

# Accident Compensation

## HIGHLIGHTS

### Labour will:

- Maintain ACC as a publicly administered and delivered social insurance scheme which provides comprehensive and universal personal injury coverage for all New Zealanders
- Make the ACC system fairer and more transparent for claimants, by implementing the findings of the Dean report
- Relieve legislative restrictions to allow for fairer compensation and better rehabilitation.

## Introduction

In 1974 the Third Labour Government implemented the ACC scheme, and Labour has improved it since. It was created because Kiwis believe in giving each other a fair go. So we decided to support all those who suffer personal injury caused by accident, whatever the cause. New Zealand still leads the world in providing universal and comprehensive no fault coverage for all physical injuries.

ACC is a social insurance scheme, not a commercial one, which is why it must continue to be publicly administered and delivered. It is a very good scheme so long as it is run with the best interests of Kiwis at heart.

We must ensure that the ACC system is fair, transparent and accessible for all claimants. Rehabilitation must be to the maximum extent practicable. Injury prevention is of paramount importance to avoid personal trauma, and save cost to the scheme. Levies to pay for the scheme must be set on an equitable basis.

## Keeping ACC public, fair and transparent

As a social insurance scheme provided for by Parliament, currently through the Accident Compensation Act 2001 (the Act), the ACC system must be fair and transparent. Under National, ACC has too often been mean-minded, and it has become more difficult for claimants to access cover or entitlements for which they are eligible. This is not acceptable.

Any ACC decision about cover or entitlements can be reviewed. While technically the review function is internal to ACC, it sends review applications to FairWay Resolution Ltd (FairWay) to arrange hearings. A reviewer's decision can be appealed to the District Court.

The 2015 Acclaim Otago report, and the 2016 independent review of it by Miriam Dean QC, identified a number of issues with the dispute resolution process – around claimants being heard, and having access to the law, evidence and representation. The Dean recommendations should be fully implemented. Doing this will make ACC a fairer and more

transparent system, which is accountable and sustainable and offers the best outcomes for New Zealanders.

**Labour will:**

- Maintain ACC as a publicly administered and delivered social insurance scheme which provides comprehensive and universal personal injury coverage for all New Zealanders
- Make the ACC system fairer and more transparent for claimants, by implementing the findings of the Dean report
- Ensure that claimants have access to adequate medical evidence, and that medical assessments are fair and independent.

## Preventing injuries

Injury prevention is of paramount importance to the accident compensation scheme. Reducing injuries avoids trauma to Kiwis and saves cost to the scheme. Workplace safety is of particular concern, with consistently high injury and death tolls in many sectors.

**Labour will:**

- Focus on health and safety programmes and long-term injury prevention strategies
- Ensure effective implementation of the Health and Safety at Work Act 2015 and strengthen the Act as required, including enhancing the role of workplace representatives
- Optimise coordination between ACC and other agencies responsible for injury prevention, such as MBIE, WorkSafe, the Police and the New Zealand Transport Agency.

## Providing effective support, fairer compensation and better rehabilitation

Dispute resolution issues aside, ACC does assist thousands of Kiwis every year in their recovery from personal injury. However, some people are disproportionately disadvantaged by restrictions on access to cover or entitlements.

A visit to a GP or other primary care provider is usually when an ACC claim is first made. A claimant is typically required to pay a surcharge to the provider for the cost of the visit, above what ACC is prepared to pay.

**Labour will:**

- Review the nature and adequacy of payments made to primary care providers through whom ACC claims are made, with a view to minimising any surcharge claimants have to pay.

Treatment subsequently funded by ACC may be delivered by either the public or private sector. It is desirable to achieve maximum synergy between ACC-funded services and other publicly-funded medical and disability services. For public hospitals, especially in the

provinces, ACC-funded surgery can be important to maintaining “critical mass” and sustaining a skilled workforce.

**Labour will:**

- Seek to achieve synergies from the provision of ACC-funded services alongside other publicly-funded medical and disability services.

Currently, ACC claimants injured before they have to opportunity to begin earning are compensated at a rate equal to 80% of the higher of the minimum weekly wage or 125% of the supported living payment. It's unfair to assume people incapacitated by an injury at an early age would have earned only the minimum wage had the injury not occurred. A more reasonable assumption is that, on average, they would earn the median wage.

Before 2009, if an earner was currently unable to work because of an injury suffered when they were a non-earner, they would qualify for weekly compensation on the basis of their current incapacity for work. This changed in 2009 when the National government denied weekly compensation to claimants if they had been non-earners at the time they were injured. It is unfair that a claimant now in work but needing to take time off because of a longstanding injury (e.g. for follow-up treatment) is denied weekly compensation for lost earnings.

**Labour will:**

- Investigate increasing compensation for loss of potential earnings to 80% of the median wage
- Amend the Act to make it clear that a current earner who is unable to work because of a Covered injury will qualify for weekly compensation, even if they were a non-earner when they suffered the injury.

Mental injury is a covered under the Act in work-related and certain other circumstances. Volunteers who suffer mental injury while carrying out work that may otherwise be done by a paid employee are not eligible for mental injury cover. This is a problem for volunteers suffered PTSD or other mental injuries in earthquake recovery or other emergencies.

**Labour will:**

- Investigate extending cover for mental injury to include work done as a volunteer when the work might otherwise have been carried out by a paid employee.

People who contract asbestos-related injuries through a spouse or family member who has come into contact with it at work are not currently covered by the Act. They include children who have been exposed to asbestos on the clothing or tools of parents, and have subsequently developed asbestosis later in life. National has delayed acting on this issue, and Labour believes that these asbestos victims should be eligible for support.

The Schedule 2 list of occupational diseases in the Act can be added to as knowledge of disease-causing substances and chemicals improves. One such chemical could be pentachlorophenol (PCP), which was once widely used as a timber preservative and antisapstain treatment, and to which timber workers were exposed.

**Labour will:**

- Consider allowing cover for asbestos related diseases where a reasonable link to another person's occupational exposure can be established
- Consider extending cover for occupational diseases to include cancers caused by exposure to PCP chemicals (by adding this to Schedule 2 of the Act).

A number of changes National made to the Act in 2010 disadvantaged claimants. Full-time work was defined as 30 rather than 35 hours per week for vocational independence purposes. It became more difficult to get cover for work-related gradual process injuries, and for hearing loss.

**Labour will:**

- Review changes National made to the Act in 2010, as to whether they should be reversed or modified.

## Improving the levy system

Labour is committed to keeping ACC levies fair for businesses, workers, non-earners and motorists; and no higher than needed to meet the real costs of claimants' entitlements.

National has been overcharging Kiwi businesses for years. In 2015, Labour commissioned an independent report into ACC levies. This showed the government was overcharging businesses on ACC levies by \$350 million. This overcharge was costing 700 jobs a year and it was holding Kiwi businesses back – all in an attempt to scrape the government's books into surplus.

**Labour will:**

- Set ACC levies at a level needed to fund accidents and injuries rather than prop up a government surplus
- Keep levies fair for businesses, workers and motorists.

In 2015, the government introduced vehicle risk rating to calculate ACC levies. This was intended to ensure that levies paid by owners more closely reflected the safety of their vehicles and the risk and cost of injuries.

Labour believes that this risk rating model is fundamentally flawed and unfair, and needs to be scrapped.

In practice, the risk rating levy model has seen the same model car being classified with different risk ratings and has resulted in many models being reclassified every year. In 2016 approximately 750,000 cars were reclassified. It costs \$1.5 million annually to administer and this money can be better spent improving safety on our roads.

Also the system rewards those who can afford the latest, safest model of car, and punishes the elderly, the poor, and the young who can't.

**Labour will:**

- Scrap the ACC vehicle risk rating model.

## Reducing treatment injury

Treatment injury became part of the scheme in 2005, replacing the previous medical misadventure provisions. Over the last five years, treatment injury claims have risen by 66%. ACC says that the cost of treatment injury claims increased by 113% between 2008/2009 and 2015/2016. This increase is a consequence of National's \$2.3 billion underfunding of health. There have also been costly issues such as surgical mesh.

### Labour will:

- Over time, reinstate the \$2.3 billion stripped from our health system by the National government
- Continue to support the provision of treatment injury cover on a no fault basis
- Work to reduce the number of treatment injuries that occur
- Monitor the ongoing costs of treatment injury claims.

## Giving superannuitants a better deal

At present, superannuitants who suffer a personal injury covered by ACC must after 12 months choose whether they are paid New Zealand superannuation or weekly compensation (but then only for up to 12 months longer).

This restriction disadvantages those who are injured at work after the age of superannuation eligibility. Now that many more people are working after 65, it is not clear that the restriction is appropriate. It means that many of our most vulnerable Kiwis are not getting the weekly compensation that they need while recovering from their injuries. And it would seem unfair that workers over 65 are subject to full levy payments, yet can be cut off from weekly compensation even though they may still have been working.

### Labour will:

- Review the restrictions on superannuitants being able to receive both weekly compensation and New Zealand superannuation, given the changing nature of the over 65 workforce.

## Ensuring the review and appeal system is fit for purpose

The review jurisdiction is an important one, akin to tribunals administered by the Ministry of Justice for other jurisdictions. However, the jurisdiction's statutory basis is not well aligned with how it actually operates, with ACC contracting out the review function to FairWay, formerly a Crown-owned company but recently privatised. One of the Dean review's recommendations was "to address problems, perceived or otherwise, with FairWay's independence."

Meantime, the National government has considered creating a new tribunal to consider appeals rather than the District Court doing so. There is considerable opposition to the proposal on the basis of it lowering the standing and effectiveness of the appeal jurisdiction, and it has been deferred.

The District Court has heard appeals from review decisions since 1992. However, there are a few residual appeals under the former 1972 and 1982 Acts, which are heard by an Accident Compensation Appeal Authority. There is no good reason for keeping the Authority in existence. Any residual appeals could be heard by the District Court. This would also remove the complexity and cost that sometimes arises as to whether the Authority or the Court should hear an appeal.

At present there is no filing fee for appealing, but National is moving towards charging one.<sup>1</sup> That would be an unjustifiable monetary barrier to ACC claimants exercising their rights.

**Labour will:**

- Retain the District Court for the hearing of appeals against review decisions, and ensure that applying to the Court continues to be free
- Abolish the Accident Compensation Appeal Authority, with any residual appeals under the 1972 and 1982 Acts being heard by the District Court
- Consider the future of the review jurisdiction, including the impact of privatisation of the current service, and whether the jurisdiction should now be placed under the umbrella of the Ministry of Justice.



---

<sup>1</sup> See clause 4 of the Tribunals Powers and Procedures Legislation Bill, introduced to Parliament in August 2017.