(1) On and from 1 July 2000, every employer must pay, in accordance with this Act and regulations made under this Act, premiums to fund the Employers' Account.

"(1A) If at any time during the period on and from 1 April 2000 to the end of 30 June 2000 an employer does not have an accident insurance contract as an employer, the employer must pay, in accordance with this Act and regulations made under this Act, premiums to fund the Employers' Account.

"(2) A premium must relate to a prescribed period, and may be collected in advance or in arrears as specified in regulations.

"281C **Rates of premiums**

"(1) Premiums are to be paid under **section 281B** at a rate or rates prescribed from time to time in regulations made under this Act, and must be related in whole or in part to the amount of earnings paid, estimated to be paid, or deemed to have been paid by the employer to the employer's employees for that period.

"(2) The extent of funds to be derived from premiums under **section 281B** is to be calculated so that the cost of all claims under the Employers' Account is fully funded.

"(3) Regulations made on or after 1 April 2000 for the purposes of this section may apply in respect of any period commencing on or after that date.

"(4) Sections 408 and 409 do not apply to the making of regulations under any of **sections 281B to 281E** if those regulations apply to a period ending not later than 31 March 2001.

"281D **Classification of industries or risks**

"(1) Employers must be classified into industry or risk classes defined in regulations made under this Act for the purposes of setting premiums payable under **section 281B**.

"(2) A premium must be determined for each industry or risk class defined under **subsection (1)**.

"(3) Subject to this Act, the manager must decide which classification of industry or risk is appropriate in relation to any employer by whom a premium is payable.

"(4) Separate account must be kept of the amounts collected from each industry or risk class under **section 281B** and the amounts expended for the purposes of **section 281A(3)** in respect of employers within each industry or risk class.

New (majority)

"281DA **Risk adjustment of employer premiums**

"(1) A premium determined for the purposes of **section 281D** may be adjusted up or down for a particular employer by reference to the safety management practices of the employer.

"(2) Adjustments to premiums under this section are to be made in accordance with regulations made under this Act.

"(3) Regulations made for the purposes of this section must specify the basis of and procedure for making the adjustments and, in particular, must provide that—

"(a) premiums will be adjusted on the basis of audits of safety management practices; and

"(b) audits will measure safety management practices against independent New Zealand or foreign standards; and

"(c) adjustments are to be within ranges or at levels specified in the regulations; and

"(d) adjustments may be reassessed from time to time on the basis of new audits.

"(4) Section 409 (which prescribes consultation requirements for regulations relating to premium setting), except subsection (2)(a)(iv) and (v), applies in relation to the making of regulations for the purposes of this section as if the regulations prescribed rates of premiums.

"(5) Regulations made for the purposes of this section may incorporate by reference all or any part of any—

"(a) New Zealand standard; or

"(b) standard, requirement, recommended practice, rule, statute, or regulation, of any foreign government or organisation.

New (majority)

"(6) Any material incorporated in regulations by reference is to be regarded for all purposes as forming part of the regulations, but any amendment made to the material after the commencement of the regulations will not have effect until regulations have been made incorporating the amendment into the regulations.

"(7) A copy of all material incorporated in regulations by reference must be made available by the manager for inspection by the public free of charge.

"281E **Estimation of premium**

"(1) ⟨*The*⟩ ⟨If a premium is to be collected in advance, the⟩ manager may require an employer to pay a premium based on the manager's reasonable estimate of the premium payable by the employer for ⟨*a period*⟩ ⟨part or all of the prescribed period⟩.

"(2) In that event, the manager must, as soon as practicable after the end of the period, calculate the amount of premium actually payable by the employer for the ⟨*period*⟩ ⟨part or all of the prescribed period⟩ and—

"(a) refund any amount overpaid⟨, together with (if that amount exceeds $1000) interest on that amount at the rate prescribed by regulations made under this Act⟩; or

"(b) require the employer to pay any amount outstanding.

"281F **Information available to manager**

"(1) The purpose of this section is to enable the manager to—

"(a) identify employers whose employees are covered by the manager; and

"(b) set premiums payable by those employers.

"(2) The manager may, for the purposes of this section, from time to time request the Commissioner to provide a list of all employers, or of such category of employers, as the manager may specify.

"(3) The list is to include the names of the employers, their addresses and tax file numbers, and the time at which the employers became or ceased to be employers.

"(4) The manager may from time to time request the Commissioner to provide such information relating to an employer's industry classification and ⟨*employee earnings levels*⟩ ⟨the total earnings as employees of the employer's employees⟩ as the manager may specify for the purposes of this section.

"(5) The Commissioner is authorised to comply with requests made under this section.

New (majority)

"281G **Regulator may provide information to manager**

"(1) The Regulator may provide information about employers to the manager for the purpose of facilitating the assumption by the manager of the obligation to provide statutory entitlements to employees for work-related personal injuries.

"(2) Nothing in the Privacy Act 1993 is to be regarded as preventing the provision of information by the Regulator to the manager under subsection (1)."

11A New heading and sections 302A–302C inserted

The principal Act is amended by inserting, after section 302, the following heading and sections:

"*Purchase of weekly compensation by self-employed persons*

"302A **Purchase of weekly compensation by self-employed persons**

"(1) A self-employed person may apply to purchase from the manager the right to receive an agreed amount or level of weekly compensation for loss of earnings as a self-employed person in accordance with this section.

"(2) The manager must determine an amount or level of weekly compensation that fairly reflects the likely costs of incapacity for the self-employed person having regard to—

"(a) an estimate of the person's income, net of business costs; and

"(b) an estimate of the cost of any required replacement labour; and

New (majority)

"(c) such other matters as may be relevant to the particular case.

"(3) The amount determined under **subsection (2)** must not be—

"(a) less than 80% of the amount of weekly earnings specified in clause 13(a) of Schedule 1; or

"(b) more than the maximum amount of weekly compensation specified in clause 21 of Schedule 1.

"(4) The manager must specify by notice in writing to the self-employed person—

"(a) the date on which the right to receive weekly compensation will start, which may be the date on which the agreement is made or any later date; and

"(b) the period for which the agreement has effect; and

"(c) the amount which is to be treated as the weekly compensation of the person for the purpose of the agreement.

"(5) If the self-employed person agrees to the terms of the notice under **subsection (4)**, the person must give the manager a notice in writing indicating his or her agreement and the terms of the notice constitute the agreement to purchase weekly compensation under this section.

"(6) The agreement has no effect in respect of any personal injury suffered before the date the agreement is entered into.

"302B **Compensation for self-employed persons who purchase weekly compensation**

"(1) A self-employed person who purchases weekly compensation under **section 302A** is entitled to weekly compensation for the period and at the rate agreed by the person and the manager, without proof of loss of earnings, if—

"(a) the person suffers incapacity resulting from personal injury during the period for which the agreement has effect; and

"(b) the person has cover for the personal injury under Part 3.

New (majority)

"(2) A person who purchases weekly compensation under **section 302A** for loss of earnings as a self-employed person does not have any entitlement to weekly compensation for loss of earnings as a self-employed person other than under the agreement.

"302C **Premiums for self-employed persons who purchase weekly compensation**

"(1) Premiums prescribed by regulations made for the purposes of section 300 may provide for the cost of purchasing weekly compensation under **section 302A**, having regard to the variables of risk and level of compensation purchased.

"(2) A self-employed person who purchases weekly compensation under **section 302A** must pay a premium determined by the manager in accordance with the regulations.

"(3) The aim of premiums payable by persons who purchase weekly compensation under **section 302A** is that they are sufficient to fully fund the costs arising from the purchase of compensation in the relevant period.

"(4) The Self-Employed Work Account must fund weekly compensation payable to persons who purchase weekly compensation under **section 302A**.

"(5) The manager must separately account for and report on how many persons elect to purchase weekly compensation under **section 302A**, and on how much is subsequently expended on those persons."

12 New Part 10A inserted

The principal Act is amended by inserting, after Part 10, the following Part:

"Part 10A
"Accredited employers

"326A **Interpretation**

In this Part, unless the context otherwise requires,—

"**accreditation agreement** means an agreement between the ⟨*Corporation*⟩ ⟨manager⟩ and an employer entered into, or to be entered into, under the framework

"**accredited employer** means an employer who has entered into an accreditation agreement

"**claim management period**, in relation to an accredited employer and a work-related personal injury, means the period specified as such in the employer's accreditation agreement, being a period of not less than 12 months, and not more than 60 months, from the date of the injury

"**framework** means the framework established under **section 326C**.

"326B **Objectives of this Part**

The objectives of this Part are to—

"(a) promote injury prevention and rehabilitation; and

"(b) reduce work-related personal injury claim costs and premiums; and

"(c) provide benchmarks against which the extent and management of work-related personal injuries can be measured—

by allowing accredited employers to provide at their own cost statutory entitlements in relation to work-related personal injuries suffered by their employees.

"326C **Framework to be established**

"(1) The Minister must, by notice in the *Gazette*, establish a framework under which the ⟨*Corporation*⟩ ⟨manager⟩ and an employer may agree that the employer is the agent of the ⟨*Corporation*⟩ ⟨manager⟩ for the purposes of providing statutory entitlements in relation to work-related personal injuries suffered by the employer's employees.

"(2) The framework must not contain any provision that is inconsistent with any provision of this Part.

New (majority)

"(3) The Minister may, by notice in the *Gazette*, change or replace the framework, after such consultation as the Minister considers appropriate has been undertaken.

"(4) A notice in the *Gazette* under this section is to be regarded as a regulation for the purposes of the Regulations (Disallowance) Act 1989.

Compare: 1992, No 13, s 105

"326D **Accreditation agreements**

"(1) An accreditation agreement may provide that—

"(a) the employer is liable for some or all of the cost of providing statutory entitlements in relation to work-related personal injuries suffered by the employer's employees; and

"(b) in return, the ⟨*Corporation*⟩ ⟨manager⟩ will charge the employer reduced premiums in relation to those work-related personal injuries on the basis set out in the framework.

"(2) A decision of an employer in relation to a work-related personal injury that is made under an accreditation agreement is, for the purposes of this Act, to be regarded as a decision of the ⟨*Corporation*⟩ ⟨manager⟩.

"326E **Accreditation requirements**

"(1) The ⟨*Corporation*⟩ ⟨manager⟩ may not enter into an accreditation agreement with an employer unless, in the opinion of the ⟨*Corporation*⟩ ⟨manager⟩, the employer—

Struck out (majority)

"(a) has at least the number of employees specified in the framework for the purposes of this paragraph; and

"(b) has appropriate experience in managing occupational health and safety issues positively; and

"(c) has demonstrated commitment to injury prevention; and

New (majority)

"(ca) has demonstrated understanding and awareness of the importance of—

"(i) rehabilitation; and

"(ii) the employer's involvement in the rehabilitation of the employer's employees; and

"(d) has appropriate policies and procedures in place to prevent work-related personal injuries; and

"(e) has adequate resources, policies, and procedures in place to manage work-related personal injury claims; and

New (majority)

"(ea) has adequate resources, policies, and procedures in place to promote and manage rehabilitation; and

"(f) has adequate procedures in place to fulfil the reporting requirements in **section 326H**; and

"(g) is solvent and able to meet its expected financial and other obligations in relation to work-related personal injury claims⟨; and⟩

New (majority)

"(h) has consulted with the employer's employees and any representatives of those employees about the employer's ability to meet the requirements of **paragraphs (a) to (g)**.

"(2) The ⟨*Corporation*⟩ ⟨manager⟩ may revoke an accreditation agreement at any time if, in the opinion of the ⟨*Corporation*⟩ ⟨manager⟩, the employer no longer complies with the framework or no longer fulfils the requirements in **paragraphs (a) to (g)** of **subsection (1)**.

"326F **Accredited employers to provide statutory entitlements**

"(1) Every accredited employer must, on behalf of the ⟨*Corporation*⟩ ⟨manager⟩ and during the claim management period concerned,—

"(a) manage every work-related personal injury claim relating to injury suffered by an employee of the employer while the accreditation agreement is in force; and

"(b) provide any statutory entitlements, and pay the costs, specified in the accreditation agreement in relation to every such claim.

"(2) Despite **subsection (1)**, the ⟨*Corporation*⟩ ⟨manager⟩ may agree with an accredited employer to perform some or all of the employer's obligations under **subsection (1)** on such terms and conditions as the ⟨*Corporation*⟩ ⟨manager⟩ thinks fit.

"(3) If an accredited employer has ceased to exist or fails or is unable to perform its obligations under an accreditation agreement or this Act,—

"(a) those obligations must be performed by the ⟨*Corporation*⟩ ⟨manager⟩; and

"(b) except to the extent otherwise provided in the accreditation agreement, the cost of doing so will constitute a debt due to the ⟨*Corporation*⟩ ⟨manager⟩ from the accredited employer; and

"(c) for the purposes of any law relating to the ranking of creditors on an insolvency, receivership, or liquidation, that debt is, to the extent it represents payment of weekly compensation to an employee, to be regarded as ranking in priority next after wages or salary of that employee.

"(4) The obligations of an accredited employer under, and other provisions of, an accreditation agreement in respect of any work-related personal injury claim relating to injury suffered while the agreement was in force continue after the termination of the agreement as if the agreement remained in force.

"326G **Monitoring and audit**

"(1) The ⟨*Corporation*⟩ ⟨manager⟩ must establish a monitoring programme in relation to accredited employers, which may include audits of the activities of accredited employers to ascertain whether—

"(a) the requirements of this Part and of accreditation agreements relating to accredited employers have been met; and

"(b) accredited employers have provided accurate and complete reports to the ⟨*Corporation*⟩ ⟨manager⟩ in accordance with accreditation agreements.

New (majority)

"(2) Persons carrying out any audit under **subsection (1)** must, during the course of the audit, give representatives of the accredited employer, and representatives of employees of the accredited employer, an opportunity to be heard in relation to the audit.

"326H **Reporting and information**

"(1) Every accredited employer must report to the ⟨*Corporation*⟩ ⟨manager⟩ in accordance with the accreditation agreement.

"(2) All information received by an accredited employer in relation to work-related personal injury claims made by an employee of the employer under the accreditation agreement is the property of the ⟨*Corporation*⟩ ⟨manager⟩.

"(3) Every accredited employer must provide to each employee, without charge, a written statement that specifies the procedures and requirements under the accreditation agreement in relation to the lodging of claims, provision of treatment, handling of claims, assessment of incapacity, assessment of capacity for work, and dispute resolution."

Struck out (unanimous)

13 Saving for risk sharing

The repeal of section 185(3) of the principal Act by **section 14** of this Act does not affect the liability of any insurer to provide cover and statutory entitlements, if the obligations specified in any risk sharing agreement to which that insurer is a party are not carried out.

New (majority)

13 Saving for risk sharing

(1) The repeal of section 185 of the principal Act by **section 14** of this Act does not extinguish or affect the obligations of any party under a risk sharing agreement entered into under that section 185.

(2) A risk sharing agreement entered into under section 185 of the principal Act does not affect the liability of the insurer to provide cover and statutory entitlements, if the obligations specified in the risk sharing agreement are not carried out.

14 Repeals

The following provisions of the principal Act are repealed:

(a) section 2 (which relates to the purposes of the principal Act):

(b) sections 168, 173, 176, 177, 180, 182, 185, and 186 (which relate to the competitive provision of accident insurance):

(c) sections 169, 184, 188, and 189 (which also relate to the competitive provision of accident insurance):

(d) sections 200, 201, 207, 220, and 221 (which relate to ⟨*registration and prudential supervision of*⟩ insurers):

(e) section 335 (which requires the Corporation to form a company to provide claims management and network services).

15 Other amendments to principal Act

The principal Act is amended in the manner indicated in ⟨*the* ***Schedule***⟩ ⟨**Schedule 1**⟩.

New (majority)

16 Consequential amendments

(1) The enactments specified in **Schedule 2** are amended in the manner set out in that schedule.

New (majority)

(2) The regulations specified in **Schedule 3** are amended in the manner set out in that schedule.

s 15

Schedule 1
Other amendments to Accident Insurance Act 1998

Part 1
Amendments coming into force on 1 April 2000

Section 9

Repeal and substitute:

"9 **Competitive delivery of elements of scheme**

"(1) Parts 7 to 9 deal with the delivery of the scheme by insurers under accident insurance contracts in force before 1 July 2000.

"(2) Those Parts create a regulatory regime and set out rules for the delivery of the scheme by any insurer that was registered under section 201 immediately before the commencement of **Part 1** of **Schedule 1** of the **Accident Insurance (Transitional Provisions) Act 1999**, and that continues to be registered under section 204.

"(3) Those Parts also—

"(a) create a prudential regime to manage the particular risks associated with this insurance market, including exit from that market by insurers:

"(b) create an environment to ensure that persons with cover receive their entitlements in the event of a failure to insure or in the event of insurer insolvency:

"(c) identify the regulatory roles required."

Section 10

Omit from subsection (1) the words "that are not open to competition".

Repeal subsection (2).

Section 11

Omit from subsection (1) the words "non-competitive elements of the".

Repeal subsections (2) and (3).

Section 13(1)

Repeal the definition of the term **arms length**.

Insert, in its appropriate alphabetical order, the following definition:

"**Employers' Account** means the Account described in **section 281A**:".

Part 1—*continued*

Omit from paragraph (b) of the definition of the term **insurer** the words ", except for the purposes of Parts 7 to 9 and the provisions in Part 12 associated with those Parts".

Section 135

Insert, after subsection (1):

Struck out (majority)

"(1A) The Regulator, on behalf of an insured or on his or her own initiative, may apply to an insurer for a review of any decision on a claim, but may not take any further part in the review."

New (majority)

"(1A) If the Regulator considers that an insurer has not taken adequate action in relation to a claim by an insured, the Regulator may, on behalf of the insured or on his or her own initiative, apply to the insurer for a review of any of its decisions on the claim, but may not take any further part in the review."

Section 169(1)

Repeal and substitute:

"(1) Every employer must maintain in force, until the close of 30 June 2000, an accident insurance contract that was in force immediately before the commencement of **Part 1** of **Schedule 1** of the **Accident Insurance (Transitional Provisions) Act 1999**, unless the contract is terminated in accordance with section 174 or section 189."

Section 170(1)

Omit from paragraph (h) the words "it is terminated in accordance with section 174 or section 189" and substitute the words "the close of 30 June 2000 or the date on which it is terminated in accordance with section 174 or section 189, whichever is the earlier".

Section 171

Repeal subsections (1) and (2) and substitute:

"(1) Every employer must give to each person who has been employed by the employer at any time during the period commencing on 1 July 1999 and ending with the close of

Part 1—*continued*

30 June 2000, on demand by the person and without charge, a written statement that complies with this section."

Repeal subsection (4).

Section 174

Repeal paragraph (a) of subsection (1) and substitute:

"(a) Notified the insurer of the employer's election to terminate that accident insurance contract, and the insurer has notified the manager, in writing, of that election; or".

Omit from subsection (2) the word "certificate" and substitute the words "written notification".

Section 175(2)

Omit the words "the employer's proposals (in general terms) for a new accident insurance contract" and substitute the words "that cover for work-related personal injury will, on and from the date of termination, be available from the ⟨*Corporation*⟩ ⟨manager⟩".

Section 178(1)

Omit from paragraph (h) the words "it is terminated in accordance with section 174 or section 189" and substitute the words "the close of 30 June 2000 or the date on which it is terminated in accordance with section 174 or section 189, whichever is the earlier".

Section 179(1)

Repeal paragraph (a).

Section 181(1)

Omit from paragraph (h) the words "it is terminated in accordance with section 183 or section 189" and substitute the words "the close of 30 June 2000 or the date on which it is terminated in accordance with section 183 or section 189, whichever is the earlier".

Section 189(1)(b)

Insert, after the word "Regulator", the words ", and to the manager,".

Section 197

Repeal paragraph (b).

Section 237

Insert, after subsection (1):

Part 1—*continued*

"(1A) The Regulator must declare that an insurer is an insolvent insurer for the purposes of sections 238 to 261 if registration of the insurer is cancelled under section 205."

Section 279(1)

Insert, before paragraph (a):

"(aa) employees in respect of work-related personal injury; and".

Omit from paragraph (b) the words "who do not have an accident insurance contract".

Section 281(1)

Insert, before paragraph (a):

"(aa) an Employers' Account for the purposes set out in **section 281A**:".

Section 282(2)

Add "; and".

Add:

"(d) payments made to the manager in respect of obligations taken on by the manager under **section 6 of the Accident Insurance (Transitional Provisions) Act 1999** in relation to accident insurance contracts for self-employed persons for non-work injury."

New (majority)

Section 282(3)

Insert, after paragraph (d):

"(da) statutory entitlements in respect of obligations taken on by the manager under **section 6** of the Accident Insurance (Transitional Provisions) Act **2000** in relation to accident insurance contracts for self-employed persons for non-work injury; and".

Section 299

Repeal subsection (2) and substitute:

"(2) The funds for the Self-Employed Work Account are to be derived from—

"(a) premiums payable by those self-employed persons and private domestic workers under section 300; and

Part 1—*continued*

"(b) payments made to the manager in respect of obligations taken on by the manager under **section 6 of the Accident Insurance (Transitional Provisions) Act 1999** in relation to accident insurance contracts for self-employed persons for work-related personal injury."

New (majority)

Insert in subsection (3), after paragraph (b), the following paragraph:

"(ba) statutory entitlements in respect of obligations taken on by the manager under **section 6** of the Accident Insurance (Transitional Provisions) Act **2000** in relation to accident insurance contracts for self-employed persons and private domestic workers for work-related personal injury; and".

Repeal subsection (4).

Section 301

Repeal paragraph (b) of subsection (2).
Repeal subsection (3).

Section 308

Omit from subsection (2) the words "A self-employed person" and substitute the words "An employer, self-employed person,".
Add:

"(3) If an accident insurance contract terminates under a term implied by section 170(1)(h), or section 178(1)(h), or section 181(1)(h), the employer, self-employed person, or private domestic worker, as the case may be, is liable to pay to the manager premiums under this Part that are proportionate to the period of time during that year that they did not have an accident insurance contract."

Section 334

Repeal subsections (4) to (6) and substitute the following subsection:

"(4) The returns generated by the activities of any subsidiary company must be applied by the ⟨*Corporation*⟩ ⟨manager⟩ on a basis determined in a policy direction under section 339."

Part 1—*continued*

Section 364(1)

Repeal paragraph (b) and substitute:

"(b) the liability arises as a result of the insurer's obligation under this Act to provide cover and entitlements."

Part 2
Amendments coming into force on 1 July 2000

Section 187(1)(a)

Omit the word "has" and substitute the word "had".

Section 199(1)

Add the following paragraph:

"(c) Continue to meet obligations under accident insurance contracts that were in force before 1 July 2000."

Section 204

Add, as subsection (2):

"(2) Continuation of registration as an insurer applies only in relation to the insurer's obligations in respect of accident insurance contracts in force before 1 July 2000."

Section 236(2)

Repeal and substitute:

"(2) The ⟨*Corporation*⟩ ⟨manager⟩ must pay, on the amount of its outstanding liability for claims under accident insurance contracts taken on under **section 6 of the Accident Insurance (Transitional Provisions) Act 1999**, as determined by the Regulator, a levy at a rate or rates prescribed by regulations made under this Act to meet the costs of the Regulator under this Act in the previous financial year.

"(2A) Every other insurer must pay, on the amount of its outstanding liability for claims under accident insurance contracts, as determined by the Regulator, a levy at a rate or rates prescribed by regulations made under this Act to meet the costs of the Regulator under this Act in the previous financial year."

Section 247(4)

Repeal and substitute:

"(4) Every insurer must pay a contribution calculated in accordance with the following formula:

Part 2—*continued*

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

where—

"a is 1 of the following amounts:

"(i) in the case of the ⟨*Corporation*⟩ ⟨manager⟩, the amount of its outstanding liability under accident insurance contracts taken on under **section 6 of the Accident Insurance (Transitional Provisions) Act 1999** at the end of the immediately preceding financial year as determined by the Regulator:

"(ii) in the case of every other insurer, the amount of its outstanding liability for claims under accident insurance contracts at the end of the immediately preceding financial year as determined by the Regulator:

"b is the total amount of outstanding liability of all insurers under accident insurance contracts at the end of the immediately preceding financial year, as determined by the Regulator, minus the total amount of outstanding claims liability of any insolvent insurer in that year:

"c is the amount determined under subsection (2)."

Section 266

Omit from subsection (1) the words "an annual" and substitute the word "a".

Repeal subsection (2) and substitute:

"(2) The Regulator must, as soon as practicable after 30 June 2000, determine the total amount to be levied on insurers to the Fund."

Repeal paragraph (b) of subsection (3) and substitute:

"(b) the Regulator's estimate of the amount necessary to meet all claims on the Fund in future years; and

"(c) the costs of the Regulator in administering the Fund in that financial year; and

"(d) the Regulator's estimate of the costs of the Regulator in administering the Fund in future years."

Section 299(1)

Omit the words "and who do not have an accident insurance contract" in both places where they occur.

Part 2—*continued*

Section 299(3)(a)

Omit the words "(other than a self-employed person who has an accident insurance contract)".

Section 299(3)(b)

Omit the words "(other than a private domestic worker who has an accident insurance contract)".

Section 300(1)

Omit the words "who does not have an accident insurance contract".

New (majority)

s 16(1)

Schedule 2
Enactments amended

Part 1
Amendments coming into force on 1 April 2000

Armed Forces Discipline Act 1971 (1971 No 53)

Omit from section 186A(4)(b) the expression "section 14" and substitute the expression "section 394".

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

Repeal section 302 and substitute:

"302 **Application of Accident Insurance Act 1998 to young persons performing work under community work order**

When a young person performs any service or does any work for the purposes of a community work order, the following provisions apply:

"(a) if the young person suffers any personal injury for which he or she has cover under the Accident Insurance Act 1998 arising out of and in the course of performing that service or doing that work,—

"(i) the personal injury is deemed, for the purposes of section 76 of that Act only, to be a work-related personal injury; and

"(ii) the Crown is liable to pay compensation to which the young person is entitled under that section:

"(b) the cost of all other entitlements of the young person under that Act must be met from the Earners' Account in the case of a young person who is an earner and from the Non-Earners' Account in all other cases."

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Insert, after the words "section 201 of the Accident Insurance Act 1998", the words "(as it read immediately before its repeal by **section 14** of the Accident Insurance (Transitional Provisions) Act **2000**)".

New (majority)

Part 1—*continued*

Insert, after the words "section 201 of that Act", the words "(as it so read before its repeal by **section 14** of the Accident Insurance (Transitional Provisions) Act **2000**)".

Criminal Justice Act 1985 (1985 No 120)
Omit from section 28(4)(a) the words "Accident Compensation Act 1982" and substitute the words "Accident Insurance Act 1998".

Disputes Tribunals Act 1988 (1988 No 110)
Omit from section 59 the words "Accident Compensation Act 1982" and substitute the words "Accident Insurance Act 1998".

Fair Trading Act 1986 (1986 No 121)
Omit from section 43(9) the words "section 27 of the Accident Compensation Act 1982" and substitute the words "section 394 of the Accident Insurance Act 1998".

Holidays Act 1981 (1981 No 15)
Omit from section 30A(6) the words "earnings related compensation under the Accident Compensation Act 1982"and substitute the words "weekly compensation under the Accident Insurance Act 1998".

Income Tax Act 1994 (1994 No 164)
Omit from section CB 4(1)(a)(ii) the expression "section 201" and substitute the expression "section 204".
Omit from section CB 5(1)(i)(ii) the expression "section 201" and substitute the expression "section 204".
Omit from section CB 10(2)(e)(iv) the expression "section 201" and substitute the expression "section 204".
Omit from section CB 10(2)(e)(v) the expression "section 201" and substitute the expression "section 204".
Insert in section CI 1(j)(a)(i), after the words "section 13 of the Accident Insurance Act 1998", the words ", in this case being a premium or contribution that was paid in respect of an accident insurance contract that was in force before 1 July 2000".
Omit from section CI 1(ja)(ii) the words "that Act" where they secondly appear and substitute the words "the Accident Insurance Act 1998".

New (majority)

Part 1—*continued*

Insert in section ED 1A(2), after paragraph (b):

"(ba) Premiums to fund the Self-Employed Work Account under section 300:".

Insert, after section ED 1A:

"ED 1B **Year in which employers' premium deductible**

"(1) For the purposes of calculating a taxpayer's taxable income for an income year, an employers' premium that is due and payable by an employer in the income year is treated as being expenditure incurred by the taxpayer in the income year and the allowable deduction for the amounts must be computed accordingly.

"(2) If a taxpayer's balance date ends between 1 October and 6 April (inclusive), a premium that is due and payable on a date specified in Schedule 13, column E is an allowable deduction as if it were due and payable on the date specified in Schedule 13, column D.

"(3) Despite **subsection (1)**, an employers' premium is treated as being expenditure incurred by a taxpayer in the income year in which it is allowed as a deduction if—

"(a) the employers' premium was allowed as a deduction in an income year before the income year in which the premium became due and payable by the taxpayer; and

"(b) the Commissioner cannot lawfully alter the assessment for the income year because of the time bar.

"(4) In this section—

"**employers' premium** means an employers' premium to fund the Employers' Account under **section 281B** of the Accident Insurance Act 1998."

Insert in section EH 33(4)(b), after subparagraph (iv):

"(iva) the Accident Insurance Act 1998, or".

Insert in section NC 20(3)(a)(ii), after the words "section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992", the words ", or section 285 of the Accident Insurance Act 1998,".

New (majority)

Part 1—*continued*

Insert in section OB 1, in its appropriate alphabetical order, the following definition:

"**Employers' premium** is defined in **section ED 1B** for the purposes of this section."

Omit from paragraph (ib) of the definition of that term in section OB 1 the words "that Act" and substitute the words "the Accident Insurance Act 1998".

Omit from paragraph (e) of the definition of the term "specified payment" in section OB 1 the words "Accident Rehabilitation and Compensation Insurance Corporation"and substitute the words "Accident Compensation Corporation".

Insert in section OF 2(2)(h)(i), before the expression "EF 1,", the expression "ED 1B,".

Sharemilking Agreements Act 1937 (1937 No 37)

Omit from clauses 5(2) and 45 of Parts I and II of the Schedule the words "Accident Compensation Act 1982" and substitute the words "Accident Insurance Act 1998".

Social Security Act 1964 (1964 No 136)

Insert in paragraph (c)(iii) of the definition of the term **income** in section 3(1), after the words "section 185 of that Act", the words "(as it read immediately before its repeal by **section 14** of the Accident Insurance (Transitional Provisions) Act **2000**)".

Tax Administration Act 1994 (1994 No 166)

Insert in section 167(1), after the words "section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992", the words "or section 285 of the Accident Insurance Act 1998".

New (majority)

Part 2
Amendments coming into force on 1 July 2000

Income Tax Act 1994 (1994 No 164)

Omit from section CC 1(1)(bb) the words "section 188(1)(a) of the Accident Insurance Act 1998" and substitute the words "(as it read immediately before its repeal by **section 14** of the Accident Insurance (Transitional Provisions) Act **2000**)".

Insert in section CI 1(ja)(ii), after the words "section 188(1)(a) of that Act", the words "(as it read immediately before its repeal by **section 14** of the Accident Insurance (Transitional Provisions) Act **2000**)".

Insert in paragraph (ib) of the definition of the term **salary or wages** in section OB 1, after the words "section 188 (1) (a) of the Accident Insurance Act 1998", the words "(as it read immediately before its repeal by **section 14** of the Accident Insurance (Transitional Provisions) Act **2000**)".

New (majority)

Schedule 3

s 16(2)

Regulations amended

Accident Insurance (Insurers' Payments for Public Health Acute Services) Regulations 1999 (SR 1999/104)

Omit from regulation 3(2) the words "(for an insurer other than the manager)".

Add to regulation 3(2)(b) "; plus".

Add to regulation 3(2):

"(c) all employees for whom the manager is liable to provide statutory entitlements for work-related personal injuries (other than entitlements funded from the Self-Employed Work Account or the Residual Claims Account); plus

"(d) all employees in respect of whom the manager has taken on obligations under **section 6** of the Accident Insurance (Transitional Provisions) Act **2000** in relation to employers' accident insurance contracts."

Revoke regulation 3(3) and substitute:

"(3) The manager's relevant employees in a quarter are—

"(a) the self-employed persons or private domestic workers in respect of whom a premium is payable to the Self-Employed Work Account in the quarter; plus

"(b) all self-employed persons and private domestic workers in respect of whom the manager has taken on obligations under **section 6** of the Accident Insurance (Transitional Provisions) Act **2000** in relation to accident insurance contracts for self-employed persons or private domestic workers."

Insert in regulation 6(3), after paragraph (a):

"(aa) add to the amount calculated under paragraph (a) any amount calculated in respect of the manager's obligations under regulation 3; and".

Accident Insurance (Insurer Returns) Regulations 1999 (SR 1999/163)

Revoke the definition of the term **insurer** in regulation 2 and substitute:

New (majority)

"**insurer** means an insurer registered under section 201 of the Act (as at the date of its repeal by **section 14** of the Accident Insurance (Transitional Provisions) Act **2000**):".

Add to regulation 3:

"(4) For the purposes of the Accident Insurance (Transitional Provisions) Act **2000**,—

"(a) on and from 1 April 2000, the manager must give the Regulator returns relating to employers' employees covered by the manager:

"(b) on and from 1 July 2000 the manager must give the Regulator returns relating to all employers:

"(c) returns required by paragraph (a) or (b) must be given weekly in 1 single return unless the manager and the Regulator agree to some other timing:

"(d) an insurer must advise the Regulator if any of the insurer's liabilities under an accident insurance contract have been taken over by the manager or another insurer:

"(e) in respect of any period ending on or before 30 June 2000, an insurer must continue to comply with subclauses (1) to (3) until the Regulator is satisfied that the insurer has provided the correct information for all the insurer's accident insurance contracts in force during that period."

Add to regulation 4:

"(3) In respect of any period ending on or before 30 June 2000, an insurer must continue to comply with subclauses (1) and (2) until the Regulator is satisfied that the insurer has provided the correct information for all the insurer's accident insurance contracts in force during that period, whether or not any of the insurer's liabilities under those contracts has been taken over by the manager or another insurer."

Add to regulation 5:

"(2) The returns required by regulation 3(4) to be given by the manager must include the information specified in subclause (1), except that—

"(a) the premium must include both the estimated and actual premium; and

New (majority)

"(b) there is no need to provide the numbers of employees of an employer if those details are not known by the manager."

Add to regulation 6:

"(2) Nothing in subclause (1) applies to the manager."

Add to regulation 12(1):

"(g) Employers' Account."

Add to regulation 12(2)(b) "; and".

Add to regulation 12(2):

"(c) subclause 1(g)."

Omit from regulation 13(2)(a) the words "weekly in 1 single return, by the second working day of each week" and substitute the words "weekly in 1 single return unless the manager and the Regulator agree to some other timing".

Insert in regulation 15, after paragraph (h), the following paragraph:

"(ha) the actual aggregate earnings on which the actual premium was calculated:".

Legislative history

22 December 1999	Introduction, first reading, and referral to Committee on the Bill (Bill 4–1)
28 February 2000	Reported from Committee on the Bill (Bill 4–2)

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