

GOVERNMENT RESPONSE TO THE REPORT OF THE MINISTERIAL ADVISORY PANEL ON WORK-RELATED GRADUAL PROCESS, DISEASE, OR INFECTION

The cost of occupational illness in New Zealand is huge. It affects our ability to work, to contribute to our communities, and to participate fully in life. It places an enormous financial burden on our workplaces and our society, and an even greater social burden is borne by individuals, their families, and their communities. A recent report by the National Occupational Health and Safety Advisory Committee (NOHSAC) estimated that there are up to 1000 deaths from occupational disease and up to 20,000 new cases of work-related disease each year.

Given the increasing evidence around the burden of occupational disease in New Zealand it is an appropriate time to more closely examine how work-related gradual process, diseases, and infections are covered by the ACC Scheme. Consequently, the government welcomes the report of the Ministerial Advisory Panel, and would like to express its appreciation for the job that they have done.

It is the role of the ACC Scheme to ensure that people who are hurt during the course of their employment gain the treatment, rehabilitation, and compensation that will enable them to recover and participate in society to the maximum extent possible. The Panel's report highlights a number of conditions that are not covered by the Scheme because of the lack of a physical injury, the nature of the illness, or the difficulty in establishing that it was caused by the person's work.

Recommendations in the discussion paper

The Panel is a group independent from Government, set up under the ACC legislation. They must make recommendations to Government on issues related to work-related gradual process, disease, or infection, although the government is not obliged under law to implement their recommendations. The Panel has released a report that makes substantial recommendations to the extent of conditions covered by the ACC Scheme, the process for deciding cover, and the wider issue of the level of support available to all people with disability and impairment.

The government has considered the issues raised by the Panel, and has proposed a comprehensive work programme to address the Panel's concerns. In considering how to best deal with the panel's recommendations, the government will be mindful of the need to balance these recommendations with the requirements of the ACC scheme to be both fair (both for claimants and levy-payers) and sustainable. The government considers that a cautious approach is needed to ensure the best outcome for workers, employers, and society as a whole.

1 Addressing the Panel’s recommendation that Schedule 2 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (IPRC Act) be revised and updated.

The Panel’s report raises concerns about the breadth of cover for occupational diseases listed in Schedule 2 of the IPRC Act. Schedule 2 of the IPRC Act provides a list of occupational diseases and corresponding substances which are known to cause such diseases (for example, mesothelioma diagnosed as caused by exposure to asbestos). For claimants who have been diagnosed with a disease resulting from exposure to the substances listed in Schedule 2, section 30(3) of the IPRC Act provides a ‘fast track’ system for establishing cover. If a person has a personal injury that is caused by exposure to a listed substance, all that is needed to obtain cover is evidence that the claimant was exposed to the substance in employment.

The government agrees that the concerns of the Panel are legitimate, and a revision of the list of disease in Schedule 2 is required in the short term. To this end, the government has commenced a review of Schedule 2, to look at whether other occupational disease or conditions should be added. This revision will be a consultative exercise, during which key stakeholders will be given the opportunity to provide comment.

2 Addressing the Panel’s recommendation that cover for work-related gradual process, disease, or infection under section 30 of the IPRC Act should be extended to all those who suffer a work-related impairment. This would require changes to the definition of personal injury and the causation requirements set out in the IPRC Act.

Aside from the ‘fast track’ process for cover, cover for work-related gradual process, disease, or infection is usually determined by a three-part work-relatedness test that establishes whether the condition was a result of workplace exposure. Section 30(2) of the IPRC Act requires that the work-related gradual process, disease, or infection occur in the following circumstances:

- 1 the person’s employment task or employment environment has a particular characteristic (that is, a causative agent) that caused, or contributed to the cause of, the injury;
- 2 the property or characteristic is not found to any material extent in the claimant’s non-work activities or environment, and
- 3 the risk of sustaining this form of personal injury is significantly greater for people who do this particular type of employment task, or work in that environment, than for people who do not.

The government proposes doing additional work in this area to establish the extent of the problem and the feasibility and cost implications of extending cover for work-related harm.

A consultative approach will be used, with input from Business New Zealand, the New Zealand Council of Trade Unions, and other appropriate stakeholders, in addition to expert medical and legal advice.

3 Addressing the Panel's recommendation that all people who require treatment and rehabilitation services as defined in the IPRC Act should receive those services regardless of whether their need for those services arises by reason of disability, illness, or injury, and regardless of whether or not their disability, illness, or injury was caused by work events.

The government considers that what is being proposed by the Panel would constitute major changes to both the ACC Scheme and the health and welfare sectors. It is not the intention of the government to implement such a fundamental reform.

A review of long term disability support is being undertaken by the Office for Disability Issues. Should any further work be considered there would need to be opportunities for wide-ranging public debate.