Accident Compensation Amendment Act 2010

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Commencement	see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Accident Compensation Amendment Act 2010.

2 Commencement

(1) The following provisions come into force on 1 July 2010:

(a) section 6(2):

(b) section 8:

(c) section 9:

(d) sections 11 to 13:

(e) section 19:

(f) section 34:

(g) section 47(1) and Part 1 of Schedule 1:

(h) sections 53 to 61.

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

3 Principal Act amended

This Act amends the Act that was previously called the Injury Prevention, Rehabilitation, and Compensation Act 2001.

Part 1
Amendments to principal Act

4 Title repealed

The Title is repealed.

5 Name of principal Act changed

(1) On and from the commencement of this section,—

(a) the principal Act is called the Accident Compensation Act 2001; and

(b) every reference to the principal Act in any enactment, agreement, deed, instrument, application, notice, or other document must, unless the context otherwise requires, be read as a reference to the Accident Compensation Act 2001.

(2) Section 1 is consequentially amended by omitting "Injury Prevention, Rehabilitation, and Compensation" and substituting "Accident Compensation".

(3) Section 21A(4)(c) is consequentially amended by omitting "the Injury Prevention, Rehabilitation, and Compensation Act 2001" and substituting "this Act".

6 Interpretation

(1) Section 6(1) is amended by repealing the definitions of **Earners' Account Residual levy**, **Motor Vehicle Account Residual levy**, **Residual Claims Account**, and **Residual Claims levy**.

(2) The definition of **vocational independence** in section 6(1) is amended by omitting "35 hours" and substituting "30 hours".

(3) Section 6(1) is amended by inserting the following definitions in their appropriate alphabetical order:

moped has the meaning given to it in section 2(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986

motor cycle has the meaning given to it in section 2(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986

Motorcycle Safety levy means the levy payable under section 214(3)

7 Earnings as an employee: Work Account levy payable under section 168 and Residual Claims levy payable under section 193

(1) The heading to section 12 is amended by omitting "**and Residual Claims levy payable under section 193**".

(2) Section 12 is amended by omitting "and the Residual Claims levy payable under section 193".

8 Personal injury

Section 26 is amended by inserting the following subsections after subsection (1):

(1A) **Personal injury** includes any degree of hearing loss that is 6% or more of binaural hearing loss caused by a personal injury described in section 20(2).

(1B) **Personal injury** does not include any degree of hearing loss caused by—

(a) a personal injury other than a personal injury described in section 20(2); or

(b) the ageing process; or

(c) any other factors.

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

(1) Section 30(1A) is repealed.

(2) Section 30(2)(b) is amended by inserting the following subparagraph after subparagraph (i):

(ii) is not found to any material extent in the non-employment activities or environment of the person; and

(3) Section 30(2) is amended by repealing paragraph (c) and substituting the following paragraph:

(c) the risk of suffering the personal injury—

(i) is significantly greater for persons who perform the employment task than for persons who do not perform it; or

(ii) is significantly greater for persons who are employed in that type of environment than for persons who are not.

(4) Section 30(2A) is repealed.

10 Section 31 repealed

Section 31 is repealed.

11 Conduct of initial occupational assessment

Section 91(1A) is amended by omitting "must" and substituting "may".

12 New section 119 inserted

The following section is inserted after section 118:

119 Disentitlement for wilfully self-inflicted personal injuries and suicide

(1) The Corporation must not provide any entitlements under Schedule 1 for any of the following:

(a) a personal injury that a claimant wilfully inflicts on himself or herself, or, with intent to injure himself or herself, causes to be inflicted upon himself or herself:

(b) the death of a claimant due to an injury inflicted in the circumstances described in paragraph (a):

(c) the death of a claimant due to suicide.

(2) However, subsection (1) does not excuse the Corporation from liability to provide the claimant with entitlements for—

(a) treatment; and

(b) any ancillary service related to treatment referred to in clause 3(1) of Schedule 1.

(3) Subsection (1) does not apply if the personal injury or death was the result of—

(a) mental injury suffered because of physical injuries suffered by the claimant for which he or she had cover; or

(b) mental injury suffered by the claimant in the circumstances described in section 21 or 21B.

13 New sections 122 and 122A substituted

Section 122 is repealed and the following sections are substituted:

122 Disentitlement for certain imprisoned offenders

(1) The Corporation must not provide any entitlements under Schedule 1 to a claimant if—

(a) the claimant suffers a personal injury in the course of committing an offence; and

(b) the offence is punishable by a maximum term of imprisonment of 2 years or more; and

(c) the claimant is sentenced to imprisonment or home detention for committing the offence; and

(d) the Corporation would, but for this section, be liable to provide entitlements to the claimant for the personal injury.

(2) In addition, the Corporation must not provide any entitlements under Schedule 1 to the following persons if the Corporation would, but for subsection (1), be liable to provide entitlements to any of them in relation to a deceased claimant's personal injury:

(a) the surviving spouse or partner of the deceased claimant:

(b) any child of the deceased claimant:

(c) any other dependant of the deceased claimant.

(3) However, subsection (1) does not excuse the Corporation from liability to provide the claimant with entitlements for—

(a) treatment; and

(b) any ancillary service related to treatment referred to in clause 3(1) of Schedule 1.

(4) Despite subsection (3), the Corporation must not provide any entitlement for surgery unless the surgery is required to restore the claimant's function to enable him or her to return to work.

122A Exemption from section 122(1)

(1) The Minister may exempt a claimant from section 122(1) if the Minister is satisfied that there are exceptional circumstances relating to the claimant.

(2) Nothing in this section gives a claimant the right to apply for an exemption under subsection (1).

14 Separate Accounts

Section 166(1)(b) is repealed.

15 New section 167 substituted

Section 167 is repealed and the following section substituted:

167 Application and source of funds

(1) The purpose of the Work Account is to—

(a) finance entitlements provided under this Act by the Corporation to employees, private domestic workers, and self-employed persons for work-related personal injuries; and

(b) finance the following entitlements that are required to be provided in respect of persons whose entitlements would have been provided from

the Employers' Account under the Accident Rehabilitation and Compensation Insurance Act 1992:

(i) entitlements for work injuries (as defined in the Accident Rehabilitation and Compensation Insurance Act 1992) suffered before 1 July 1999; and

(ii) entitlements for non-work injuries to earners suffered before 1 July 1992.

(2) The funds for the Work Account are to be derived from—

(a) levies payable under sections 168, 168A, 168B, and 211 by employers, private domestic workers, and self-employed persons; and

(b) payments made to the Corporation in respect of obligations taken on by the Corporation under section 7 of the Accident Insurance (Transitional Provisions) Act 2000 in relation to the accident insurance contracts of employers and private domestic workers, and for self-employed persons; and

(c) premiums continued by or payable under Part 11.

(3) The funds in the Work Account must be applied to meet the costs of—

(a) entitlements in respect of employees, private domestic workers, and self-employed persons for work-related personal injuries; and

(b) entitlements in respect of obligations, under accident insurance contracts of employers and private domestic workers, and for self-employed persons, taken on by the Corporation under section 7 of the Accident Insurance (Transitional Provisions) Act 2000; and

(c) entitlements that are required to be provided in accordance with Part 11 in respect of persons whose entitlements would have been provided from the Self-Employed Work Account under the Accident Insurance Act 1998; and

(d) entitlements in respect of employers, private domestic workers, and self-employed persons that, immediately before 1 April 2007, would have been funded from the Self-Employed Work Account or the Employers' Account; and

(e) entitlements that, immediately before the commencement of section 21 of the Accident Compensation Amendment Act 2010, would have been funded from the Residual Claims Account as it was immediately before that commencement; and

(f) administering the Account; and

(g) audits and assessments referred to in section 175; and

(h) any other expenditure authorised by this Act.

(4) Regulations made under this Act may prescribe, in relation to a prescribed period, a portion of the levies payable under sections 168, 168A, 168B, and

211 to provide for or, to the extent that it is necessary, to provide separately for,—

(a) the purposes of subsection (3)(a) to (d) and (f) to (h):

(b) the purposes of subsection (3)(e), (f), and (h) and the purpose specified in section 169AA(1)(a).

(5) Those regulations may also relate to the same or different prescribed periods.

16 Rates of levies

(1) Section 169(1) is amended by omitting "for that period" in each place where it appears.

(2) Section 169 is amended by repealing subsection (2) and substituting the following subsections:

(2) Regulations made under this Act may—

(a) establish a system or systems for either or both of the following:

(i) the experience rating of employers, private domestic workers, or self-employed persons:

(ii) risk sharing between employers, private domestic workers, or self-employed persons, on the one hand, and the Corporation on the other; and

(b) adjust the levies under sections 168, 168A, 168B, and 211 in relation to a particular employer, private domestic worker, or self-employed person on the basis of that system or those systems.

(3) The systems referred to in subsection (2) may include no-claims bonuses, higher or lower levies, and claim thresholds.

(4) None of the following applies, or can be made to apply, to the portion of the levies payable under sections 168, 168A, 168B, and 211 that is necessary to achieve the purpose specified in section 169AA(1)(a):

(a) any of the systems referred to in subsection (2):

(b) section 175.

17 New section 169AA inserted

The following section is inserted after section 169:

169AA Basis on which funds to be calculated

(1) The extent of funds to be derived from levies under sections 168, 168A, and 168B is to be calculated to achieve the following purposes:

(a) the residual amount is to be completely paid off or funded no later than 31 March 2019:

(b) the cost of all claims under the Work Account is fully funded.

(2) The Minister may, by notice in the *Gazette*, specify the residual amount.

(3) The Minister's power under subsection (2) may be exercised only once.

(4) In this section, **residual amount** means the amount that—

(a) is specified by the Minister; and

(b) represents, among other things, as at 30 June 2009, the sum of—

(i) the estimated value of the outstanding claims liability for the Residual Claims Account (minus the value of any accrued assets); and

(ii) the estimated value of the Corporation's potential liability (minus the value of any accrued assets) in respect of future claims for cover for personal injury caused by work-related gradual process, disease, or infection by persons who,—

(A) before 1 July 1999, may have been exposed to a particular property or characteristic of their employment tasks or environment that causes, or contributes to the cause of, the personal injury; but

(B) by 30 June 2009, have not suffered the personal injury.

18 Classification of industries or risks

(1) Section 170 is amended by repealing subsection (1) and substituting the following subsection:

(1) The Corporation must classify an employer and a self-employed person in an industry or risk class that most accurately describes their activity, being an industry or risk class set out in regulations made under this Act for the following purposes:

(a) setting levies payable under sections 168, 168B, and 211:

(b) setting those levies to include a portion that is necessary to achieve the purpose specified in section 169AA(1)(a).

(2) Section 170(4A) is amended by inserting "that relate to an industry or risk class defined under subsection (1)(a)" after "subsection (4)".

19 Purchase of weekly compensation by shareholder-employees

(1) Section 190(1) is amended by—

(a) omitting "person with earnings as a shareholder-employee" and substituting "shareholder-employee"; and

(b) omitting "the person" and substituting "the shareholder-employee".

(2) Section 190(2) is amended by omitting "person with earnings as a shareholder-employee" and substituting "shareholder-employee".

20 Effect on Work Account levy

Section 191 is amended by repealing subsection (2) and substituting the following subsection:

(2) However, subsection (1) does not affect the employer's obligation to pay the portion of the Work Account levy referred to in section 167(4) that is payable in respect of the earnings of that employee.

21 Heading above section 192 and sections 192 to 200 repealed

The heading above section 192 and sections 192 to 200 are repealed.

22 Earner levies for self-employed persons who purchase weekly compensation

Section 212 is amended by omitting "and the Earners' Account Residual levy required by section 219(2)".

23 Application and source of funds

(1) Section 213 is amended by repealing subsection (1) and substituting the following subsection:

(1) The purpose of the Motor Vehicle Account is to—

(a) finance entitlements provided under this Act in respect of motor vehicle injuries; and

(b) finance the cost of programmes to improve the safety of moped and motor cycle riders from the levy referred to in subsection (2)(d).

(2) Section 213(2) is amended by repealing paragraph (d) and substituting the following paragraph:

(d) the prescribed Motorcycle Safety levy; and

(3) Section 213(5) is amended by inserting the following paragraph after paragraph (b):

(ba) claims that would have been provided from the Motor Vehicle Account under the Accident Rehabilitation and Compensation Insurance Act 1992; and

(4) Section 213 is amended by repealing subsection (6) and substituting the following subsections:

(6) To avoid doubt,—

(a) subsection (1)(b) does not limit or affect section 263; and

(b) section 263 (except section 263(3)(b)) applies to the programmes referred to in subsection (1)(b) as if the references to measures in section 263 were references to the programmes.

(7) Regulations made under this Act may prescribe, in relation to a prescribed period, a portion of the levies (except the Motorcycle Safety levy) to provide for or, to the extent that it is necessary, to provide separately for,—

(a) the purposes of subsection (5)(a), (b), (c), and (d):

(b) the purposes of subsection (5)(ba), (c), and (d) and the purpose specified in section 215(1)(a).

24 Rate of levies

Section 214 is amended by repealing subsection (3) and substituting the following subsections:

(3) A registered owner of a motor vehicle that is a moped or motor cycle must pay, in accordance with this Act and regulations made under it, the prescribed Motorcycle Safety levy.

(3A) Subsection (3) does not limit or affect subsection (1).

25 New section 215 substituted

Section 215 is repealed and the following section substituted:

215 Basis on which funds to be calculated

(1) The extent of funds to be derived under section 213(2) is to be calculated to achieve the following purposes:

(a) the residual amount is to be completely paid off or funded no later than 30 June 2019:

(b) the cost of all claims under the Motor Vehicle Account is to be fully funded.

(2) Subsection (1) does not apply to the Motorcycle Safety levy.

(3) The Minister may, by notice in the *Gazette*, specify the residual amount.

(4) The Minister's power under subsection (3) may be exercised only once.

(5) In this section, **residual amount** means the amount that—

(a) is specified by the Minister; and

(b) represents, among other things, as at 30 June 2009, the estimated value of the outstanding claims liability for the Motor Vehicle Account (minus the value of any accrued assets) in respect of the claims described in section 213(5)(ba).

26 Levy categories

Section 216 is amended by adding the following subsections as subsections (2) and (3):

(2) The regulations may also classify all or any of the following, or categories of the following, into classes that most accurately describe their risk rating and

may impose levies at different rates in relation to those classes in accordance with the system of differential levies referred to in subsection (1):

(a) motor vehicles:

(b) registered owners of motor vehicles:

(c) persons who hold trade licences under section 34(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

(3) Subsection (2) does not limit subsection (1).

27 Collection of levies

Section 217 is amended by repealing subsection (3) and substituting the following subsection:

(3) The Motorcycle Safety levy is payable in the prescribed manner.

28 Application and source of funds

(1) Section 218(3)(b) is repealed.

(2) Section 218(4) is amended by inserting the following paragraph after paragraph (e):

(ea) claims that would have been provided from the Earners' Account under the Accident Rehabilitation and Compensation Insurance Act 1992; and

(3) Section 218 is amended by repealing subsection (5) and substituting the following subsection:

(5) Regulations made under this Act may prescribe, in relation to a prescribed period, a portion of the levies to provide for or, to the extent that it is necessary, to provide separately for,—

(a) the purposes of subsection (4)(a) to (e), (f), and (g):

(b) the purposes of subsection (4)(ea), (f), and (g) and the purpose specified in section 220A(1)(a).

29 Earners to pay levies

Section 219(2) is repealed.

30 Rate of levies

Section 220(2) is repealed.

31 New section 220A inserted

The following section is inserted after section 220:

220A Basis on which funds to be calculated

(1) The extent of funds to be derived from levies under section 219 is to be calculated to achieve the following purposes:

(a) the residual amount is to be completely paid off or funded no later than 31 March 2019:

(b) the cost of all claims under the Earners' Account is to be fully funded by levies.

(2) The Minister may, by notice in the *Gazette*, specify the residual amount.

(3) The Minister's power under subsection (2) may be exercised only once.

(4) In this section, **residual amount** means the amount that—

(a) is specified by the Minister; and

(b) represents, among other things, as at 30 June 2009, the estimated value of the outstanding claims liability for the Earners' Account (minus the value of any accrued assets) in respect of the claims described in section 218(4)(ea).

32 Collection of levies by deduction from employee earnings

Section 221(1) is amended by omitting "(including the Earners' Account Residual levy)".

33 Payment of Earners' Account levy and Earners' Account Residual levy by self-employed persons

The heading to section 222 is amended by omitting "**and Earners' Account Residual levy**".

34 Persons eligible to purchase weekly compensation

Section 223(3)(c)(i) is amended by inserting "permanent" after "in".

35 Mixed earnings as employee and self-employed person

Section 231(4) and (5) are repealed.

36 Residual Claims levy and Work Account levy payable by employers on disposal or cessation of business or when ceasing to employ

(1) The heading to section 232 is amended by omitting "**Residual Claims levy and**".

(2) Section 232(1) is amended by omitting "a Residual Claims levy or".

(3) Section 232 is amended by repealing subsection (2) and substituting the following subsection:

(2) An employer must comply with subsection (3) by the 15th day of the second month after the month in which the employer disposes of or ceases carrying on the business or continues the business as a self-employed person without employing any other person.

37 New section 233 substituted

Section 233 is repealed and the following section substituted:

233 Levies payable to Corporation by self-employed person who ceases to derive earnings as such

(1) Every self-employed person who, during a tax year, ceases to derive earnings as a self-employed person must—

(a) deliver to the Commissioner a statement of the person's earnings as a self-employed person for the tax year concerned, within the applicable time within which a return for that tax year is required to be furnished to the Commissioner under the Tax Administration Act 1994; and

(b) pay to the Corporation, on or before the due date,—

(i) the Work Account levy, at the rate prescribed, to the extent that it applied to the person's earnings as a self-employed person in that tax year; and

(ii) the earner levy, at the rate prescribed, to the extent that it applied to the person's earnings as a self-employed person in that tax year.

(2) The provisions of this section (other than subsection (1)(b)(ii)) and sections 239 and 329(1)(b) apply, with any necessary modifications, to private domestic workers.

38 Section 235 repealed

Section 235 is repealed.

39 Corporation to define risk classification and decide levy if activity not classified by regulations

Section 239(1) is amended by omitting "either, or both, of sections 170 (Work Account levies) and 195 (Residual Claims Account levies)" and substituting "section 170 (Work Account)".

40 Information available to Corporation

Section 246 is amended by inserting the following subsections after subsection (4):

(4A) The Corporation may also request the Commissioner to provide any of the following information:

(a) whether an employer, self-employed person, private domestic worker, or shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies has a tax agent and, if so, the tax agent's name and contact details:

(b) for an employer, self-employed person, private domestic worker, or shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies who is an individual, whether the individual is deceased and, if so,—

(i) the individual's date of death; and

(ii) the name and contact details of the administrator or executor of the individual's estate.

(4B) In this section, **tax agent** has the same meaning as in section 3 of the Tax Administration Act 1994.

41 Section 265 substituted

Section 265 is repealed and the following section substituted:

265 Ancillary powers of Corporation

(1) In addition to services required to be provided under this Act, the Corporation may provide services under subsection (2) or (4)—

(a) that are outside the functions of the Corporation under section 262 (as long as the services are consistent with the purposes of this Act):

(b) whether or not the services are provided to a person who would not otherwise have cover under this Act.

(2) The Corporation may provide services on a commercial basis, but only if—

(a) the service is provided by a Crown entity subsidiary of the Corporation; and

(b) the provision of the service is a viable commercial proposition for the Crown entity subsidiary; and

(c) the service being provided is one that is consistent with the role and functions of the Corporation under this Act; and

(d) any decision to provide the service, and the provision of the service, is consistent with any relevant policy direction given by the Minister under section 103 of the Crown Entities Act 2004.

(3) Subsection (2) applies despite section 97(a) of the Crown Entities Act 2004.

(4) The Corporation may provide government services or payments funded by an appropriation by Parliament, other than on a commercial basis, but only if—

(a) the service being provided is one that is consistent with the role and functions of the Corporation under this Act; and

(b) any decision to provide the service, and the provision of the service, is consistent with any relevant policy direction given by the Minister under section 103 of the Crown Entities Act 2004.

(5) All money received by the Corporation from an appropriation by Parliament for the purposes of subsection (4), and the expenditure of that money, must be allocated and managed through the Accounts if it is reasonable and practicable to do so; but otherwise it must be applied, accounted for, and reported on separately from the Accounts.

42 Management of Accounts

Section 274(3A) is repealed.

43 New section 278A inserted

The following section is inserted after section 278:

278A Annual financial condition report

(1) The Corporation must—

(a) prepare an annual report on its financial condition as soon as practicable after the end of each financial year; and

(b) provide the report to the Minister.

(2) The purpose of the report is to—

(a) provide advice in relation to the Corporation's operations, financial condition, and liabilities; and

(b) discuss the implications of any material risks to the Corporation that have been identified in the report.

(3) The report must—

(a) be prepared in accordance with generally accepted practice within the insurance sector in New Zealand; and

(b) contain the information required to achieve the purpose in subsection (2).

(4) The Minister must—

(a) provide a copy of the report to the Minister of Finance; and

(b) after complying with paragraph (a) but within 5 working days after receiving the report from the Corporation or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament, present the report to the House of Representatives.

44 Section 291 repealed

Section 291 is repealed.

45 Regulations relating to levies

(1) Section 329(b)(ii) is amended by omitting "sections 169(1) and 193" and substituting "section 169(1)".

(2) Section 329 is amended by inserting the following paragraph after paragraph (c):

(ca) prescribing the terms and conditions of the system or systems of experience rating or of risk sharing referred to in section 169(2):

(3) Section 329(g) is amended by omitting "sections 170 and 195" and substituting "section 170".

(4) Section 329(h) is amended by omitting "sections 170 and 195" and substituting "section 170".

(5) Section 329 is amended by repealing paragraph (l) and substituting the following paragraph:

(l) establishing a system for differential levies, for the purposes of the Motor Vehicle Account, for categories referred to in—

(i) section 216(1); or

(ii) section 216(2):

(6) Section 329 is amended by repealing paragraph (m) and substituting the following paragraphs:

(m) setting, in relation to a prescribed period, a portion of the Work Account, the Motor Vehicle Account, or the Earners' Account that is necessary to achieve,—

(i) in the case of the Work Account, the purpose specified in section 169AA(1)(a); and

(ii) in the case of the Motor Vehicle Account, the purpose specified in section 215(1)(a); and

(iii) in the case of the Earners' Account, the purpose specified in section 220A(1)(a):

(ma) prescribing the manner of payment of the Motorcycle Safety levy for the purposes of section 217(3):

(7) Section 329 is amended by adding the following subsection as subsection (2):

(2) Regulations made under subsection (1)(ca) may—

(a) specify the types of claims to which the system or systems of experience rating or of risk sharing referred to in section 169(2) apply; and

(b) make different provision for different classes of levy payers or in respect of different industries or levies.

46 Consultation requirements for regulations relating to classifications, risk rating, or treatment injury

Section 330 is amended by omitting "section 329(f) or (g) or (l) or (m)" and substituting "section 329(f) or (g) or (l)(i) or (ma)".

47 Schedules 1 and 4 amended

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

(2) Schedule 4 is amended in the manner set out in Part 2 of Schedule 1 of this Act.

Part 2
Miscellaneous provisions

Validation

48 Validation of disclosure of information for assessment of levies

(1) Every disclosure of the information specified in subsection (2) by the Commissioner of Inland Revenue to the Accident Compensation Corporation under section 85E of the Tax Administration Act 1994 that was made before the commencement of this section must be taken to be, and always to have been, lawful.

(2) The information referred to in subsection (1) is as follows:

(a) whether an employer, self-employed person, private domestic worker, or shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies has a tax agent and, if so, the tax agent's name and contact details:

(b) for an employer, self-employed person, private domestic worker, or shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies who is an individual, whether the individual is deceased and, if so,—

(i) the individual's date of death; and

(ii) the name and contact details of the administrator or executor of the individual's estate.

(3) In this section, **tax agent** has the same meaning as in section 3 of the Tax Administration Act 1994.

Consequential amendments

49 Consequential amendments to other enactments

The enactments specified in Schedule 2 of this Act are consequentially amended in the manner indicated in that schedule.

Transitional provisions for levies

50 Transfer of assets and liabilities to Work Account

All assets and liabilities of the Residual Claims Account as it was immediately before the commencement of this section are, on that commencement, transferred to the Work Account.

51 Sections 330 and 331 of principal Act do not apply to making of regulations for Earners' Account, Motor Vehicle Account, or Work Account

Sections 330 and 331 of the principal Act do not apply to the making of regulations in relation to—

(a) the Earners' Account or the Work Account for the 2010–11 tax year:

(b) the Motor Vehicle Account (including the Motorcycle Safety levy) for the period that starts on 1 July 2010 and ends on 30 June 2011.

52 Levies continue to be payable

(1) This section applies to the amounts of levy that were, or will become, payable to the Residual Claims Account, the Motor Vehicle Account, or the Earners' Account as they were immediately before the commencement of this section.

(2) The amounts to which this section applies—

(a) continue to be due and payable; and

(b) must be paid,—

(i) in the case of the Residual Claims levy, to the Work Account; and

(ii) in the case of the Motor Vehicle Account Residual levy, to the Motor Vehicle Account; and

(iii) in the case of the Earners' Account Residual levy, to the Earners' Account.

Transitional provisions for other matters

53 Transitional provision for disentitlement for wilfully self-inflicted personal injuries and suicide

To avoid doubt, this Act applies to disentitle a claimant for a wilfully self-inflicted personal injury, death, or suicide described in section 119 of the principal Act (as inserted by this Act) only if the personal injury was suffered or, as the case may be, the death or suicide occurred on or after the commencement of this section.

54 Transitional provision for disentitlement for certain imprisoned offenders

(1) To avoid doubt, this Act applies to disentitle a claimant who suffers a personal injury in the circumstances described in section 122 of the principal Act (as substituted by this Act) only if the personal injury was suffered on or after the commencement of this section.

(2) To avoid doubt, despite the amendment of section 122 of the principal Act by section 13 of this Act, section 122 of the principal Act (as it read immediately before the commencement of this section) continues to apply to a claimant who, before the commencement of this section, suffered a personal injury in the circumstances described in section 122 (as it so read).

55 Claims for personal injury including hearing loss that have been lodged but not decided

(1) This section applies if, before the commencement of this section,—

(a) a person has suffered a personal injury that includes any degree of hearing loss that is less than 6% of binaural hearing loss caused by a personal injury described in section 20(2) of the principal Act; and

(b) he or she has lodged a claim with the Accident Compensation Corporation under section 48 of the principal Act in respect of the personal injury; and

(c) the Corporation has not made a decision on the claim.

(2) On or after the commencement of this section, the Corporation must make a decision on the claim in all respects as if section 8 of this Act had not been enacted.

56 Claims for work-related gradual process, disease, or infection that have been lodged but not decided

(1) This section applies if, before the commencement of this section,—

(a) a person has suffered a personal injury caused by a work-related gradual process, disease, or infection; and

(b) he or she has lodged a claim with the Accident Compensation Corporation under section 48 of the principal Act in respect of the personal injury; and

(c) the Corporation has not made a decision on the claim.

(2) On or after the commencement of this section, the Corporation must make a decision on the claim in all respects as if section 9 of this Act had not been enacted.

57 Assessment of vocational independence

An assessment of a claimant's vocational independence that has been commenced, but not determined, before the commencement of this section must, on or after that commencement, be considered and determined in all respects as if sections 6(2), 11, and 47 (to the extent that it relates to clause 25 of Schedule 1 of the principal Act) of this Act had not been enacted.

58 Calculations of weekly earnings for weekly compensation

To avoid doubt, sections 223(3)(c)(i) and clauses 33, 34, 35, 36, 38, 39, 41, and 42 of Schedule 1 of the principal Act (as amended by this Act) apply to the calculation of weekly earnings for the purposes of weekly compensation that is payable in respect of a period of incapacity that commences only on or after the commencement of this section.

59 Calculations of weekly compensation for loss of potential earning capacity

(1) This section applies to—

(a) a claimant who is incapacitated before the commencement of this section, but who is not entitled to weekly compensation for loss of potential earning capacity immediately before that commencement:

(b) a claimant who is incapacitated only on or after the commencement of this section.

(2) To avoid doubt, clause 47 of Schedule 1 of the principal Act (as amended by this Act) applies to the calculation of weekly compensation for loss of potential earning capacity in respect of a claimant to whom this section applies.

60 Special provision for claimant already entitled to receive weekly compensation for loss of potential earning capacity

(1) This section applies to a claimant who is incapacitated before the commencement of this section and who is entitled to weekly compensation for loss of potential earning capacity immediately before that commencement.

(2) The weekly compensation payable to the claimant is the amount of weekly compensation to which the claimant was entitled immediately before the commencement of this section.

(3) However, if the calculation of weekly compensation for loss of potential earning capacity in respect of the claimant is, but for subsection (2) and section 59, more favourable to the claimant under clause 47(4) of Schedule 1 of the principal Act (as amended by this Act), then clause 47(4) applies despite subsection (2) and section 59.

61 Abatement of weekly compensation

To avoid doubt, clause 49 of Schedule 1 of the principal Act (as amended by this Act) applies to the abatement of a claimant's weekly compensation in accordance with that clause and clause 51 of Schedule 1 of the principal Act in respect of a period of incapacity that commences only on or after the commencement of this section.

62 Members of ministerial advisory panels not entitled to compensation

(1) Nothing in this Act entitles a member of the ministerial advisory panel referred to in section 31 or 291 of the principal Act to any compensation in respect of the repeal of those sections and the removal of the panel, or for any fees or allowances that would otherwise be payable for the remainder of the term of an appointment affected by the repeals.

(2) In this section, **member** includes the chair of the ministerial advisory panel referred to in section 31 or 291 of the principal Act.

Schedule 1
Amendments to Schedules 1 and 4

s 47

Part 1
Amendments to Schedule 1

Clause 25

Subclause (1A): omit "must" and substitute "may".

Heading above clause 33

Omit "*claimant*" and substitute "*in permanent employment*".

Clause 33

Repeal and substitute:

33 Weekly earnings if earner had earnings as employee immediately before incapacity commenced: application of clause 34

(1) Clause 34 applies to a claimant who—

(a) was an earner immediately before his or her incapacity commenced; and

(b) was in permanent employment at that time; and

(c) had earnings as an employee from that permanent employment at that time.

(2) If the claimant had permanent employment with more than 1 employer at that time, the weekly earnings of the claimant, in respect of each employer he or she had at that time, are as calculated separately under clause 34 and aggregated under clause 41.

(3) For the purposes of this clause and clause 34, the claimant is regarded as having been in permanent employment if, in the opinion of the Corporation, he or she would have continued to receive earnings from that employment for a continuous period of more than 12 months after the date on which his or her incapacity commenced, if he or she had not suffered the personal injury.

(4) Subclause (5) applies if—

(a) the claimant was in permanent employment (that was full-time employment) as an employee immediately before his or her incapacity commenced; and

(b) before the employment, the claimant was employed by the same employer for less than 30 hours per week.

(5) The weekly earnings of the claimant is the greater of—

(a) the claimant's weekly earnings calculated in accordance with clause 34:

Clause 33—*continued*

(b) the claimant's weekly earnings calculated in accordance with clause 36, as if the claimant were not in permanent employment immediately before his or her incapacity commenced.

Clause 34

Heading to clause 34: insert "**in permanent employment**" after "**employee**".

Subclause (1): omit "(from the claimant's employment immediately before the claimant's incapacity commenced)" and substitute "(from that permanent employment)".

Subclause (2): omit "(from the claimant's employment immediately before the claimant's incapacity commenced)" and substitute "(from employment with that employer)".

New clauses 35 and 36 inserted

Insert after clause 34:

35 Weekly earnings if earner had earnings as employee not in permanent employment immediately before incapacity commenced: application of clause 36

(1) Clause 36 applies to a claimant who—

(a) was an earner immediately before his or her incapacity commenced; and

(b) had at that time earnings as an employee (from employment that was not permanent employment).

(2) For the purposes of this clause and clause 36, employment is not permanent employment if, in the opinion of the Corporation, the claimant would have not continued to receive earnings from that employment for a continuous period of more than 12 months after the date on which his or her incapacity commenced, if he or she had not suffered the personal injury.

36 Weekly earnings if earner had earnings as employee not in permanent employment immediately before incapacity commenced: calculations

(1) This subclause applies to each of the 4 weeks after the first week of incapacity. The claimant's weekly earnings for each of the 4 weeks are calculated using the following formula:

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

where—

a is the claimant's earnings as an employee (from all employment that was not permanent employment) in the 4 weeks immediately before his or her incapacity commenced

New clauses 35 and 36 inserted—*continued*

b is the number of full or part weeks during which the claimant earned those earnings as an employee in the 4 weeks immediately before his or her incapacity commenced.

(2) This subclause applies to any weekly period of incapacity after the 4 weeks described in subclause (1). The claimant's weekly earnings for any such weekly period are calculated using the following formula:

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

where—

a is the claimant's earnings as an employee (from all employment that was not permanent employment) in the 52 weeks immediately before his or her incapacity commenced

b is 52 or such smaller number, if adjustments are required under subclause (4).

(3) For the purposes of this clause the following must be disregarded in calculating weekly earnings:

(a) any period during which the claimant was entitled to weekly compensation:

(b) any continuous period of unpaid sick leave, during a period of employment, of more than 1 week:

(c) any period during which—

(i) the claimant did not receive earnings as an employee; and

(ii) the claimant did receive earnings as a self-employed person or as a shareholder-employee; and

(iii) those earnings ceased before the commencement of the claimant's incapacity:

(d) any earnings in respect of any period under paragraph (a), (b), or (c).

(4) In item b of the formula set out in subclause (2), the expression 52 is adjusted by deducting from it any number of weekly periods that subclause (3)(a), (b), or (c) applies to.

(5) For the purposes of subclause (3)(c), the Corporation may determine the number of weeks that fairly and reasonably represent the period during which the claimant received earnings as a self-employed person or as a shareholder-employee.

Clause 38

Subclause (5): omit "clauses 33 and 34" and substitute "clauses 33 to 36".

Clause 39

Subclause (1)(a): insert "or clause 36, whichever is applicable" after "clause 34".

Subclause (4): omit "clauses 33 and 34" and substitute "clauses 33 to 36".

Subclause (5): omit "clauses 33 and 34" and substitute "clauses 33 to 36".

Clause 41

Subclause (1): omit "clauses 33 and 34" in each place where it appears and substitute in each case "clauses 33 to 36".

Subclause (3): omit "clauses 33 and 34" in each place where it appears and substitute in each case "clauses 33 to 36".

Subclause (5): insert "or clause 36" after "clause 34".

Subclause (6): omit "clause 34" in each place where it appears and substitute in each case "clause 34 or clause 36".

Clause 42

Subclause (1)(b): insert "36," after "clauses 34,".

Subclause (1)(c): omit "1 week" and substitute "5 weeks".

Subclause (2): omit "first week of incapacity" and substitute "5-week period".

Clause 47

Subclause (4): omit "multiplied by 125%".

Clause 49

Subclause (3): repeal and substitute:

(3) In clause 51(2), **earnings** includes any payment made on the termination of employment in respect of leave entitlements. The Corporation must treat such a payment as having been derived after the termination of employment for a period that is equal to the total period that the claimant could have taken as leave if the claimant had not received the payment.

Part 2
Amendments to Schedule 4

Clause 7

Repeal and substitute:

7 An employer who makes a payment to a shareholder-employee must, within the time within which the employer is required to furnish a return of income under section 33 of the Tax Administration Act 1994, deliver a statement of the total amount of shareholder-employee earnings paid or payable by the employer for the tax year to which the return relates.

Clause 16(b)

Repeal and substitute:

(b) pay to the Commissioner, on or before the due date, an earner levy, at the rate prescribed, on any earnings that do not exceed the specified maximum.

Clause 18

Omit "and Earners' Account Residual levy".

Omit "or Earners' Account Residual levy".

Clause 19(a)

Omit "and Earners' Account Residual levy".

Clause 20

Omit "or Earners' Account Residual levy".

Schedule 2
Consequential amendments to other enactments

s 49

Part 1
Amendments to other Acts

Health and Safety in Employment Act 1992 (1992 No 96)

Definition of **Residual Claims levy** in section 59(1): repeal.

Section 59(1): add:

> **Work Account levy** means the levy payable under section 168, 168A, 168B, or 211 of the applicable Act

Section 59(3): omit "Residual Claims levy" in each place where it appears and substitute in each case "Work Account levy".

Income Tax Act 2007 (2007 No 97)

Section EF 3(5)(b): repeal.

Section EF 3(5)(e): repeal and substitute:

> (e) an Earners' Account levy under section 283(2) of the Accident Insurance Act 1998:

New Zealand Superannuation and Retirement Income Act 2001 (2001 No 84)

Section 16(2): omit "and (2)".

Tax Administration Act 1994 (1994 No 166)

Section 81(1)(a)(iia): omit "sections 193 and 219" and substitute "section 219".

Section 85E(2): add:

> (g) whether an employer, self-employed person, private domestic worker, or shareholder-employee has a tax agent and, if so, the tax agent's name and contact details:
>
> (h) in the case of an employer, self-employed person, private domestic worker, or shareholder-employee who is an individual, whether the individual is deceased and, if so,—
>
> (i) the individual's date of death; and
>
> (ii) the name and contact details of the administrator or executor of the individual's estate.

Part 2
Amendments to regulations

Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334)

Definition of **ACC earner levies** in regulation 4: omit "section 219(1) and (2)" and substitute "section 219(1)".

Legislative history

22 October 2009	Introduction (Bill 90–1)
27 October 2009	First reading and referral to Transport and Industrial Relations Committee
12 February 2010	Reported from Transport and Industrial Relations Committee
18 February 2010	Second reading
23 February 2010	Committee of the whole House, third reading
2 March 2010	Royal assent

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