



# BRIEFING

## Schedule 2 Review Framework: Stage 1

<b>Date:</b>	6 December 2022	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-2007

Action sought		
	Action sought	Deadline
Hon Carmel Sepuloni <b>Minister for ACC</b>	<b>Note</b> that MBIE, with ACC's support, has determined that a review of Schedule 2 should occur.	16 December 2022
	<b>Agree</b> to present a non-Parliamentary paper to the House of Representatives informing it of the review of Schedule 2 and the rationale.	28 February 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Bridget Duley	Manager (Acting), Accident Compensation Policy	04 897 6364	s 9(2)(a)	✓
James Anderson	Principal Policy Advisor (Acting), Accident Compensation Policy	04 897 6792	-	
Kayleigh Wiltshire	Senior Policy Advisor, Accident Compensation Policy	04 896 5434	-	

The following departments/agencies have been consulted
The Accident Compensation Corporation, WorkSafe New Zealand

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Released under Official Information Act 1982



# BRIEFING

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<b>Date:</b>	6 December 2022	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-2007

### Purpose

To provide you with the Ministry of Business, Innovation and Employment's (MBIE) initial determination that a review of Schedule 2, the list of occupational diseases covered under the Accident Compensation Act 2001 (AC Act), is needed. This also seeks your feedback on, and approval to present, a non-Parliamentary paper to the House of Representatives informing it of the review.

### Executive summary

One of your portfolio priorities under the Labour Party's 2020 election manifesto is to "consider the range of conditions the Accident Compensation Corporation (ACC) covers and take an evidence-based approach to updating the list of chronic illnesses caused through workplace exposure to harmful environments". Cabinet agreed to an evidence-based review framework for the list of occupational diseases covered under ACC on 26 September 2022 [CAB-22-MIN-0388 refers].

Stage 1 of the framework is for MBIE, with engagement from relevant agencies, "to make an initial determination of whether a review of Schedule 2 is required".

MBIE, with support from ACC, has determined that a full review of Schedule 2 should occur because of:

- **Developments in occupational disease knowledge:** The International Labour Organization's (ILO) list of occupational diseases was updated in 2010 and has not yet been considered for inclusion in Schedule 2, which was last updated in 2008.
- **Length of time since previous update to Schedule 2:** Schedule 2 has not been updated for 14 years. This is nearly triple the recommended regularity of the new review framework of 5 years.
- **Variety of claims for gradual process injuries considered under the section 30 three-step test that have a 50% or above acceptance rate.** This indicates a provisional list of conditions that should be analysed further to understand if they should be considered for inclusion in Schedule 2.

We recommend that you update the House of Representatives that a full review of Schedule 2 will occur and the reasons for that decision. The Leader of the House's office has confirmed to your office that a non-Parliamentary paper is the most appropriate vehicle for this update. A draft non-Parliamentary paper is provided for your approval in Annex 1.

Following the update to the House, MBIE will begin stage 2, which involves preparing a discussion document and draft Cabinet paper seeking permission to publish the document in early 2023. This discussion document will request suggestions of occupational diseases to be included in Schedule 2 and any supporting research. If any changes are needed to Schedule 2 as a result of this review, we would aim for these to be reflected in Schedule 2 by the end of September 2023.

## Recommended action

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MBIE recommends that you:

a **Note** that MBIE, with ACC's support, has determined that a pilot review of Schedule 2 should begin because:

- developments in occupational disease knowledge since Schedule 2's last update in 2008 should be considered,
- nearly triple the recommended time period of the new review framework of 5 years has elapsed since the last update, and
- a variety of ACC's gradual process claims have a 50% or above acceptance rate, which indicates further work is needed to understand if they should be considered for inclusion in a Schedule 2 review.

*Noted*

b **Provide** feedback, if any, on the draft non-Parliamentary paper in Annex 1.

*Provide/Not provide*

c **Approve** the House Office to present the non-Parliamentary paper in Annex 1 as soon as practicable.

*Approve/Not approve*

d **Forward**, pending your approval to recommendation c, the non-Parliamentary paper to the Minister for Workplace Relations and Safety in advance of presenting to the wider House.

*Forward/Not forward*

s 9(2)(a)

Bridget Duley  
**Manager (Acting), Accident Compensation  
Policy**  
Labour, Science and Enterprise, MBIE  
6 December 2022

Hon Carmel Sepuloni  
**Minister for ACC**

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## Background

1. Schedule 2, the list of occupational diseases covered under the AC Act is part of how ACC provides cover for work-related gradual process, disease, or infection injuries (known collectively as gradual process injuries). The AC Act provides cover for gradual process injuries in two ways. The first is using the three-step test under section 30 (the three-step test). This test is used to determine if a personal injury is, on the balance of probabilities, more likely to be caused by a work-related factor than not. The three-step test enables ACC to consider claims for a variety of gradual process injuries, including hearing loss and musculoskeletal conditions.
2. The second route to cover is Schedule 2, which provides a simpler pathway for a specific type of gradual process injury (an occupational disease). In order for a disease to be listed in Schedule 2, it must have a strong causal link between the workplace and the disease.
3. On 26 September 2022, Cabinet agreed to an evidence-based framework to review Schedule 2 [CAB-22-MIN-0388 refers] which is set out below:

Stage	Description
<b>Stage 1 - Initial determination</b>	MBIE undertakes an initial determination every five years (engaging relevant agencies) of whether a review is needed. An initial determination can be completed outside of this period if new evidence emerges. The Minister for ACC will update the House of Representatives on whether a full review of Schedule 2 will occur and the rationale for that decision, to support transparency throughout the framework.
<b>Stage 2 - Public consultation</b>	If a review is needed, MBIE will prepare and release a consultation document for interested parties to suggest occupational diseases and provide supporting research.  MBIE, with ACC's support, will proactively contact stakeholders and interested parties. These stakeholders include, but are not limited to, Māori, disabled people, unions, businesses, and medical experts.
<b>Stage 3 - Independent researchers and medical experts' report</b>	MBIE compiles a list of the diseases suggested through the consultation, alongside the ILO's list and any other diseases identified.  MBIE procures an organisation to conduct a literature review of the relevant clinical and epidemiological evidence for occupational diseases. The organisation will also manage the independent selection and management of medical experts to assess the evidence of listed diseases against the technical criteria.
<b>Stage 4 - MBIE consideration of the report</b>	Officials consider the analysis, as well as cost estimates and other policy considerations, and make recommendations to the Minister for ACC.
<b>Stage 5 - Minister's consideration and stakeholder consultation</b>	Consultation with appropriate stakeholders, as determined by the Minister, on proposals to change Schedule 2.
<b>Stage 6 - Cabinet and Order-in-Council</b>	Following a Ministerial decision, an Order-in-Council process begins. Any changes are considered by Cabinet and taken to the Executive Council in an Order-in-Council. <sup>1</sup>

<sup>1</sup> Section 336 of the AC Act.

<b>Stage 7 - Evaluation</b>	An evaluation of the framework will be completed to inform consideration of future legislative changes to the AC Act, such as embedding a regular review period of Schedule 2 and allocating ongoing funding after the pilot review. <sup>2</sup>
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4. This briefing supports the delivery of stage 1 of the review. This continues to deliver on the 2020 election manifesto of “considering the range of conditions ACC covers and taking an evidence-based approach to updating the list of chronic illnesses caused through workplace exposure to harmful environments.”
5. This is a pilot of the review framework set out above and an evaluation process will occur at the end to determine if any changes are required, including legislative changes for future reviews.

## A full review of Schedule 2 should occur

6. MBIE considers that a pilot review of Schedule 2 is required. With ACC and WorkSafe’s support, we have used three factors to inform this initial determination. These are:
  - **Developments in occupational disease knowledge:** This includes both internationally and domestically. Most importantly, the International Labour Organization’s List of Occupational Diseases (ILO List)<sup>3</sup> was last updated in 2010 and Schedule 2 was last updated in 2008, so a review has not yet occurred to consider the international developments.
  - **Length of time since previous update to Schedule 2:** Schedule 2 has not been updated for fourteen years. This is nearly triple the recommended time period of the new review framework of five years.
  - **The acceptance rate of ACC’s gradual process claims under the section 30 three-step test:** If a gradual process injury has had 50% or above acceptance rate, this, in combination with other factors, provides an indication that further work is needed to understand whether the condition should be considered using the three-step test, or is a condition that meets the causation requirements of Schedule 2.
7. The first and second factors have the most weighting in this determination that a review should occur due to the developments in the ILO List in the time since Schedule 2’s last update. The third factor, in isolation, does not provide a strong rationale for reviewing Schedule 2 and we explain this in more detail below.

### *Developments in occupational disease knowledge should be considered in a review*

8. Schedule 2 is based on the ILO List. Schedule 2 was last updated in 2008 and the ILO List was updated after this in 2010. The leading reason that a review of Schedule 2 should occur is to consider, at minimum, the new diseases added to the updated ILO List. The ILO List includes a range of internationally recognized occupational diseases, from illnesses caused by chemical, physical and biological agents to respiratory and skin diseases. Mental and behavioural disorders have also for the first time been specifically included in the ILO List.
9. ACC supports a review occurring now to consider, at a minimum, the updated ILO List. ACC’s clinical team commented that occupational disease research is a slow-moving field, and, separately to the ILO List, major new developments are unlikely over the course of fourteen years. ACC is not in a position to be aware of emerging occupational diseases

<sup>2</sup> Note, these examples are for the evaluation of the pilot review. Future reviews will be evaluated against the objectives of the review.

<sup>3</sup> It is a requirement under ILO Convention 42, to which Aotearoa New Zealand is a party, for members to provide compensation to workers incapacitated by occupational diseases.

ahead of the ILO, given the ILO has regular access to all member states' epidemiological data, while ACC only has access to Aotearoa New Zealand data of diseases already covered.

10. ACC's engagement with occupational research is focused on prevention and rehabilitation, rather than on developments that may lead to additions of diseases to Schedule 2, as this is outside the scope of what ACC is able to fund. The focus of ACC-funded evidence is predominantly on reviews of occupational diseases to inform case decisions on causation, including cancer decisions made by the Toxicology Panel. This is helpful in understanding how cover for current diseases listed under Schedule 2 operates.
11. WorkSafe supports a review of Schedule 2 occurring. As well as the updates to the ILO List needing to be considered, WorkSafe have highlighted that Safe Work Australia commissioned a review of the 2015 Deemed Diseases, which sets out a list of diseases for cover in the workers' compensation system for most of Australia's jurisdictions. This review (published in November 2021<sup>4</sup>) recommended a list of diseases and associated exposures to be included in compensation schemes in Australian jurisdictions. It would be useful to consider this recent report in a review of Schedule 2.
12. WorkSafe and Massey University have also conducted studies and surveys to improve understanding of exposure to work-related health risks in Aotearoa New Zealand workplaces. While Aotearoa-focused occupational health research has not presented any new occupational diseases outside of the ILO List, it has developed in the last fourteen years with a growing focus on understanding the impact of diseases on traditionally under-represented populations in research.
13. A 2022 Massey University study on occupations and ischaemic heart disease in the general and Māori populations of New Zealand concluded that current knowledge of exposure to occupational risk factors may not be generalisable across different population groups.<sup>5</sup> A review will be able to consider new research like this, particularly for populations typically under-represented in occupational health research such as Māori and women, in the context of updating Schedule 2 and understanding how occupational diseases impact populations differently.

*There has been a significant period of time since the previous update to Schedule 2*

14. The review framework recommends that a determination of whether a review of Schedule 2 is required, or not, should occur every 5 years. A review of Schedule 2 can happen outside of this timeframe should new developments in research occur.
15. The last update of Schedule 2 occurred in 2008. 14 years without an update to Schedule 2 is nearly triple the recommended time period in the new review framework.

*There are a variety of conditions under ACC's gradual process claims process which have a 50% or above acceptance rate*

16. ACC provided acceptance and decline rate data on gradual process injuries and occupational disease claims lodged between 1 July 2017 and 12 November 2022. The data includes an estimate of gradual process claims that were considered under Schedule 2 based on diagnosis codes and commentary in claims, as ACC does not have a data field which confirms which section of the AC Act a claim was covered under.
17. It is not appropriate to use this factor in isolation to determine whether to review Schedule 2. As well as the data being based on estimates, for some gradual process injuries, there is a

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<sup>4</sup> Driscoll T, '[SWA Deemed Diseases List Recommendations for amendments to 2015 List: final report](#)', 2021.

<sup>5</sup> Barnes LA, Eng A, Corbin M, Denison HJ, t'Mannetje A, Haslett S, et al., '[A longitudinal linkage study of occupation and ischaemic heart disease in the general and Maori populations of New Zealand](#)', 2022.

very small number of ACC claims (less than four). Using only the 50% acceptance rate indicator to determine whether a review should occur to include an occupational disease in Schedule 2 oversimplifies the complexity of determining causation for diseases and involves a lot of examples with a very small sample size. It also does not consider the variety of factors behind ACC's acceptance or decline rates, such as the exposure to a substance occurring outside of a work setting.

18. The data is however useful in providing an indicative list of conditions to consider including in a review of Schedule 2. The data demonstrated that, over a 5-year period, there were a variety of conditions considered through the three-step test for which ACC's acceptance rate was 50% or higher in total across the time period. While this is useful information, at this first stage, we are not listing, or pre-determining which conditions will be included for consideration in a review of Schedule 2. Epidemiological expertise is needed to understand whether these conditions would be relevant for this review and more appropriately considered under Schedule 2.
19. A 50% or above acceptance rate of claims for certain gradual process injuries does not guarantee they will be considered for inclusion in Schedule 2, particularly as claims for some Schedule 2 diseases do not have a 50% or higher acceptance rate.
20. The low acceptance rate for some conditions under Schedule 2 could be due to a variety of reasons, including the exposure not being at work or clinicians not being aware of a condition being covered if diagnosed as caused by a substance. It may indicate that the current wording of Schedule 2 could be adjusted to improve practitioner use and further analysis of this can be completed by the independent researchers. Due to the limitations of the data provided at this stage and complexity of gradual process claims, we cannot conclude that Schedule 2 is not operating as intended based on this data alone. The review will look into this data further to understand which conditions should be covered, but any changes to Schedule 2 other than adding/removing diseases would be a separate project.
21. While awareness is not the main purpose of this review, publicising the process of reviewing Schedule 2 and engaging with stakeholders and medical professionals will raise awareness about occupational diseases and how they can be claimed for under the Accident Compensation Scheme (AC Scheme).

## **Risks of beginning a review of Schedule 2 and mitigations**

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22. A review of Schedule 2 will provide a new opportunity for lobbyists to seek to widen the scope of the AC Scheme. This could be used to seek cover for diseases and conditions which do not have a strong causal link to work and, in some cases, are caused by non-work factors (such as ageing). While this risk exists without a review of Schedule 2, as this is a new framework, it provides a new opportunity which has not been experienced in as public a setting before.
23. This review will also likely increase the lobbying from organisations, such as Fire and Emergency New Zealand and New Zealand Professional Firefighters, for Schedule 2 to provide presumptive cover for firefighters. This is the proposal seeking occupational cancers to be linked to a person's occupation as a firefighter, rather than exposure to a specific task or substance which is the current approach to Schedule 2.
24. Providing cover for diseases linked to occupations is possible in an update of Schedule 2, as section 336 of the AC Act allows an update to include "occupations, industries, or processes" in Schedule 2. This is a different approach to how cover for occupational diseases is provided currently, and we do not consider it provides fair cover for all workers.
25. You have advised correspondents (most recently s 9(2)(a) ) that you are not seeking to provide presumptive cover for any type of occupation. Providing cover for diseases using exposure to substances or general work tasks allows fairer access to the AC Scheme for

people who work in different occupations, but may be exposed to similar substances (for example construction workers and firefighters are both exposed to asbestos).

26. At this stage, we are not advising on which diseases will, or will not, be considered for inclusion in Schedule 2. We will have an independent review process, using epidemiological expertise, to inform advice on any additions to Schedule 2.
27. We will mitigate risks of the review being misinterpreted as expanding the AC Scheme by directly engaging with organisations and developing clear public messaging on the aim of the Schedule 2 review. We have also published the review, its scope and relevant Cabinet decisions on MBIE's website, making the decision-process of this review transparent from the outset.
28. At this stage, we do not know if Schedule 2 is outdated or not, as a review has not been conducted recently to understand if the additions to the ILO List are relevant for Aotearoa New Zealand. If we do not conduct a review of Schedule 2 now, more time will elapse and the risk of the list being outdated increases. This could mean that workers are not getting fair access to cover using the efficient pathway for gradual process injuries.
29. We have received support for a review of Schedule 2 from medical experts and unions as part of the consultation on the framework earlier this year, so there is stakeholder expectation that this review will occur.
30. The risks set out above do not outweigh the benefit of piloting a review to ensure Schedule 2 reflects modern scientific knowledge of occupational diseases. If any diseases are added as a result of this review, this could improve access to cover for people experiencing occupational diseases in Aotearoa New Zealand.

## Next steps

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31. Pending your approval and House time, we recommend you update the House of Representatives in the form of a non-Parliamentary paper by the end of February 2023. It is unlikely there will be House time prior to the Christmas break.
32. We have provided a draft non-Parliamentary paper in Annex 1 and, pending your decision, your office will confirm with the House Office that the paper can be presented and published on the Parliament website.
33. Once this paper has been presented to the House, MBIE will begin stage 2, which involves preparing a discussion document and a Cabinet paper seeking permission to publish the document. This document will request suggestions of occupational diseases to be included in Schedule 2 and any supporting research. Pending work programme priorities, we are aiming to provide this to you in early 2023.
34. MBIE, with ACC's support, will engage with Māori, disabled people, unions, businesses, and medical experts to ensure they are aware of an upcoming public consultation. We will offer opportunities to discuss the consultation to support effective engagement, including, but not limited to:
  - Te Kupenga Hauora Māori at Auckland University and the Research Centre for Māori Health and Development at Massey University,
  - Whaikaha - Ministry of Disabled People,
  - The Australian & New Zealand Society of Occupational Medicine and the New Zealand Occupational Health Nurses Association,
  - E Tū,
  - New Zealand Professional Firefighters Union and Fire and Emergency NZ,
  - Occupational Health Nurses Accelerated Silicosis Prevention Group,

- Sawmill Workers Against Poisons,
  - Southern Cross Medical Care Society, and
  - WorkSafe New Zealand.
35. MBIE, with ACC's support, also intends to share the consultation directly with academics specialising in occupational health and epidemiology, and groups who have previously commented on gradual process cover more widely, such as ACC Futures Coalition.
36. MBIE will also prepare for stage 3 of the review. This involves procuring an organisation to conduct a literature review on relevant evidence for the suggested diseases and to manage independent researchers who will develop recommendations of any additions to Schedule 2. By preparing for stages two and three alongside each other, this will support the review being a continuous process.
37. Depending on the availability of researchers, we are aiming for you to bring proposals to Cabinet on changes to Schedule 2 (if required) in July/August 2023. Pending Cabinet approval, we would aim to complete the Order-in-Council process to implement these changes by the end of September 2023.

## **Annexes**

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Annex 1: Draft non-Parliamentary paper

Released under Official Information Act 1982

**Annex 1: Draft non-Parliamentary paper**

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*Attached as a separate document.*

Released under Official Information Act 1982



# BRIEFING

## Schedule 2 - Stage 2 Draft Cabinet Paper and Discussion Document

<b>Date:</b>	28 February 2023	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-2307

Action sought		
	Action sought	Deadline
Hon Peeni Henare <b>Minister for ACC</b>	<b>Agree</b> to publish a discussion document seeking suggestions for occupational diseases considered for inclusion in Schedule 2	15 March 2022
	<b>Provide</b> any comments on the attached draft Cabinet paper and discussion document	
	<b>Agree</b> to lodge the Cabinet paper by 10am on 16 March 2023 for consideration by SWC on 22 March 2023	

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Bridget Duley	Manager (Acting), Accident Compensation Policy	04 897 6364	s 9(2)(a)	✓
James Anderson	Principal Policy Advisor (Acting), Accident Compensation Policy			
Kayleigh Wiltshire	Senior Policy Advisor, Accident Compensation Policy			

The following departments/agencies have been consulted
Accident Compensation Corporation (ACC)

**Minister's office to complete:**

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

**Comments**

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# BRIEFING

## Schedule 2 - Stage 2 Draft Cabinet Paper and Discussion Document

Date:	28 February 2023	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-2307

### Purpose

This briefing seeks:

- your feedback on, and agreement to publish, a discussion document seeking suggestions of occupational diseases to consider for inclusion in Schedule 2.
- subject to any comments on the attached Cabinet paper, your agreement to lodge the paper by 10.00am on 16 March 2023, for consideration at the Cabinet Social Wellbeing Committee (SWC) meeting on 22 March 2023. The paper seeks Cabinet agreement to release the discussion document.

### Executive summary

One of your portfolio priorities under the 2020 Labour Party's Manifesto is to "consider the range of conditions ACC covers and take an evidence-based approach to updating the list of chronic illnesses caused through workplace exposure to harmful environments".

This briefing seeks your approval to issue a discussion document seeking suggestions of occupational diseases to be considered for inclusion in Schedule 2, the list of occupational diseases in the Accident Compensation Act 2001. This would continue to deliver on the above Manifesto commitment and complete Stage 2 of the Schedule 2 review.

In the discussion document we have not included any proposals for additional diseases. We have included background information on Schedule 2, the review process, and developments in occupational disease recognition by the International Labour Organization (ILO) and Australian jurisdictions to provide context for the public submissions.

Subject to your agreement, the attached draft Cabinet Paper would seek Cabinet approval to publish a discussion document. This could be lodged for the SWC meeting on 22 March 2023.

Pending Cabinet approval for publishing the document, MBIE, with ACC's support, will proactively contact stakeholders and interested parties. These stakeholders include, but are not limited to, Māori, disabled people, unions, businesses, and medical experts.

### Recommended action

MBIE recommends that you:

- Note** that Cabinet agreed to a review process in September 2022 for the list of occupational diseases in Schedule 2.
- Note** that the former Minister for ACC notified the House of Representatives on 30 January 2023 of her decision to proceed with a review of Schedule 2.

*Noted*

*Noted*

- c **Note** that the submissions will inform a list of occupational diseases which will be provided to independent researchers and experts who will assess them to inform a report with recommended additions to Schedule 2.

*Noted*

Next Steps

- d **Provide** any comments on the attached draft Cabinet paper (**Annex 1**) and discussion document (**Annex 2**)

*Provided / Not provided*

- e **Agree** to lodge the Cabinet paper (**Annex 1**) by 10.00am on 16 March 2023 for the Cabinet Social Wellbeing Committee (SWC) meeting on 22 March 2023.

*Agree / Disagree*

- f **Agree** to publish the discussion document (**Annex 2**) seeking suggestions of occupational diseases to be considered for inclusion in Schedule 2, for release in March 2023.

*Agree / Disagree*

s 9(2)(a)

Bridget Duley  
**Manager (Acting), Accident Compensation  
Policy**  
Labour, Science and Enterprise, MBIE

28 / 02 / 2023

Hon Peeni Henare  
**Minister for ACC**

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## Background

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1. On 30 January 2023, Hon Carmel Sepuloni, the then Minister for ACC, updated the House of Representatives that a review of Schedule 2, the list of occupational diseases under the Accident Compensation Act 2001 (the AC Act), will occur.<sup>1</sup> MBIE, with ACC's support, determined the review should occur because:

- **A review should, at minimum, consider updates to the ILO list of occupational diseases (ILO List).** The ILO List was updated in 2010, and Schedule 2 was last updated in 2008.
- **Schedule 2 has not been updated for over 14 years.** This is nearly triple the recommended amount of time for the regularity of this review framework (which is five years).
- **A variety of gradual process claims under the section 30 three-step test<sup>2</sup> have a 50% or above acceptance rate.** This provides a provisional list of conditions which need to be analysed further, with epidemiological expertise, to understand if they should be considered in a review of Schedule 2.

2. The update to the House of Representatives completed Stage 1 of the Schedule 2 review.

### *Stage 2 - Public consultation*

3. Stage 2 of the review process is a public consultation seeking suggestions of occupational diseases and supporting research from interested parties. As Schedule 2 is updated by an Order in Council and not an Amendment Act, there is not a select committee process. A consultation provides the opportunity for public involvement in informing changes to Schedule 2.
4. The discussion document does not include proposals of occupational diseases for the public to respond on. At this stage, we are not advising which diseases will, or will not, be considered for inclusion in Schedule 2. There will be an independent review process, using epidemiological experts, to inform advice on whether additions are needed for Schedule 2, or not.

### *Scope of the consultation*

5. As advised in the Stage 1 briefing [*BR 2223-2007 refers*], a review of Schedule 2 will likely increase lobbying for expansion of the Accident Compensation Scheme (AC Scheme), including for presumptive cover for firefighters and for mental injury.
6. The discussion document sets out the scope of the review to ensure submitters are aware that the review only focuses on adding occupational diseases (and their corresponding exposures) to Schedule 2, and adding additional exposures for diseases already listed in Schedule 2. The review will not consider wider changes to the AC Scheme, including how gradual process cover is provided more broadly and how other types of injuries, which are not an occupational disease, are covered under the AC Act.

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<sup>1</sup> Hon Carmel Sepuloni, 'Decision to review Schedule 2: List of Occupational Diseases under the Accident Compensation Act 2001', 30 January 2023, [https://www.parliament.nz/en/pb/papers-presented/current-papers/document/PAP\\_130495/accident-compensation-act-2001-decision-to-review-schedule](https://www.parliament.nz/en/pb/papers-presented/current-papers/document/PAP_130495/accident-compensation-act-2001-decision-to-review-schedule)

<sup>2</sup> The three-step test determines if a personal injury is, on the balance of probabilities, more likely to be caused by a work-related factor than not. This test enables ACC to consider claims for a variety of work-related gradual process, disease, or infection injuries, including hearing loss and musculoskeletal conditions, which can also be caused by non-work factors (such as ageing).

## *Developments in occupational disease recognition and research*

7. The discussion document includes summaries of international (including Australian) and Aotearoa New Zealand developments in occupational disease research since Schedule 2's last update in 2008. This aims to support submitters' awareness of how occupational diseases are covered in a workers' compensation context, and how research has developed, to help support an informed submission.
8. The ILO List was most recently updated in 2010 and includes a range of illnesses caused by chemical, physical and biological agents to respiratory and skin diseases. The ILO List included mental and behavioural disorders for the first time in 2010.
9. The ILO has also recommended that member states take a 'gender sensitive' approach when reviewing and developing occupational health research and legislation. This approach is not designed to negatively impact any group of individuals. The approach recognises that workers are exposed to different risks and may react differently to the same risks because of their different biological makeup. It also recognises that different societal roles, expectations, and responsibilities may influence the exposures that workers have in the workplace.
10. In Australia, there are 11 main workers' compensation systems. Most jurisdictions have a Deemed Diseases List as part of their workers' compensation scheme, which comprises diseases which are deemed to be work-related.
11. Safe Work Australia commissioned a review of the Deemed Diseases List which was published in November 2021 and informed the most recent Revised List of Deemed Diseases in December 2021.
12. The Deemed Diseases List is useful in informing the review of Schedule 2. The Deemed Diseases list works similarly to Schedule 2 in that it is designed as a streamlined route to workers' compensation compared to the alternative process (which, under ACC, is the three-step test under section 30 of the AC Act) of demonstrating a multi-factorial disease is more likely to be caused by work than non-work factors.
13. However, the Deemed Diseases List was produced for the context of Australian workers' compensation systems. The Schedule 2 review framework includes criteria for inclusion in Schedule 2, which differ from those used for the Deemed Diseases List.
14. As both the Deemed Diseases List and the ILO List include mental conditions, for clarity the discussion document explains that work-related mental injury is covered separately to gradual process injuries under the AC Act and will not be considered in this review. A separate review is being scoped regarding analysis of the cover available for mental injuries under the AC Act.

## **Risks of Schedule 2 consultation**

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15. The risks of a public consultation are similar to the risks of beginning a review of Schedule 2. A public consultation on Schedule 2 will provide an opportunity for lobbyists to seek to widen the scope of the AC Scheme. Submitters may seek cover for diseases and conditions which do not have a strong causal link to work and, in some cases, are caused by non-work factors (such as ageing). This information is also set out in a briefing we provided to the former Minister for ACC on beginning a review of Schedule 2 [*BR 2223-2007 refers*].
16. This review will also likely increase the lobbying from organisations, such as Fire and Emergency New Zealand and New Zealand Professional Firefighters, for Schedule 2 to provide presumptive cover for firefighters. This is a proposal seeking cover for occupational cancers to be linked to a person's occupation as a firefighter, rather than exposure to a specific task or substance which is the current approach to Schedule 2.

17. Presumptive cover is outside the scope of this review process and would be a separate policy project. We do not consider linking diseases to occupations provides fair cover for all workers. Providing cover for diseases using exposure to substances or general work tasks allows fairer access to the AC Scheme for people who work in different occupations, but may be exposed to similar substances (for example construction workers and firefighters are both exposed to asbestos).
18. At this stage, we are not advising on which diseases will, or will not, be considered for inclusion in Schedule 2. We will have an independent review process, using medical expertise, to inform advice on any potential additions to Schedule 2.
19. Submitters may also seek a wider review of Schedule 2, such as removing diseases currently listed and changing the purpose of the Schedule. Wider changes to Schedule 2, including removing diseases or changing its purpose, would be beyond the scope of the Order in Council power to update Schedule 2. This would also require the design of a new process, as the current review process has been designed to inform if any updates are required to the list, rather than redesign its purpose.
20. We will mitigate risks of the consultation being misinterpreted as expanding the AC Scheme or restructuring Schedule 2 by directly engaging with organisations and developing clear public messaging on the aim of the Schedule 2 consultation. We have also published the Schedule 2 review process, its scope and relevant Cabinet decisions on MBIE's website, making the decision-process of this review transparent from the outset.
21. The risks set out above do not outweigh the benefit of a public consultation to support Schedule 2 reflecting modern scientific knowledge of occupational diseases. If any diseases are added as a result of this review, this could improve access to cover for people experiencing occupational diseases in Aotearoa New Zealand.

## Next steps

22. If you agree to launch a discussion document, subject to your approval of the Cabinet paper, your office will need to lodge the Cabinet paper by a provisional date of 10am on Thursday 16 March 2023 for it to be considered during the SWC meeting on 22 March 2023.
23. Subject to Cabinet approval, officials can publish the discussion document anytime on or after Tuesday 28 March 2023 and the consultation period would be open for four weeks. Timeframes for the discussion document are set out on the following page in **Table 1**.

**Table 1: Stage 2 timeframe**

Item	Date
Draft Discussion document to Minister	28 February 2023
Ministerial Consultation	1 March – 15 March 2023
Provisional date for lodging the Cabinet Paper with SWC	Thursday 16 March 2023 by 10am
SWC meeting	22 March 2023
Discussion document released to public (pending Cabinet approval)	Any time on or after Tuesday 28 March 2023, closing date to be established.

24. During the consultation period, MBIE (with ACC's support) will proactively contact stakeholders. These include, but are not limited to:
- ACC Futures Coalition,
  - Te Kupenga Hauora Māori at Auckland University and the Research Centre for Māori Health and Development at Massey University,
  - Whaikaha - Ministry of Disabled People,
  - The Australian & New Zealand Society of Occupational Medicine and the New Zealand Occupational Health Nurses Association,
  - E Tū,
  - New Zealand Professional Firefighters Union and Fire and Emergency NZ,
  - Occupational Health Nurses Accelerated Silicosis Prevention Group,
  - Sawmill Workers Against Poisons,
  - Southern Cross Medical Care Society, and
  - WorkSafe New Zealand.
25. When the consultation closes, MBIE, with ACC's support, will use the submissions to develop a list of occupational diseases. This list will be provided to independent researchers and experts for Stage 3 of the review.

*Stage 3 - Independent researchers & medical experts' report*

26. Stage 3 of the review process involves a literature review of the relevant clinical and epidemiological evidence for occupational diseases. This will be provided to a group of independent medical experts who will assess the evidence of the listed diseases to determine if they will recommend their inclusion in Schedule 2, or not.
27. MBIE expects to launch the procurement process for the researchers and medical experts soon after the discussion document is released to the public. This aims for the contract to begin in late May 2023, supporting a smooth transition between Stages 2 and 3.
28. If the contract begins in late May, we expect a report by late July with recommendations of occupational diseases to include in Schedule 2. As this is a pilot of the review process, these timings are estimated and it may take longer, or shorter, dependent on the time needed for the procurement and expert analysis.

## **Annexes**

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Annex 1: Draft Cabinet paper

Annex 2: Draft discussion document

**Annex 1: Draft Cabinet paper**

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*Attached as a separate document.*

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**Annex 2: Draft discussion document**

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*Attached as a separate document.*

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## AIDE MEMOIRE

### Schedule 2 Talking Points for Social Wellbeing Committee

<b>Date:</b>	27 March 2023	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-3138

#### Information for Minister(s)

Hon Peeni Henare  
**Minister for ACC**

#### Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Bridget Duley	Manager, Accident Compensation Policy	04 897 6364 s 9(2)(a)	✓
Rebecca Lloyd	Policy Advisor, Accident Compensation Policy	04 901 2154	

#### The following departments/agencies have been consulted

Accident Compensation Corporation

#### Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

#### Comments

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# AIDE MEMOIRE

## Schedule 2 Talking Points for Social Wellbeing Committee

<b>Date:</b>	27 March 2023	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-3138

### Purpose

You are seeking approval at the Cabinet Social Wellbeing Committee (SWC) on Wednesday, 29 March 2023 to release the discussion document seeking suggestions of occupational diseases to be considered for inclusion in Schedule 2 of the Accident Compensation Act 2001 (the AC Act).

This aide memoire provides suggested talking points and answers to possible questions from your Cabinet colleagues in **Annex One**.

Officials from MBIE (James Anderson and Kayleigh Kell) will be available for the SWC meeting to support you as required.

s 9(2)(a)

Bridget Duley  
**Manager, Accident Compensation Policy**  
Workplace Relations & Safety Policy, MBIE

27/03/2023

### Background

1. Schedule 2 lists the current occupational diseases covered by the AC Act.
2. On 30 January 2023, your predecessor informed the House of Representatives that a review of Schedule 2 will occur. You then agreed to the proposals in the Schedule 2 – Stage 2 briefing [2223-2307 refers] to publish a discussion document seeking suggested additions to Schedule 2.
3. You are now seeking approval from SWC to release that public consultation document which seeks suggestions of additional occupational diseases for Schedule 2 of the AC Act.
4. The discussion document does not contain proposals for additional diseases. It contains background information on Schedule 2, the review process, and developments in occupational disease recognition by the International Labour Organization and Australian jurisdictions. Submitters' suggestions could include diseases not currently listed in Schedule 2, and additional employment tasks or environments for diseases already listed.
5. MBIE has provided talking points and Q&As to support you at the meeting in **Annex One**.

6. During the consultation period, officials will contact various stakeholders to ensure they are aware of the consultation and have the opportunity to provide a submission. The stakeholders will include advocacy organisations, health professionals, workers' representatives, and employer and industry representatives.

## Risks & Mitigations

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### Timing of the review

7. Your Cabinet colleagues may push back regarding the timing of the Schedule 2 review as it will coincide with the pre-election period of restraint (14 July to 14 October 2023). While it is the Government, and ultimately the Prime Minister's, discretion on which decisions to pursue in this period, the Schedule 2 review does not fall into the two main areas where previous governments have chosen to restrict their actions in the pre-election period. These areas include significant appointments, and some government advertising.<sup>1</sup>
8. There is also a risk that the review cannot be completed before the election, as the timing is dependent on a number of factors, such as experts' availability, and Cabinet availability and priorities in the pre-election period of restraint. We expect that the review will be completed by the end of the calendar year.

### Scope of the review

9. The consultation may raise expectations for diseases to be added, or types of cover to be expanded. MBIE will continue to engage with stakeholders to clearly set out the scope of the review and have developed clear public messaging on the aim of this consultation. We have also published the Schedule 2 review process, its scope and relevant Cabinet decisions on MBIE's website, making the decision-process of this review transparent from the outset.
10. At this stage, we are not advising on which diseases will, or will not, be considered for inclusion in Schedule 2. We will have an independent review process, using medical experts, to inform advice on any potential additions to Schedule 2. This aligns with the 2020 Manifesto commitment for the review to be 'evidence-based'.

### *Presumptive cover*

11. Your Cabinet colleagues may raise concerns considering attention the Schedule 2 review has received from firefighters regarding their push for presumptive cover. The discussion document is likely to attract some submissions from firefighters on the matter.
12. Presumptive cover is outside the scope of this review process and would be a separate policy project. As we mentioned in our previous briefing [2223-2307 refers], we do not consider that linking diseases to specific occupations provides fair cover for all workers. Providing cover for diseases based on exposure to substances or general work tasks allows fairer access to cover for people in different occupations. We have provided reactive lines in your communications pack to ensure we are prepared for any media queries.
13. We have also provided suggested answers on these topics in **Annex One**.

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<sup>1</sup> [Cabinet Office Circular – CO \(23\) 1](#)

## Next steps

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14. Pending Cabinet agreement, MBIE will publish the discussion document on our website on 4 April 2023. Public consultation will be open for six weeks and close on 16 May 2023.
15. During the consultation period, officials will contact various stakeholders to ensure they are aware of the consultation and have the opportunity to provide a submission. The stakeholders will include advocacy organisations, health professionals, workers' representatives, and employer and industry representatives.

## Annexes

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**Annex One:** Suggested talking points and Q&A on the discussion document.

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## Annex One: Suggested talking points and Q&A on the discussion document

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### Talking points

- I am seeking approval to release a discussion document requesting suggestions of occupational diseases to be considered for inclusion in Schedule 2, the list of occupational diseases covered under the Accident Compensation Act 2001.
- We committed in our 2020 Manifesto to take an 'evidence-based approach to updating the list of chronic illnesses caused through workplace exposure to harmful environments.'
- This list of occupational diseases has not been updated since 2008. My predecessor, the Hon Carmel Sepuloni, announced earlier this year on 30 January that a review of Schedule 2 would begin.
- This public consultation continues that review and supports the objective: "transparency and consistency" by being open about what is involved in the review.
- Providing an opportunity for public input is also consistent with the above objective.
- This review aims to ensure the list in the Accident Compensation Act better reflects diseases that working New Zealanders experience and improve claimants' access to ACC.
- As Minister for ACC, I want to make sure that ACC assists all New Zealanders who have had an injury and that it is fit for purpose for New Zealand in the 21st century.

### Q&A

#### Review timing and cost

##### **When will Schedule 2 be updated?**

- This is the first time we are using this new review framework involving medical expert analysis and the list has not been updated for 14 years.
- I expect to receive advice from officials on diseases to include in the Schedule in mid-to-late 2023.

##### **How much will the review cost?**

- We are estimating it will cost up to \$100,000 as it is a new review process involving expert analysis, noting that the list has not been updated for 15 years so there is new information to consider.
- The costs of this first review under the new framework will be met by MBIE with additional funding from ACC if necessary.
- This review will be used to inform any future changes, such as providing specific funding from the Work Account for future reviews. I want to provide certainty for levy payers before making this change.

## Background information

### **What is Schedule 2?**

- Schedule 2 is a list of certain occupational diseases for which cover can be provided under the Accident Compensation Act 2001 (the AC Act).
- It is intended to provide a streamlined route to ACC cover where there is a high degree of certainty the disease someone has is caused by workplace exposure, e.g., to a specific chemical.
- An example is if a person was exposed to asbestos at work and later developed mesothelioma – it is almost certain the exposure to asbestos caused their condition.

### **Why are occupational diseases covered by ACC?**

- The Accident Compensation Act provides cover for work-related injuries caused by a gradual process, disease or infection, referred to in a shorthand way as “gradual process” injuries.
- Cover for work-related gradual process injuries has been a fundamental component of workers compensation schemes in Aotearoa New Zealand and internationally. It is a requirement under the International Labour Organization’s (ILO) Convention 42, to which Aotearoa New Zealand is a party.
- This acknowledges workers may have little control over work tasks or environments that cause disease, illness or injury and that some conditions may develop over time.

### **What is a gradual process injury?**

- ‘Gradual process injury’ is used as a shorthand term for ‘Work Related Gradual Process Disease or Infection’. This encompasses illnesses that are not covered under the AC Act’s general provisions for injury caused by accident. Gradual process injuries are only covered when they are caused by work, and include single exposure events such as infection, and injuries that develop over a longer period of time. Examples include
  - personal injury arising from working repetitively with agents, dusts, compounds, substances, radiation or other factors that cause illness over time, or
  - infection that could result from a single exposure, such as leptospirosis, a bacterial infection that can be caused by working with animals or animal carcasses.

### **How does ACC cover claims related to occupational diseases?**

- There are two ways for work-related gradual process injuries to be covered under the AC Act:
  - There is a three-step test outlined in section 30(2) of the AC Act that considers a causal relationship between the claimant’s gradual process injury and the claimant’s work. Meeting the requirements of this test is one way to be covered.
  - The other way is being diagnosed with an occupational disease that is already listed in Schedule 2, which is the list of occupational diseases covered in the AC Act. In these cases, it is not necessary to make such a detailed assessment of the causal relationship between the occupational disease and the claimant’s work or other factors.

## Expansion of AC Scheme

### **Will you be adding new diseases to Schedule 2? (e.g., sawmill workers impacted by PCP poisoning and firefighters' cancers)**

- I cannot pre-determine the outcome of the review. The consultation is focused on hearing suggestions from workers, workers' groups and any interested parties about their experiences and evidence of occupational diseases.
- The outcome of the review could lead to adding new diseases through an Order in Council.

### **Will you be expanding Schedule 2 to consider the impact of occupational diseases on whānau of individuals with occupational diseases?**

- It is not the intention of this review to expand cover under the Accident Compensation Scheme beyond what it already covers, and the Order in Council mechanism for updating Schedule 2 does not enable this type of expansion.

### **Will mental conditions be added to Schedule 2 now they are included on the ILO list?**

- In New Zealand, work-related mental injury is covered under section 21B of the Accident Compensation Act rather than through Schedule 2, so it is not included in the review.

### **Will the review mean firefighters get presumptive cover?**

- Presumptive cover, where someone is automatically covered for certain diseases because of their occupation, is not part of the Schedule 2 review. This would represent a significant change to the way the AC Scheme works.
- Linking diseases to occupations does not provide fair cover for all workers and is counter to the principle of fairness in the AC Scheme.
- Providing cover for diseases based on exposure to substances or general work tasks allows fairer access to cover for people in different occupations. Firefighters and construction workers may both be exposed to asbestos, for example.
- All occupations have certain levels of unavoidable risks for specific injuries and the AC Scheme is already constructed to effectively respond to gradual process injuries.

### **The previous Minister said she wants to rebalance ACC to close the gender gap. How can a review of Schedule 2 help?**

- Most of the research on occupational diseases in Aotearoa New Zealand is entirely or predominantly focused on men.
- To better support women, we need to understand what diseases women are experiencing in the workplace and where the gaps in our knowledge are. The Schedule 2 review will be a step towards understanding more about these diseases, and how best to support the people experiencing them, to help ensure access to the AC Scheme is fair.
- The review will include an analysis of the latest occupational health research by independent medical experts and their process will take gender into account.
- This information can be used to improve awareness and preventative action and to improve access to ACC's cover for occupational diseases impacting women.

### **Why does MBIE review Schedule 2 and not ACC?**

- MBIE is the government department responsible for oversight of the AC Act.
- MBIE is also responsible for monitoring, reviewing and reporting on the AC Scheme's regulatory systems and ensuring robust analysis for changes to the regulatory systems.
- A regular review initiated by MBIE and informed by independent researchers will improve MBIE's regulatory stewardship/oversight of the AC Act.

### **What is the estimated timeline for Schedule 2 public consultation?**

- The Discussion Paper will be published any time on or after 4 April 2023 (following Cabinet approval).
- The consultation period will close on 16 May 2023 and responses will be summarised following this.

### **What is the estimated timeline for the events following the public consultation closing?**

- These steps of the timeline are dependent on a number of factors, such as experts' availability and the occurrence of the pre-election period of restraint and the election itself. Regardless, it is expected for the below steps to be completed by the end of the calendar year.
- Experts will review submissions and develop an independent report with their recommendations. While this is estimated to take three months (June to August 2023) it is dependent on expert availability and an amount of time the experts deem appropriate to conduct a thorough review.
- MBIE will consider the independent report, working with ACC on costings and other policy considerations to inform their advice to me. This will follow the independent report meaning it will be impacted by both the completion of the independent report and the pre-election period of restraint.
- Pending MBIE's advice, I will seek Cabinet permission to engage in consultation on final recommended changes to Schedule 2. This entails another round of public consultation and is dependent on the availability of Cabinet around this time, which will be during the pre-election period of restraint.
- The final recommendations will be confirmed with Cabinet and the Order in Council process to update Schedule 2 will begin. This will likely occur during the pre-election period of restraint and the election itself or following the election.



## BRIEFING

### 2023 Schedule 2 Consultation Update and Next Steps

<b>Date:</b>	19 June 2023	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-3850

Action sought		
	Action sought	Deadline
Hon Peeni Henare <b>Minister for ACC</b>	<b>Note</b> the summary of responses to the Schedule 2 consultation in <b>Annex One.</b>	30 June 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Bridget Duley	Manager, Accident Compensation Policy	04 897 6364	s 9(2)(a)	✓
Rebecca Lloyd	Policy Advisor, Accident Compensation Policy	04 901 2154	-	

The following departments/agencies have been consulted
ACC

**Minister's office to complete:**

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

**Comments**

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# BRIEFING

## 2023 Schedule 2 Consultation Update and Next Steps

<b>Date:</b>	19 June 2023	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-3850

### Purpose

To provide you with a summary of the proposed changes to Schedule 2 of the Accident Compensation Act 2001 received through the public consultation and the next steps in the review. We are not seeking any decisions from you at this stage.

### Executive summary

A key commitment in the Labour Party's 2020 Manifesto was "considering the range of conditions ACC covers and taking an evidence-based approach to updating the list of chronic illnesses caused through workplace exposure to harmful environments." Cabinet approved a review framework for the Schedule 2 list of occupational disease in the Accident Compensation Act 2001 and this began in January 2023.

Stage 2 of the review involved a consultation seeking public suggestions for additions to Schedule 2. This was open from 5 April to 17 May 2023 and MBIE received 20 written submissions from a range of unions, insurance providers, governmental departments, and medical professionals.

The majority of the 20 submitters provided suggestions for additions to Schedule 2, two submitters sought for no changes to Schedule 2 to be made, and a few submitters also raised points which were out of scope of the consultation (i.e., presumptive legislation for firefighters, government monitoring programmes, and mental health coverage).

**Annex One** provides a summary of the submissions for changes to Schedule 2 which MBIE will use to inform a list of proposals (a draft is available in **Annex Two**) to provide to independent researchers and medical experts. The summary document (as Annex One) will be uploaded to the MBIE website before the end of June 2023.

The upcoming Stage 3 of the review will involve independent researchers conducting a literature review of the available evidence on the suggestions. This literature review will be provided to a panel of independent health experts to develop a report with recommendations for any changes to Schedule 2. MBIE is expecting to procure an organisation to begin Stage 3 by the end of June 2023.

Following the development of the report, which at this point is expected to be completed by the end of September 2023, MBIE, in conjunction with ACC, will develop advice on whether any changes should be made to Schedule 2.

## Recommended action

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The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** the summary of responses to the Schedule 2 consultation in Annex One

*Noted*

s 9(2)(a)

Bridget Duley  
**Manager, Accident Compensation Policy**  
Workplace Relations & Safety Policy, MBIE

19 / 06 / 2023

Hon Peeni Henare  
**Minister for ACC**

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## Background

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1. Work-related gradual process diseases and infections (WRGPDI) can be covered by the Accident Compensation Scheme (the AC Scheme) with the acknowledgement that not all injuries take immediate effect, some worker activities have a higher risk than others, and workers may have little control over their work tasks or environments that can cause disease, illness, or injury.
2. There are two cover routes for work-related gradual process diseases and infection:
  - Through successful application of the three-step test provided in section 30 of the Accident Compensation Act 2001 (the AC Act).<sup>1</sup> The test involves demonstrating that an employment task or environment with a particular property, causes or contributes to the cause of, a personal injury.
  - Through an illness being included in the Schedule 2 list of occupational diseases. This is a more efficient cover route as the diseases on the list already have a strong causal link to exposure to a substance or specific work task.<sup>2</sup> These diseases are considered to be work-related if the person suffering the disease has been in employment in an occupation, industry, or process listed, or been in employment involving exposure to the agent or substance listed in Schedule 2 for a disease type (unless ACC establishes that the person's personal injury has a cause other than their employment).
3. The International Labour Organization established a list of occupational diseases in 1934 (ILO List) and most recently updated this in 2010.<sup>3</sup> The Schedule 2 list in the AC Act was based on the ILO list and has not been updated since 2008.
4. In September 2022, Cabinet agreed to a new review framework for Schedule 2 to ensure it is kept up to date with modern science. A copy of the final review framework is in **Annex Three**. The review will contain seven stages. Stage 1 (determining if a review is needed and updating the House of Representatives) was completed in January 2023, followed by Stage 2 (publishing a consultation document seeking suggestions for additions to Schedule 2).

### Consultation regarding additions to the Schedule 2 list of occupational diseases was undertaken throughout April and May 2023

5. The public consultation was open from 5 April 2023 to 17 May 2023 and covered the context and scope of the Schedule 2 review; background on work-related gradual process injuries; the developments that overseas organisations have made to their lists of occupational diseases (i.e., the ILO and Safe Work Australia); and the next steps of the review.
6. MBIE and ACC both shared this consultation document directly with a range of unions, advocacy organisations, medical organisations, sector representatives, and academics. These are listed in **Annex Four**.
7. Overall, MBIE received 20 submissions from the following organisations and individuals this list is contained in **Annex Five**.

### An overview of the submissions

8. Most submissions suggested new diseases, substances and other exposure factors to be included in Schedule 2, such as a range of heart and lung diseases and new compounds

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<sup>1</sup> This was amended to be more claimant friendly in the Accident Compensation (Maternal Birth Injuries and Other Matters) Amendment Bill 2022.

<sup>2</sup> If using the Schedule 2 list route, the claimant does not need to apply the three-step test for cover.

<sup>3</sup> Information on the ILO list can be found here: [https://www.ilo.org/safework/info/publications/WCMS\\_125137/lang-en/index.htm](https://www.ilo.org/safework/info/publications/WCMS_125137/lang-en/index.htm)

including ammonia, fluorine, and chlorine. A detailed summary of submissions (which MBIE will proactively release) is attached at **Annex One**.

9. MBIE also received a number of other submissions which were out of scope as they concerned expansion to the AC Scheme or other amendments to the AC Act (for example, presumptive cover for firefighters). These issues, whilst not relevant to the review, reflect stakeholder views on how cover is accessed for certain injuries and are also summarised in **Annex One**.
10. A small group of two submitters recommended leaving the Schedule 2 list as it currently stands.<sup>4</sup> These are referred to as 'status quo submissions'. Additionally, two submissions were received using the form from April 2022 which suggested changes to the Schedule 2 review framework.
11. The out of scope submissions concerned topics such as changes to the review framework per Stage 1 of the Schedule 2 review, changes to section 30 of the AC Act, expanding the AC Scheme to include mental health cover or health issues not related to work, and introducing presumptive legislation for firefighters, among other things. (**Annex One** provides further detail on these).

### **Common suggestions in submissions**

12. A significant number of the proposals were concerned with the ACC cover available for firefighters (both professional and suggestions to expand WRGPDI cover to volunteers). Such submissions were particularly focused on cancers and heart diseases deemed to be associated with firefighting. These proposals are consistent with the Revised List of Deemed Diseases by Safe Work Australia.<sup>5</sup>
13. While the ILO and Deemed Diseases lists are relevant for consideration in this stage of the Schedule 2 review, the threshold for new additions to the Schedule 2 list is different due to the design of the AC Act and the purpose of the AC Scheme (compared to Australian worker compensation and the ILO).
14. Envirocom, UFBA and WorkSafe all proposed the inclusion of Hepatitis (A, B & C) for inclusion in Schedule 2.
15. Cancer Society of New Zealand, Dr Bronwen McNoe, and Southern Cross included Melanoma, non-melanoma skin cancers, and/or rarer malignancies of the skin in their proposed additions, all citing excessive UVA, UVB and UVR exposure as the cause.
16. There was a wide range of musculoskeletal disorders suggested in submissions from Envirocom, UFBA, Robyn Tattley, WorkSafe, AIA, and Southern Cross with occupations including firefighters, funeral directors, truck/bus drivers, nurses, and various types of outdoor workers.
17. As for additions of specific compounds/agents/dusts, there were extensive proposals for new additions, with Envirocom and UFBA (in particular) using the 2010 ILO List as a guide.
18. Expansion of diseases covered by compounds/agents/dusts already included in Schedule 2 was a big theme in the submissions. For example, while Schedule 2 includes lung cancer and mesothelioma caused by asbestos, NZISM and UFBA proposed expanding diseases relating to asbestos to also include cancers of the larynx and gastrointestinal tract. Further discussion on this is in **Annex One**.

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<sup>4</sup> Related to this, Whaikaha made a submission which did not contain any proposals, but did not explicitly state the list should be left as is.

<sup>5</sup> More information on this list can be found here: <https://www.safeworkaustralia.gov.au/doc/revised-list-deemed-diseases-australia>

19. Overall, this consultation has demonstrated there are a significant number of proposals for independent researchers and medical experts to consider.

## Next steps

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20. MBIE will use the summary of suggestions provided by the public (**Annex One**), alongside the ILO's 2010 List and Safe Work Australia Revised Deemed Diseases List, to inform a list of proposed changes to Schedule 2.
21. The list of suggestions will be used in stage 3 of the review. The proposals will be provided to a group of independent researchers who will conduct a literature review to gather relevant causal evidence on each proposed disease. The evidence will then be provided to medical experts with epidemiological and occupational health expertise to inform a report with any recommended changes to Schedule 2.
22. Procurement for stage 3 is currently ongoing. MBIE is expecting to issue a contract this month, with the aim of the contract beginning by the end of June. Organisations who have expressed an interest in completing the stage have advised that it will take three months due to the clinical nature of the work, with a suggested end date of the report to be in September 2023.
23. After receiving the report, MBIE will work with ACC to consider the experts' recommendations, alongside policy considerations such as the cost and scope of the AC Scheme, to inform advice on any recommended changes to Schedule 2. We expect this advice will be provided following the election.

## Annexes

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**Annex One:** Summary of submissions

**Annex Two:** Overview of public proposals

**Annex Three:** Final review framework

**Annex Four:** Agency and stakeholder list

**Annex Five:** List of submitters

## **Annex One: Summary of submissions**

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*Attached as separate document.*

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## Annex Two: Overview of public proposals

Table 1: Suggested additions

Disease	<p>Specific corresponding agent, dusts, compounds, substances, radiation or things.</p> <p>Level or extent of exposure to these.</p> <p>Occupations, industries or processes.</p>
<b>Cancers</b>	
Melanoma	Intense intermittent exposure to excessive ultraviolet radiation; UVA and UVB exposure; high-risk occupations include, but are not limited to: outdoor construction workers, agriculture, horticulture, aquaculture, mountain guiding, landscaping or roading
Non-melanoma skin cancers (keratinocytic) including, but not limited to: basal cell carcinoma and squamous cell carcinoma	Exposure to excessive solar ultraviolet radiation (UVR); UVA and UVB exposure
Rarer malignancies of the skin (such as angiosarcoma)	UVA and UVB exposure
Non-Hodgkin's lymphoma	Firefighting
Testicular cancer	Firefighting
Prostate cancer	Firefighting
Kidney cancer	Firefighting
Bladder cancer	Firefighting; exposure to amines and other named chemical exposure causes
Colon cancer	Firefighting
Myeloid leukaemia	Firefighting
Female reproductive cancers	Firefighting
Thyroid cancer	Firefighting
Oesophagus cancer	Firefighting
Mesothelioma	Firefighting
General occupational cancer	Working as a firefighter or other emergency personnel
<b>Heart diseases</b>	
Ischaemic heart disease	Firefighting
Stroke	Firefighting

Other interstitial pulmonary diseases	Firefighting
<b>Lung diseases</b>	
Occupational Asthma	Exposure to sensitising agents as a firefighter
Obliterative bronchitis	Manufacturers in food production
Extrinsic allergic alveolitis	Workers in mushroom farms, vegetable storage, and wood processing
Lung and respiratory disease (with specific reference to pneumoconiosis)	Working as a nail technician or working in close proximity of where nail technicians perform their work (such as a beauty salon); working in the green space and landscaping sector; exposure to pneumocystis jirovecii (PCP) by working in the timber industry
<b>Musculoskeletal disorders</b>	
Musculoskeletal disorders including, but not limited to osteoarthritis; and other conditions of the shoulder, hip, back, and knee	Firefighting; Funeral director / embalmer; work in the green space or landscaping sector; fruit market workers; long-distance truck or bus drivers; construction workers, agriculture or aquaculture workers, manual patient handlers such as geriatric nurses
Bursitis Olecranon bursitis Prepatellar bursitis	Prolonged pressure of the elbow region Prolonged stay in the kneeling position
Osteonecrosis	Occupational diving
Radial styloid tenosynovitis	Repetitive movements, forceful exertions and extreme postures of the wrist
Chronic tenosynovitis of hand and wrist	Repetitive movements, forceful exertions and extreme postures of the wrist
Epicondylitis	Repetitive forceful work
Meniscus lesions	Extended periods of work in a kneeling or squatting position
Carpal tunnel syndrome	Extended periods of repetitive forceful work, work involving vibration, extreme postures of the wrist (or a combination of the three)
Occupational lumbar disc disorder	Exposure to work processes involving repetitive manual handling of heavy load or excessive work-related heavy lifting, frequent bending and/or twisting of trunk and/or continuous whole-body vibration; recognised high risk occupations include, but are not limited to: fruit marker workers, fire and emergency field workers, long-distance truck

	or bus drivers, construction workers, agriculture or aquaculture workers, manual patient handlers
<b>Other diseases/injuries</b>	
Hepatitis (A, B & C)	Firefighting (professional and volunteer); rescue activities (including medical first response); healthcare workers or other workers in contact with bodily fluids
Covid-19 (including Long Covid)	Firefighting (professional and volunteer)
Human Immunodeficiency Virus	Healthcare workers / other workers in contact with bodily fluids
Tuberculosis	Healthcare workers / other workers in contact with bodily fluids
Influenza A	Those working in healthcare settings
Chronic Traumatic Encephalopathy (TCE)	Repeated traumatic blows to the head suffered by professional athletes in contact sports
Occupational varicose veins in the lower extremities	Engaged in prolonged standing at work/walking at work; high risk occupations include, but are not limited to: nurses working in emergency care and operative rooms
Campylobacteriosis	Working with live animals or their carcasses; recognised high-risk occupations including, but not limited to: dairy cattle farmers, poultry workers, wildlife animal workers, and slaughterhouse workers

**Table 2: Agents, dusts, compounds, substances, radiation or things/level of exposure/occupations, industries, or processes additions**

<b>Corresponding factor</b>	<b>Specific corresponding disease</b>
Diseases of a type generally accepted by the medical profession as caused by fluorine and its compounds	N/A
Diseases of a type generally accepted by the medical profession as caused asphyxiants like carbon monoxide, hydrogen sulphide, hydrogen cyanide or its derivatives	N/A
Diseases of a type generally accepted by the medical profession as caused by oxides of nitrogen including, but not limited to: nitric oxide, nitrogen dioxide, nitrogen monoxide, and nitrogen pentoxide	N/A

Diseases of a type generally accepted by the medical profession as caused by mineral acids including, but not limited to: hydrochloric acid, nitric acid, phosphoric acid, and sulphuric acid	N/A
Diseases of a type generally accepted by the medical profession as caused by pharmaceutical agents including clandestine lab drugs and precursor chemicals	N/A
Diseases of a type generally accepted by the medical profession as caused by corneal irritants and including all Environmental Protection Authority-assessed Class 6.4A substances	N/A
Diseases of a type generally accepted by the medical profession as caused by ammonia	N/A
Diseases of a type generally accepted by the medical profession as caused by pesticides and including agrichemical and other toxicants generally including Classes 6.1A-E, 6.5A&B, 6.8A-C & 6.9A&B including narcotic effect and 2.1.7 sensitising asthma Class 6.5A	N/A
Diseases of a type generally accepted by the medical profession as caused by sulphur oxides including, but not limited to: sulphur dioxide and sulphur trioxide	N/A
Diseases of a type generally accepted by the medical profession as caused by chlorine	N/A
Diseases of a type generally accepted by the medical profession as caused by extreme temperatures	N/A
2, 3, 7, 8-tetrachloro dibenzo-para-dioxin	Diseases of the type associated with exposure including, but not limited to: lung cancer, non-Hodgkin's lymphoma, sarcoma; all cancer sites combined
Benzene	Leukaemia
Benzo(a)pyrene	Cancers of the lung, bladder, and skin
1,3-Butadiene	Blood cancers
Radioactivity (gamma activity)	All cancer sites combined
Radionuclides (both alpha-particle-emitting and beta-particle-emitting)	All cancer sites combined
Food manufacturing with fine dust particles including, but not limited to flour	Bakers' lung, and broader coverage for asthma

Gases, materials and toxins in the course of firefighting/employment with Fire and Emergency New Zealand	Occupational cancers including, but not limited to: lung cancer, skin cancer, thyroid cancer, and leukaemia
Surgical smoke plume	Asthma
1,2-Dichloropropane	Cholangiocarcinoma
Lindane	Non-Hodgkin's lymphoma
Pentachlorophenol	Non-Hodgkin's lymphoma
Ultraviolet light (from welding)	Ocular melanoma
Welding fumes	Lung cancer
Embalming fluid	Central nervous system damage
Per- and Polyfluorinated Substances (PFAS) firefighting foams (historical use and current use as legacy foams)	N/A
Aromatic hydrocarbons including chronic solvent-induced encephalopathy	N/A
Isocyanates used in polyurethane material	N/A
2-hydroxy ethyl methacrylate agent (Hema)	N/A

**Table 3: Suggestions that are already covered in Schedule 2 list**

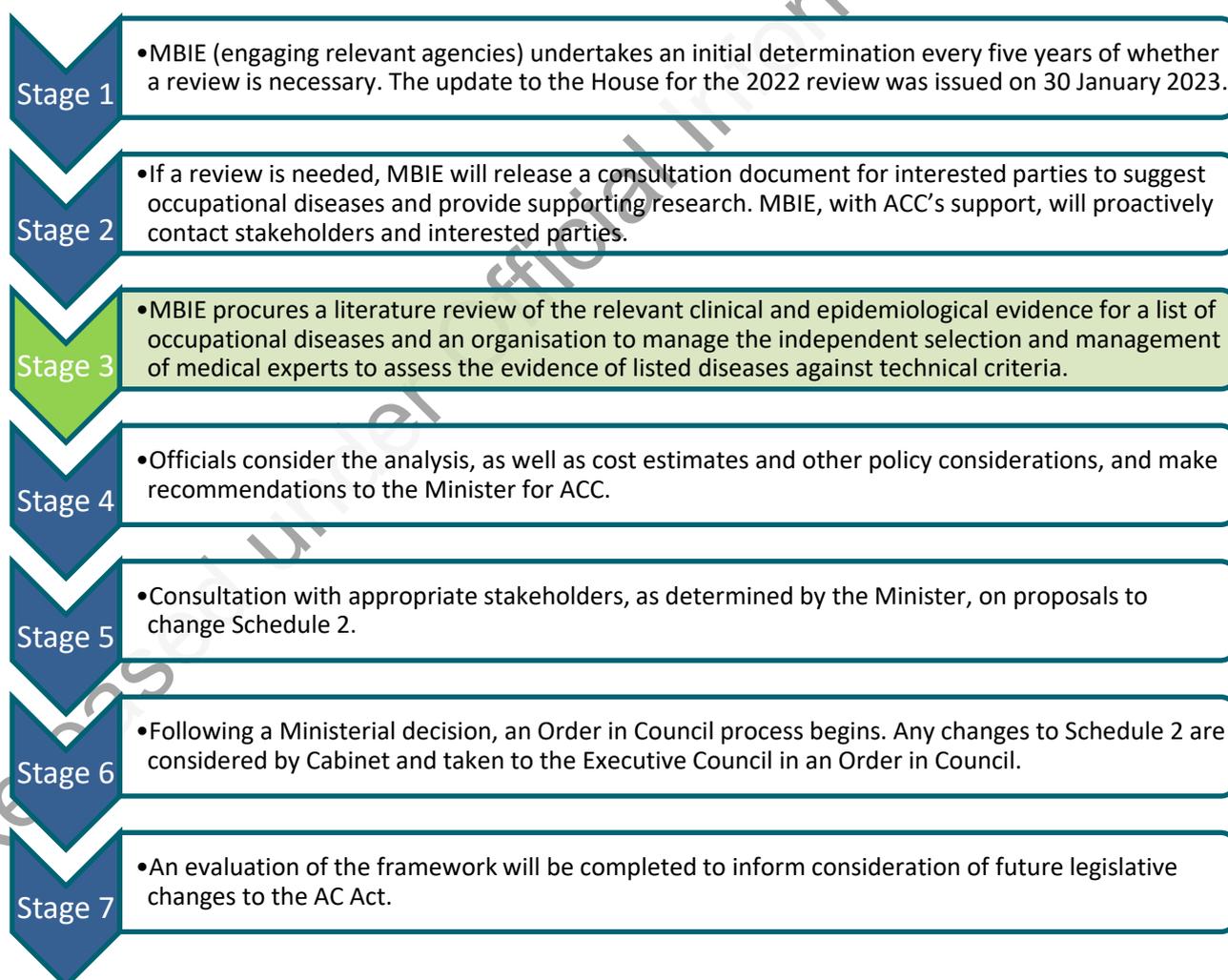
<b>Corresponding factor</b>	<b>Associated disease or infection</b>
Cadmium	Lung cancer
Silica (crystalline)	Lung cancer
Formaldehyde (by 2 submitters)	Naso-pharyngeal cancer
Sulphuric acid, sulphuric acid mist or organic solvents respectively and/or in combination	Laryngeal cancer
Exposure to sensitising agents	Occupational dermatitis

## Annex Three: Final review framework

### Objectives

Objective	Description
Clinical and epidemiological knowledge	How well Schedule 2 reflects this current knowledge
Clarity	The review is easy to understand
Transparency and consistency	Honesty and openness about what is involved in the review, including an evaluation of the framework against these objectives as soon as practicable after implementation of the review
How well the option maintains existing coverage	The outcome of the review does not narrow or expand the scope of ACC's coverage.

### Overall framework



## Annex Four: Agency and stakeholder list

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MBIE shared the consultation document with the following:

Unions and advocacy organisations:

- New Zealand Professional Firefighters Union
- Fire and Emergency New Zealand
- ACC Futures Coalition
- Sawmill Workers Against Poisons (SWAP)
- E tū
- Council of Trade Unions
- Greypower
- United Fire Brigades Association (UFBA)

Medical organisations:

- Occupational Therapy Board of NZ
- Australian and New Zealand College of Anaesthetists and Faculty of Pain Medicine
- Australasian Faculties of Occupational and Environmental Medicine and Public Health Medicine (AFOEM)
- Australian and New Zealand Society of Occupational Medicine (ANZSOM)
- New Zealand Occupational Health Nurses Association
- New Zealand Medical Association
- Occupational Health Nurses Accelerated Silicosis Prevention Group
- Southern Cross Medical Care Society

Research organisations and academics:

- Massey University
  - s 9(2)(a)
  - s 9(2)(a)
  - s 9(2)(a)
- Centre for Public Health Research – s 9(2)(a)
- Research Centre for Māori Health and Development at Massey University – s 9(2)(a)
- Te Kupenga Hauora Māori at Auckland University – s 9(2)(a)

- Health Research Council
- Whariki (Massey University) – s 9(2)(a)

Additional organisations

- WorkSafe
- MSD – Office for Seniors
- Whaikaha
- DPO Coalition Secretariat
- Disabled Persons Assembly NZ.

ACC shared the consultation document with the following:

- Auckland Chamber of Commerce
- Building Service Contractors of New Zealand
- Business Central
- Business NZ
- Chartered Accountants Australia and New Zealand (CAANZ)
- Construction Health and Safety New Zealand (CHASNZ)
- Civil Contractors New Zealand Incorporated
- Dairy NZ
- Electrical Contractors Association of NZ
- Employers and Manufacturers Association (EMA)
- Farm and Forestry NZ (NZFF)
- Farmers Mutual Group (FMG)
- Federated Farmers of New Zealand
- Federation of Māori Authorities
- Fencing Contractors NZ
- Forest Industry Contractors Association
- Forestry Industry Safety Council
- Health and Safety Association New Zealand (HASNZ)
- Horticulture New Zealand
- Iā Ara Aotearoa Transporting New Zealand
- Inland Revenue

- Manufacturing NZ
- Maritime NZ
- Master Electricians (Electrical Contractors Association)
- Master Painters New Zealand Association Incorporated
- Meat Industry Association of New Zealand
- Metals New Zealand
- Motor Trade Association (MTA)
- New Zealand Business Association
- New Zealand Food and Grocery Council
- New Zealand Forest Owners' Association
- New Zealand Institute Safety Management (NZISM)
- NZ Certified Builders Association
- NZ Police
- Pacific Business Trust
- Registered Master Builders Association
- Sustainable Steel Council
- Te Awe Wellington Māori Business Network
- Te Puni Kōkiri
- The Manufacturing Network
- The New Zealand Chinese Building Industry Association
- Waka Kotahi
- Wellington Pasifika Business Network
- Wood Processors and Manufacturers Association of NZ
- Financial Advice NZ

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## Annex Five: List of Submitters

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- Anonymous A
- Anonymous B
- AIA New Zealand Limited
- Cancer Society of New Zealand
- Dr Bronwen McNoe (Senior Research Fellow and Teaching Fellow at Otago University)
- Dr Paul Skirrow (Director of Neuropsychology Training & Consultant Clinical Neuropsychologist at Otago University)
- Envirocom (NZ) Limited
- Fire and Emergency New Zealand (FENZ)
- Ia Ara Aotearoa Transporting New Zealand
- Mel Hollis (member of the public)
- New Zealand Professional Firefighters Union (NZPFU)
- Perioperative Nurses College of the New Zealand Nurses Organisation (NZNO)
- Robyn Tattley (member of the public)
- Southern Cross Health Society
- The Employers and Manufacturers Association (EMA)
- The New Zealand Institute of Safety Management (NZISM)
- Individual members for the Royal Australasian College of Physicians (RACP)
- United Fire Brigades' Association (UFBA)
- Whaikaha
- WorkSafe.