

# ACCIDENT REHABILITATION AND COMPENSATION INSURANCE AMENDMENT BILL (NO. 2)

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AS REPORTED FROM THE LABOUR COMMITTEE

## COMMENTARY

### Recommendation

The Labour Committee has examined the Accident Rehabilitation and Compensation Insurance Amendment Bill (No. 2) and recommends that it be passed with the amendments shown in the bill.

### Conduct of the examination

The Accident Rehabilitation and Compensation Insurance Amendment Bill (No. 2) (ARCI Amendment Bill (No. 2)) was introduced and referred to the Labour Committee on 14 December 1995. The closing date for submissions was 1 March 1996. The committee received and considered submissions from 81 organisations and other interested groups and individuals. Forty-six submissions were heard orally, including a number that were heard in Auckland. Twenty-four hours were spent on the hearing of evidence and consideration took approximately six hours. The major issues raised in submissions focused on the introduction of flexibility in social and vocational rehabilitation; health service purchasing; the proposed changes to the weekly compensation provisions by way of a shorter divisor for the calculation of earnings where a person has been in "permanent employment"; and the revised return to work provisions.

Advice was received from the Department of Labour and the Accident Rehabilitation and Compensation Insurance Corporation. The Regulations Review Committee reported to the committee on the powers contained in clauses 1 (2), 13 and 26.

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

### Background

The ARCI Amendment Bill (No. 2) aims to amend the Accident Rehabilitation and Compensation Insurance Act 1992 (ARCI Act 1992) to allow for a more claimant-centred approach to the provision of rehabilitation and compensation for personal injury resulting from an accident.

The bill aims to allow the Accident Rehabilitation and Compensation Insurance Corporation (the corporation) to utilise its case management approach fully in providing for the needs of individual claimants. It is intended that this approach to rehabilitation will allow the corporation to minimise the costs of personal injury by promoting the more efficient rehabilitation of claimants to their pre-injury state, wherever this is possible.

To ensure acceptable accountability of the corporation to Parliament and other scheme stakeholders, the bill proposes to put in place mechanisms for assessing the corporation's performance in achieving the outcomes required by the Government, particularly in respect of rehabilitation.

The bill also contains amendments that aim to correct some anomalies and perceived inequities in the rules governing the provision of weekly compensation, and to change the focus of the independence allowance from a disability payment to compensation for impairment.

### **Flexibility and accountability**

The purpose of these amendments is to improve the effectiveness of the corporation in meeting its responsibility for assessing the needs of claimants and delivering services to meet those needs. To ensure adequate accountability, the proposed changes also aim to establish an improved monitoring and reporting framework.

The ARCI Act 1992 is supported by a large number of detailed regulations, nine of which cover social rehabilitation, and 16 of which cover treatment costs. These regulations define the specific circumstances under which entitlements can be provided and the exact items or services that can be provided. They also detail treatment cost payment levels and specify some administrative requirements. The regulations are such that the specific treatments or services can rarely be varied, even when it is known that a different form of treatment or service would result in a claimant's needs being met more effectively.

The amending legislation aims to provide a framework under which the corporation will be able to become more actively involved in the assessment of individual claimant needs and the delivery of services to effectively meet those needs. It would allow the corporation to provide social rehabilitation in accordance with the regulations or otherwise to meet the objectives of the ARCI Act 1992, subject to Government policy direction issued by the Minister. It is intended that the annual service agreement between the Minister for Accident Rehabilitation and Compensation Insurance and the board of the corporation would identify outcomes and performance measures for the corporation's provision of rehabilitation, particularly for those areas of rehabilitation provided outside the regulations in the short term.

### **Social rehabilitation**

One submissioner was concerned about the requirement in the current ARCI Act that modification to residential premises, or the purchase of, or modification to, motor vehicles, be provided at five-yearly intervals. The five-yearly interval is not absolute, and such items can be provided at less than five-yearly intervals if they are considered to be "cost effective". However, we noted that the provision for modifications at less than five-yearly intervals currently includes not only a requirement of cost effectiveness, but also that the modification be necessary for the person to obtain or maintain employment. We believe that such a requirement is inconsistent with the overall objective of social rehabilitation.

Therefore, we recommend the removal of the requirement relating to the obtaining or maintaining of employment.

Two submissioners were concerned about the phrase "physical rehabilitation" in clause 5, stating that rehabilitation should not be limited to physical phenomena but should also include "cognitive" rehabilitation. Although the phrase is currently interpreted and applied in a way that includes cognitive rehabilitation, we recommend that clause 2 be amended to include a definition of "physical rehabilitation" that specifically includes "cognitive" rehabilitation.

### **Purchase of health services**

Proposed clauses 5 and 6 aim to give the corporation more control over the purchase of the health services it funds to ensure that claimants receive timely access to necessary health services and, by so doing, aim to reduce the average entitlement costs with a flow-on effect to premium payers.

The corporation presently meets the costs of public hospital services for those injured in work-related or motor-vehicle-related accidents by way of an annual bulk transfer of funds to the public health system. This covers both urgent and non-urgent services. The Government directly funds the public hospital costs of non-work-related and non-motor-vehicle-related injuries, again for both urgent and non-urgent services.

Under the current arrangements, the public health system has no direct accountability to the corporation. The corporation cannot verify the true costs of the services it funds, nor be satisfied that appropriate services are being delivered in a timely and effective manner. The proposed amendments would give the corporation a more direct role in the purchasing of health services for claimants. The corporation would be able to purchase services either through regional health authorities, or directly from Crown health enterprises and private providers. The changes would allow the corporation to purchase health services in a variety of ways for more efficient treatment of accident compensation claimants, and better management of the overall costs of the scheme.

Five submissioners were concerned about possible instances of "queue jumping", in that accident compensation claimants could get precedence for elective services at the expense of illness patients, or that accident compensation claimants could get different levels or quality of elective services from illness patients. We were assured by the advisers that precedence will not occur in the short term as there will be a roll-over of current funding for accident compensation claimants to regional health authorities. Regional health authorities will continue to purchase on the same basis for both groups at the same price in 1996/97 and, in the medium term, precedence should not occur as excess or new capacity will be utilised in the health sector. We also heard that, in the short term, quality levels should not differ as regional health authorities will continue to purchase on the same basis for both groups of patients at the same price in 1996/97.

In the medium term it is likely that there will be different levels of service provided to accident and illness patients, dependent on the different purchase strategies undertaken by the corporation and the regional health authorities for their different client groups. Regional health authorities will continue to be responsible for purchasing all care for illness patients and acute care for accident victims. The priority for treatment of these people is addressed in regional health authority policy guidelines and contracts with providers. Priorities and waiting-lists for illness patients currently differ, according to the individual Crown health enterprise or regional health authority policy.

The amendments would also enable the corporation to move, over time, from the prescriptive provisions of the current fixed fee for service regulations to a variety of purchasing mechanisms. This would also allow the corporation to exercise greater flexibility in handling decisions on health treatment for injured persons. It is expected that these provisions would result in the delivery of more appropriate and timely health care services, which should contribute to a long-term decrease in costs to the scheme overall.

The above changes would allow the corporation to negotiate purchase agreements involving “reasonable treatment costs”. This may address the International Labour Organization’s concerns regarding compliance with Conventions 12 and 17, which require the full reasonable costs of medical, surgical and pharmaceutical aid to be met on behalf of the injured worker.

### **Return to work provisions**

The purpose of the proposed changes is to enable the corporation to provide, through its case management process, the most appropriate vocational rehabilitation assistance to claimants to return them to work in the shortest possible time. Where a claimant who has a capacity to work does not leave the scheme voluntarily, the corporation would be able to use a work capacity assessment procedure to determine whether the claimant is able to undertake suitable work. Where a claimant is found to have a capacity for suitable alternative work, entitlement to weekly compensation would cease three months after that determination.

The proposed changes do not specify the work capacity assessment procedure, but they set out the broad parameters of the procedure and a transparent process for development of the assessment procedure, including consultation requirements. The ARCI Act 1992 already provides for a work capacity assessment to be developed and specified in regulations. However, this has proved unworkable in practice, with legal and practical difficulties preventing the development of an assessment able to take into account the varied objectives and specifications of the legislation.

The amendment clarifies the objective of vocational rehabilitation and specifically links this to the new work capacity assessment procedure, so that the goals of any vocational rehabilitation programme are consistent with the objectives of the assessment procedure. In addition, the bill proposes extending the maximum duration of any vocational rehabilitation programme to three years from the previous limit of one or two years.

A number of submissioners requested clarification of the three-year limit. We heard that the time limit can be interpreted as permitting vocational rehabilitation for a cumulative three-year period rather than during three calendar years. Therefore, we recommend that clause 3 be amended to state clearly that the three-year period is cumulative.

The bill also clarifies the relationship between “incapacity” and “capacity for work” by separating the provisions for determining incapacity, which is used for initial eligibility to weekly compensation, and for assessing capacity for work.

Several submissioners commented on the replacement of the word “qualified” with the word “suited” in the definition of “capacity to work”, and were concerned that this could result in claimants being required to return to work before they were ready.

The use of the word “qualified” in the current Act was considered to imply that only formal qualifications would be relevant. It was recommended that the word “qualified” be replaced with the word “suited” to reflect the idea that the

assessment should not just look at what work a claimant is formally qualified to undertake, but should also take into consideration whether the work is appropriate for the claimant, given such factors as most recent employment, work history, and vocational rehabilitation. The definition is intended to maintain the appropriate balance between recognising that claimants cannot remain on the scheme if they are able to work and that claimants should not be made to undertake any work no matter how unsuited to the person.

### **Weekly compensation**

These changes are intended to introduce greater fairness into the way weekly compensation is calculated in cases where a claimant has not worked for a full year, or where a claimant has had an atypical pattern of earnings.

Currently, some employees who have been in employment for less than 52 weeks at the time of their injury receive an unfairly low level of weekly compensation. From the fifth week of incapacity, long-term compensation is based on total earnings in the 52 weeks prior to incapacity divided by 52, irrespective of whether the claimant has been in employment for the full 52 weeks. The amendment would allow a shorter earnings period, but not less than 13 weeks, to be applied for newly-employed permanent employees and for those who have become self-employed during the most recently-completed tax year. This should result in a fairer calculation of weekly compensation for those who have been in permanent employment for a reasonable period, or who started self-employment part-way through the most recently completed tax year.

The legislation would also allow a self-employed person to elect to pay a higher premium. In the event of an injury following a poor business year, weekly earnings would be assessed as the greater of the person's actual taxable income or an amount set by regulations which reflects the additional premium paid by the self-employed person.

The bill also aims to clarify the intent of the existing legislation that payments made on termination of employment, such as holiday pay, are to be abated for the purpose of weekly compensation payments. In addition, the amounts paid by employers to top up their employees' weekly compensation to 100 percent of pre-injury earnings will not be subject to abatement. The current legislation requires abatement of post-incapacity earnings, including sick leave or other payments made by employers.

### **Independence allowance**

The objective of these proposed changes is to alter the focus of the independence allowance from a disability payment, intended to assist with the additional costs of living with a disability, to compensation for impairment arising from an injury. The changes may increase incentives for private insurers to capitalise the payments.

The purpose of the independence allowance has not been clear to claimants. Although it was intended as a payment to assist with the additional costs of living with a disability, the method of assessing eligibility did not take into account what these costs might be. There has been a perception that a loss of faculty deserves compensation regardless of the impact of that loss on the claimant's life.

The bill specifies that the independence allowance is intended to compensate for impairment. The process for assessing eligibility for the payment would change from the present self-assessment questionnaire (the Functional Limitations Profile), which attempts to identify the impact the injury has had on the claimant's ability to undertake tasks, to an objective assessment of impairment

using the American Medical Association Guides to the Evaluation of Permanent Impairment.

The maximum amount of the allowance would be increased from \$42.96 per week to \$60, although this amount may be increased in regulations and will continue to be indexed. Assessment would generally occur when the condition has stabilised, as is required by the American Medical Association guide. However, if a condition has not stabilised by 52 weeks (for example, in the case of head injuries), a preliminary assessment would be conducted then. Assessment at stability would result in quarterly payments which should vary little, encouraging private insurers to capitalise the allowance, as provided for in the ARCI Act 1992.

One submissioner suggested that the independence allowance should be paid from the date of injury, rather than the date of assessment. We agree that backdating payment of the independence allowance to the date of assessment may be a hardship for some claimants. Therefore, we recommend amending clause 13 to provide for payments to be backdated to the date of the lodgment of the claim for cover in relation to the injury that resulted in impairment.

### **Miscellaneous and technical matters**

The bill contains a number of proposed amendments to correct anomalies in the legislation.

The changes in the bill as introduced are:

- clarification that claiming for treatment of non-existent patients by health and disability service providers is an offence;
- extending to five years the time in which an information relating to an offence under the ARCI Act 1992 that is punishable with imprisonment can be laid;
- including optometrists in the definition of registered health professional, which means that any injuries caused as a result of their treatment can be considered under the medical misadventure provisions of the ARCI Act 1992;
- making the definition of registered health professional consistent with the Medical Practitioners Act 1995;
- increasing the maximum contribution for a funeral from \$2,040 to \$2,500; and
- repealing the provisions relating to the exempt employer scheme. In their place would be a provision requiring that the Minister establish a framework for accrediting employers to manage claims of their employees in the first year following injury.

We are aware that funeral costs can amount to somewhat more than the sum proposed in the bill. Therefore, we recommend that the maximum contribution be increased to the more realistic amount of \$3,000, rather than the maximum of \$2,500 that is proposed in the bill.

### **Governance**

The proposed governance arrangements would provide for improved accountability mechanisms to balance the moves towards greater flexibility and operational discretion.

The bill proposes a service agreement between the Minister and the board of the corporation that would specify the Government's desired outcomes for the scheme. It would define the board's relationship with the Minister; set out the board's responsibilities in relation to scheme performance and scheme management; and identify how the board will be accountable to the Minister. The Minister would be required to have regard to the public interest and, in particular, the interests of taxpayers, premium payers, claimants and potential claimants.

The principal role of the board would change from that of policy-making to ensuring the efficient and effective management of the corporation and each of the scheme accounts. The maximum number of board members would be increased from seven to eight members, and the managing director would no longer be a board member.

There would also be clarification of the respective roles of the board, the Minister and premium payers in premium setting, and in the relationship between the reserves policy and premium setting. The corporation would be required to follow a very specific consultation process on both the reserves policy and in setting premiums.

## **Other issues**

### **Criminal disentitlement**

There have been various instances over recent times when the public has expressed concern about the payment of accident compensation entitlements to people injured while committing criminal offences. Because of the public concern surrounding this matter, we included in our consideration the issue of eligibility for compensation for injuries received following the committing of offences and, in particular, alcohol-related and drug-related driving offences.

Section 84 of the ARCI Act 1992 provides that, where any person suffers personal injury in the course of committing any offence for which the person is convicted and sentenced to imprisonment, and the corporation is aware of that sentence, the corporation shall apply to the District Court for a determination as to whether any treatment, service, rehabilitation, related transport, compensation, grant or allowance should be payable on the person's release from prison, or whether such payment should be withheld on the grounds that it would be repugnant to justice. The ARCI Act 1992 prohibits payment of compensation while a person is imprisoned. However, although a person may be considered ineligible to receive benefits under the ARCI Act 1992, that person would still have cover.

In addition to the possibility of disentitlement under the repugnancy to justice provisions, the ARCI Act 1992 prohibits the payment of benefits for wilfully self-inflicted injuries and suicide, unless the person's injury or suicide was the result of mental injury or sexual abuse. Death benefits are also withheld from spouses or dependants in cases where they are convicted of the murder of the deceased person.

Prior to 1992, a number of groups had recommended precluding people convicted of criminal offences from accessing benefits. The major change that was made to the legislation in 1992 was to require the District Court to determine whether payment of compensation and the provision of other assistance to people suffering injury in the course of committing an offence for which they were sentenced to imprisonment would be repugnant to justice. Previously the corporation made this decision.

We are conscious that any decision to disentitle injured claimants who have cover under the ARCI Act 1992 from accessing benefits has to be consistent with the principles of the accident compensation scheme, while taking account of public concern about access to entitlements in inappropriate or abhorrent circumstances.

During our consideration we explored the various options open to the committee in relation to the issue of disentitlement, in response to both our own concerns and those of the submissioners who commented on the matter. We all support the principle of criminal disentitlement, but we are also concerned that the best process should be followed in bringing in legislative change. There was some

discussion about re-introducing the provisions contained in the 1982 Act, but we heard from the advisers that this would not address the problem. Therefore, we decided not to accept this option. We considered recommending an amendment to the bill but, in light of the extensive public interest in the issue, we agreed that an amendment should be deferred until an opportunity has been provided for public submissions. Therefore, we agreed not to recommend an amendment to this bill.

However, in recognition of the public opposition to drivers under the influence of alcohol or drugs, or people involved in other criminal activity, who receive benefits in abhorrent circumstances, we make a very strong recommendation to the Government that it take measures to address the issue at the next opportunity. We recommend strongly that the Government include in the next amending legislation a clause on disqualification for serious crime resulting in conviction.

#### **Commencement date**

The Regulations Review Committee expressed reservations about the bill coming into force on a date to be appointed by the Governor-General by Order in Council. While it acknowledged that this method of bringing enactments into force provides the flexibility that is sometimes necessary, it also considers that there is a danger that the commencement date can be deferred indefinitely.

We accept the view of the Regulations Review Committee and recommend that clause 1(2) be amended to allow for the bill to come into force on the day it receives the Royal assent, with the exception of the clauses pertaining to the independence allowance, which should come into force on 1 July 1997.

#### **Reserves**

At present the ARCI Act 1992 does not specify in detail the way in which the corporation's reserves policy should be established. Proposed clause 16 requires a policy to be formulated after public consultation and to be laid before the House of Representatives, having regard to estimating the liability arising from existing and estimated future claims, and subject to any Government policy direction.

#### **Health and Disability Services Act 1993**

We noted that the Health and Disability Services Act 1993 could be interpreted in such a way that it would prevent regional health authorities from purchasing health care for accident victims on the corporation's behalf. Proposed new clause 27 clarifies that regional health authorities can purchase health services for the corporation.

#### **Regulations relating to assessment and reassessment**

The Regulations Review Committee recommended that the provision relating to the incorporation of material by reference be amended to include an express provision that the material incorporated by reference be deemed to form part of the regulations; that any amendment made to the material incorporated after the commencement of the regulations will have no effect until regulations have been made incorporating the amendment; and that a copy of all material incorporated in regulations by reference shall be made available to the public for inspection free of charge.

We recommend that these amendments, included in proposed new clause 20A, be adopted.

**Conclusion**

Many of the submissioners did not address the changes made by the clauses relating to the return to work and weekly compensation provisions, and therefore it is difficult to ascertain the degree of submissioner support for these clauses. The Government and United members support the bill. However, the Labour member voted against clauses 6 to 12 and clause 15, expressing concern at these particular measures as well as the issue of the bill not addressing some of the major concerns relating to the current Act.

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KEY TO SYMBOLS USED IN REPRINTED BILL  
AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

*Hon. Doug Kidd*

**ACCIDENT REHABILITATION AND COMPENSATION  
INSURANCE AMENDMENT (NO. 2)**

ANALYSIS

Title	
1. Short Title and commencement	12. New sections substituted
2. Interpretation	49. Cessation of weekly compensation when person has capacity for work
3. New sections substituted	50. Procedure for assessment of capacity for work
22. Objective of vocational rehabilitation	51. Assessment of capacity for work
23. Provision of or payment for vocational rehabilitation	13. New sections substituted
4. New sections substituted	54. Independence allowance
26. Objective of social rehabilitation	54A. Assessment and reassessment
26A. Provision of or payment for social rehabilitation	14. Funeral grant
5. Treatment and physical rehabilitation	15. Management of claims by employers
6. Contracts relating to goods, services, or facilities	16. Reserves
7. New sections substituted	17. Cessation of compensation
37. Application of incapacity and work capacity provisions	18. Board of Corporation
37A. Determination of incapacity in relation to earners generally	19. Corporation to comply with Government policy
37B. Determination of incapacity if person has ceased to be an employee or in cases of loss of potential earning capacity	19A. New sections inserted
8. Calculation of weekly earnings where earner had earnings solely as an employee during the 12 months before commencement of incapacity	159AA. Service agreements between Corporation and Minister
9. Calculation of weekly earnings where earnings are solely earnings other than earnings as an employee during the 12 months before commencement of incapacity	159AB. Public interest
10. Deemed weekly earnings	20. Regulations
11. Abatement of compensation for loss of earnings or loss of potential earning capacity	20A. Regulations relating to assessment and reassessment
	21. Regulations relating to premium setting
	22. Further amendments to principal Act
	23. Repeals
	24. Transitional provision relating to existing health purchasing contracts
	25. Transitional provisions relating to independence allowance
	26. Regulations providing for transitional matters
	27. Amendment to Health and Disability Services Act 1993 Schedule

A BILL INTITULED

**An Act to amend the Accident Rehabilitation and  
Compensation Insurance Act 1992**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1995, and shall be read together with and deemed part of the Accident Rehabilitation and Compensation Insurance Act 1992\* (hereinafter referred to as the principal Act). 5  
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\*1992, No. 13

Amendments: 1992, No. 91; 1992, No. 136; 1993, No. 25; 1993, No. 55; 1993, No. 135; 1995, No. 1

*Struck Out (Unanimous)*

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and one or more Orders in Council may be made bringing different provisions into force on different dates. 15

*New (Unanimous)*

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day on which it receives the Royal assent. 20  
(3) Sections 13 and 25 of this Act, and the amendments to sections 71 and 148 of the principal Act in the Schedule to this Act, shall come into force on the 1st day of July 1997.

*Struck Out (Unanimous)*

**2. Interpretation**—Section 3 of the principal Act is hereby amended by adding to the definition of the term “registered health professional” the expression “; or” and the following paragraph: 25  
“(c) Any optometrist registered with the Opticians Board.”

*New (Unanimous)*

5 **2. Interpretation**—(1) Section 3 of the principal Act is hereby amended by repealing the definition of the term “registered health professional”, and substituting the following definition:

“ ‘Registered health professional’ means—

“(a) Any person who—

10 “(i) Is entitled to practise medicine under the title of medical practitioner pursuant to section 9 of the Medical Practitioners Act 1995; and

15 “(ii) Holds a current certificate issued under that Act or the Medical Practitioners Act 1968 evidencing that entitlement to practise medicine; or

20 “(b) Any person who holds a current annual practising certificate issued by the Chiropractic Board, the Dental Council of New Zealand, the Dental Technicians Board, the Nursing Council of New Zealand, the Occupational Therapy Board, the Pharmaceutical Society of New Zealand, or the Physiotherapy Board; or

25 “(c) Any person registered with the Medical Laboratory Technologists Board, the Medical Radiation Technologists Board, or the Podiatrists Board; or

“ (d) Any optometrist registered with the Opticians Board: ”.

30 (2) Section 3 of the principal Act is hereby further amended by inserting, after the definition of the term “personal injury”, the following definition:

“ ‘Physical rehabilitation’ includes, without limitation, cognitive rehabilitation: ”.

35 **3. New sections substituted**—The principal Act is hereby amended by repealing sections 22 and 23, and substituting the following sections:

“**22. Objective of vocational rehabilitation**—The objective of vocational rehabilitation is to assist—

4      *Accident Rehabilitation and Compensation Insurance  
Amendment (No. 2)*

- “(a) Those persons who are entitled to compensation for loss of earnings under section 38 or section 39 or section 44 of this Act; and
- “(b) Those persons who are entitled to compensation for loss of potential earning capacity under section 45 or section 46 of this Act; and 5
- “(c) Those persons who have cover under this Act and are likely, without vocational rehabilitation, to be entitled to compensation for loss of earnings or loss of potential earning capacity under this Act— 10
- to maintain employment, obtain employment, or, in all other circumstances, to have a capacity for work (as defined in section 51 (2) of this Act).

“23. **Provision of or payment for vocational rehabilitation**—(1) Subject to subsection (2) of this section and to any direction for the time being in force under section 159 of this Act, the Corporation may make any provision of or payment for vocational rehabilitation if it considers it appropriate in the circumstances and the provision or payment is expected by the Corporation to be cost-effective. 15 20

“(2) The Corporation may, at its discretion, provide or meet the costs of any vocational rehabilitation for the minimum period necessary to meet the objective set out in section 22 of this Act, but in no case shall such provision be made or costs be met in respect of any vocational rehabilitation that exceeds (3 years in duration) a period of 3 years in total, which need not be consecutive. 25

“(3) The 3-year period referred to in subsection (2) of this section does not include any period of vocational rehabilitation provided before the commencement of section 3 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1995.” 30

*Struck Out (Unanimous)*

**4. Social rehabilitation**—(1) The principal Act is hereby amended by repealing section 26 (as amended by subsections (1) and (2) of section 10 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following section: 35

“26. (1) The objective of social rehabilitation is to restore the independence of a person to the extent that the person’s

*Struck Out (Unanimous)*

independence has been lost by personal injury covered by this Act.

5 “(2) Notwithstanding anything in any regulations made under this Act, the Corporation may, subject to any directions for the time being in force under section 159 of this Act, make any provision or payment in respect of social rehabilitation which is required or permitted under this Act and which is consistent with the objective set out in subsection (1) of this section.

10 “(3) In this Act, ‘social rehabilitation’ includes, but is not limited, to—

“(a) Provision of, or payment for, attendant care; and

15 “(b) Purchase of, and modifications to, motor vehicles and other means of transport; and

“(c) Modifications to residential premises; and

“(d) Provision of, or payment for, household help; and

“(e) Provision of, or payment for, child care; and

20 “(f) Provision of, or payment for, wheelchairs and any other aids and appliances likely to assist independence in daily living; and

25 “(g) Provision of, or payment for, teacher aides, teacher aide hours, and transport to or from school for a child requiring special assistance as the result of personal injury covered by this Act to enable the child to receive education.

“(4) The Corporation may provide or meet the cost of modifications to residential premises or purchase of or modifications to motor vehicles in respect of any rehabilitation programme at intervals of—

30 “(a) Not more frequently than 5 years; or

35 “(b) Less than 5 years only if the Corporation is satisfied that such purchase or modifications are necessary to enable the disabled person to obtain or maintain employment, and are expected to be cost-effective for the Corporation.

40 “(5) Nothing in subsection (4) of this section shall be so construed as to oblige the Corporation to provide or meet the cost of any purchase or modifications within or outside any 5-year period.

*Struck Out (Unanimous)*

“(6) No payment in respect of any item referred to in subsection (3) of this section may be made by the Corporation other than under this section or section 23 of this Act.”

(2) Section 10 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993 is hereby consequentially amended by repealing subsections (1) and (2).

*New (Unanimous)*

**4. New sections substituted**—(1) The principal Act is hereby amended by repealing section 26 (as amended by subsections (1) and (2) of section 10 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following sections:

“**26. Objective of social rehabilitation**—(1) The objective of social rehabilitation is to restore the independence of a person to the extent that the person’s independence has been lost by personal injury covered by this Act.

“(2) In this Act, ‘social rehabilitation’ includes, without limitation,—

“(a) Provision of, or payment for, attendant care; and

“(b) Purchase of, and modifications to, motor vehicles and other means of transport; and

“(c) Modifications to residential premises; and

“(d) Provision of, or payment for, household help; and

“(e) Provision of, or payment for, child care; and

“(f) Provision of, or payment for, wheelchairs and any other aids and appliances likely to assist independence in daily living; and

“(g) Provision of, or payment for, teacher aides, teacher aide hours, and transport to or from school for a child requiring special assistance as the result of personal injury covered by this Act to enable the child to receive education.

“**26A. Provision of or payment for social rehabilitation**—(1) Subject to subsection (2) of this section, the Corporation may make any provision or payment in respect of

*New (Unanimous)*

social rehabilitation that is required or permitted under this Act and that is consistent with the objective set out in **section 26 (1)** of this Act.

5 “(2) The Corporation’s power, under **subsection (1)** of this section, to provide or pay for social rehabilitation—

10 “(a) Is exercisable notwithstanding anything in any regulations made under this Act, subject to any direction of a type referred to in **section 159 (2)** of this Act that is for the time being in force; and

“(b) Is exercisable subject to any direction of any other type for the time being in force under **section 159** of this Act.

15 “(3) No payment in respect of any item referred to in **section 26 (2)** of this Act may be made by the Corporation other than under this section or **section 23** of this Act.

20 “(4) The Corporation may provide or meet the cost of modifications to residential premises or purchase of or modifications to motor vehicles in respect of any rehabilitation programme at intervals of—

“(a) Not more frequently than 5 years; or

“(b) Less than 5 years, but only if the Corporation expects such purchase or modifications to be cost-effective.

25 “(5) Nothing in **subsection (4)** of this section shall be so construed as to oblige the Corporation to provide or meet the cost of any purchase or modifications within or outside any 5-year period.”

30 (2) Section 10 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993 is hereby consequentially amended by repealing subsections (1) and (2).

**5. Treatment and physical rehabilitation**—The principal Act is hereby amended by repealing section 27 (as substituted by section 3 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993), section 27A (as inserted by section 4 of that Act), and sections 27B to 27D (as inserted by section 11 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following section:

“27. (1) The Corporation shall contribute to the cost of any treatment, service, physical rehabilitation, related transport, or certificate (in this section called a purchased service), in respect of personal injury that is covered by this Act,—

“(a) To the extent required or permitted by regulations made under this Act; or 5

“(b) Pursuant to an agreement, contract, or arrangement entered into under **section 29A** of this Act.

“(2) No agreement, contract, or arrangement entered into under **section 29A** of this Act in respect of any purchased service shall be invalid merely because any regulations made under this Act make some other provision in respect of that purchased service. 10

“(3) The Corporation shall not do anything under this section that is inconsistent with any (*directions*) direction for the time being in force under **section 159** of this Act. 15

“(4) The Corporation shall not be obliged under **subsection (1)** of this section to contribute to the cost of any purchased service that is provided, or is obliged to be provided or arranged, pursuant to— 20

“(a) A purchase agreement; or

“(b) An obligation created pursuant to section 51 of the Health and Disability Services Act 1993,—  
except to the extent that the contribution by the Corporation to the cost of that purchased service is specifically provided for by— 25

“(c) Regulations made under this Act; or

“(d) An agreement, contract, or arrangement entered into under **section 29A** of this Act.

“(5) The Corporation shall not make any payment in respect of any purchased service under any regulations made under this Act, unless it is satisfied that the purchased service to which the payment relates is necessary, appropriate, timely, of the required quality, and not excessive in number or duration.” 30

**6. Contracts relating to goods, services, or facilities—** 35  
The principal Act is hereby amended by inserting, after the heading immediately preceding section 30, the following section:

*Struck Out (Unanimous)*

“29A. (1) For the purposes of this Act, the Corporation may purchase from any person any goods, services, or facilities.

5 “(2) The Corporation may purchase such goods, services, or facilities for any case or class of case, or on any other basis whatsoever.

“(3) Without limiting the powers of the Corporation, it may—

10 “(a) Purchase such goods, services, or facilities in conjunction with other persons, whether under an agency arrangement or a joint venture arrangement or otherwise:

“(b) Enter into, with any person, an agreement or contract or arrangement, including a purchase agreement.

15 “(4) The Corporation may make any payment to any person subject to standard terms and conditions determined by the Corporation; and the following provisions shall apply in relation to such standard terms and conditions:

20 “(a) The terms and conditions shall be notified to the persons concerned or publicly in such manner as the Corporation considers appropriate:

“(b) Acceptance by the person of the payment shall constitute acceptance by the person of the terms and conditions:

25 “(c) Compliance by the person with the terms and conditions may be enforced by the Corporation as if the person had signed a deed under which the person agreed to the terms and conditions.

30 “(5) Notwithstanding subsection (1) of this section, the Corporation shall not, without the consent of the Minister, invest in the provision of health services by making capital contributions or directly purchasing plant or equipment.

35 “(6) The Corporation shall not do anything under this section that is inconsistent with any directions for the time being in force under section 159 of this Act.”

*New (Unanimous)*

“29A. (1) For the purposes of this Act, the Corporation may—

“(a) Purchase from any person, or from the Crown, any goods, services, or facilities: 5

“(b) Provide funding to any person, or to the Crown, for any goods, services, or facilities.

“(2) The Corporation may purchase or fund such goods, services, or facilities for any case or class of case, or on any other basis whatsoever. 10

“(3) The powers of the Corporation referred to in subsection (1) of this section include, without limitation, the powers to—

“(a) Purchase or fund such goods, services, or facilities in conjunction with other persons, whether under an agency arrangement or a joint venture arrangement or otherwise: 15

“(b) Enter into, with any person, an agreement or contract or arrangement, including a purchase agreement.

“(4) Notwithstanding subsection (1) of this section, the Corporation shall not, without the consent of the Minister, contribute to the cost of any purchased service (within the meaning of section 27 (1) of this Act) by making capital contributions or directly purchasing plant or equipment. 20

“(5) The Corporation shall not do anything under this section that is inconsistent with any direction for the time being in force under section 159 of this Act.” 25

**7. New sections substituted**—The principal Act is hereby amended by repealing section 37, and substituting the following sections:

**“37. Application of incapacity and work capacity provisions**—(1) Where the Corporation is required to consider the claim of any person for weekly compensation under this Act— 30

“(a) The Corporation shall determine the person’s incapacity under section 37A or section 37B of this Act, as the case may require; and 35

“(b) If the Corporation determines that the person is not incapacitated within the meaning of section 37A or section 37B of this Act, as the case may be, the person

shall not be eligible to receive weekly compensation under this Act; and

5 “(c) If the Corporation determines that the person is incapacitated within the meaning of **section 37A** or **section 37B** of this Act, as the case may be, the person shall be eligible to receive weekly compensation under this Act and the provisions of this Act (including **sections 22 and 23**) apply accordingly.

10 “(2) While a person is receiving weekly compensation under this Act,—

15 “(a) **Section 37A** or **section 37B** of this Act, as the case may be, shall continue to apply to the person and the Corporation may further determine from time to time, in accordance with **section 37A** or **section 37B** of this Act, as the case may require, the person’s incapacity:

“**(b) Section 51** of this Act shall also apply to the person and the Corporation may from time to time assess, in accordance with that section, the person’s capacity for work.

20 “(3) A person’s entitlement to weekly compensation under this Act may cease as a consequence of the operation of **section 37A** or **section 37B** or **section 51** of this Act.

“**(4)** Nothing in this section limits any other provision of this Act.

25 “**37A. Determination of incapacity in relation to earners generally**—(1) For the purposes of this Part of this Act, the Corporation shall determine the incapacity of a person (other than a person to whom **section 37B** of this Act applies) in accordance with this section.

30 “(2) The object of a determination of incapacity under this section is to determine whether or not the person is, by reason of his or her personal injury, for the time being unable to engage in employment in which the person was engaged when the personal injury occurred.

35 “(3) The Corporation may make a determination under this section at any time and from time to time, and, in so doing, the Corporation may obtain such professional, technical, specialised, or other advice from such persons as it considers appropriate.

40 “(4) If the Corporation determines under this section that a person is able to engage in employment in which the person was engaged when the personal injury occurred, then,—

- “(a) If the person is not at that time receiving weekly compensation under this Act for loss of earnings, that person shall not then be eligible to commence receiving weekly compensation for such loss:
- “(b) If the person is at that time receiving weekly compensation under this Act for loss of earnings, that entitlement shall cease immediately and the power to assess the person under **section 51** of this Act shall no longer be exercisable. 5
- “(5) If a person is assessed under **section 51** of this Act as having a capacity for work, then,— 10
- “(a) For the purposes of this section, that assessment shall be regarded as a determination that the person is able to engage in employment in which the person was engaged when the personal injury occurred; and 15
- “(b) The person shall cease to be entitled to receive weekly compensation under this Act for loss of earnings (with **section 49** of this Act determining the time when the entitlement actually ceases).
- “37B. Determination of incapacity if person has ceased to be an employee or in cases of loss of potential earning capacity—**(1) For the purposes of sections 44, 45, and 46 of this Act, the Corporation shall determine a person’s incapacity in accordance with this section. 20
- “(2) The object of a determination under this section is to determine whether or not the person is, by reason of his or her personal injury, for the time being unable to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things. 25
- “(3) The Corporation may make a determination under this section at any time and from time to time, and, in so doing, the Corporation may obtain such professional, technical, specialised, or other advice from such persons as it considers appropriate. 30
- “(4) If the Corporation determines under this section that a person is able to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things, then,— 35
- “(a) If the person is not at that time receiving weekly compensation under this Act for loss of earnings or loss of potential earning capacity, that person shall not then be eligible to commence receiving weekly compensation for such loss: 40

“(b) If the person is at that time receiving weekly compensation under this Act for loss of earnings or loss of potential earning capacity, that entitlement shall cease and the power to assess the person under **section 51** of this Act shall no longer be exercisable.

5 “(5) If a person is assessed under **section 51** of this Act as having a capacity for work, then,—

“(a) For the purposes of this section, that assessment shall be regarded as a determination that the person is able to engage in (*employment*) work for which the person is suited by reason of experience, education, or training, or any combination of those things; and

10 “(b) The person shall cease to be entitled to receive weekly compensation under this Act for loss of earnings or loss of potential earning capacity (with **section 49** of this Act determining the time when the entitlement actually ceases).”

**8. Calculation of weekly earnings where earner had earnings solely as an employee during the 12 months before commencement of incapacity**—Section 40 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

20 “(2) The weekly earnings of any person to whom this section applies shall be,—

25 “(a) In respect of each of the 4 weeks next following the sixth day after the day on which the incapacity first commenced, the person’s earnings as an employee during the 4 weeks immediately before the commencement of the incapacity divided by the number of full or part weeks during which the person earned those earnings as an employee during that 4-week period:

30 “(b) In respect of any weekly period of incapacity after the period referred to in **paragraph (a)** of this subsection, if the person was in permanent employment immediately before the commencement of the incapacity, the person’s earnings as an employee during the 52 weeks immediately before the commencement of the incapacity, divided by—

35 “(i) The number of full or part weeks during which the person earned those earnings as an employee during that 52-week period; or

40

“(ii) Thirteen,—

whichever is the greater:

“(c) In respect of any weekly period of incapacity after the period referred to in paragraph (a) of this subsection, if the person was not in permanent employment immediately before the commencement of the incapacity, 1/52nd of the person’s earnings as an employee during the 52 weeks immediately before the commencement of the incapacity. 5

“(2A) For the purposes of this section, a person shall be regarded as having been in permanent employment if, in the opinion of the Corporation, that person would have continued to receive earnings from that employment for a continuous period of more than 12 months after the commencement of incapacity if the personal injury had not occurred.” 10 15

**9. Calculation of weekly earnings where earnings are solely earnings other than earnings as an employee during the 12 months before commencement of incapacity**—Section 41 (2) of the principal Act (as substituted by section 14 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993) is hereby amended by repealing paragraph (b), and substituting the following paragraphs: 20

“(b) In respect of any period of incapacity after the period referred to in paragraph (a) of this subsection, the earnings of that person other than earnings as an employee in the most recent income year (as defined in section OB 1 of the Income Tax Act 1994) last ended before the commencement of the period of incapacity as shown in an income tax return, divided by— 25 30

“(i) The number of weeks in that income year; or

“(ii) If the most recent income year (as so defined) last ended before the commencement of the period of incapacity was the first year during which the person received earnings other than as an employee, such number of weeks as the Corporation considers fairly and reasonably represents the number of weeks or part weeks in that income year during which the person earned those earnings other than as an employee, but in no case shall that number be less than 13: 35 40

5 “(c) Notwithstanding any other provision of this section, if the person has elected to pay and has paid the optional premium on earnings provided for in regulations made under this Act, the weekly earnings calculated in accordance with section 41A of this Act.”

**10. Deemed weekly earnings**—The principal Act is hereby amended by inserting, after section 41, the following section:

10 “41A. (1) If a person has elected to pay and has paid the optional premium on earnings provided for in regulations made under this Act, his or her weekly earnings for the purposes of the calculation under section 41 of this Act of his or her entitlement to compensation for loss of earnings shall be—

15 “(a) The amount of deemed weekly earnings prescribed for that rate of premium in regulations made under this Act; or

20 “(b) The actual weekly earnings as calculated in accordance with paragraph (a) or paragraph (b) of section 41 (2) of this Act,—  
whichever is the greater.

“(2) Deemed weekly earnings shall not be used under section 41 of this Act as a basis for calculating the compensation payable in respect of any period of incapacity resulting from any personal injury that occurred prior to an election to pay an optional premium on earnings provided for in regulations made under this Act.

30 “(3) For the purposes of section 45(6) of this Act, the reference in that provision to weekly earnings calculated under this Act does not include a reference to deemed weekly earnings under subsection (1) of this section.”

**11. Abatement of compensation for loss of earnings or loss of potential earning capacity**—Section 47 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

35 “(2) For the purposes of this section,—

“(a) Earnings include any payments made on or in respect of the termination of employment (other than as redundancy or superannuation):

40 “(b) Earnings do not include—  
“(i) Compensation for loss of earnings or loss of potential earning capacity or any other compensation payable under this Act; or

“(ii) Any payment (other than a payment for work actually undertaken by the person) made by the person’s employer during the person’s incapacity that does not exceed the difference between the level of the person’s actual earnings immediately before the commencement of incapacity and the level of the person’s compensation for loss of earnings or loss of potential earning capacity: 5

“(c) Payments referred to in **paragraph (a)** of this subsection shall be treated as being received at such weekly rate, and for such period, as the Corporation shall determine having regard to— 10

“(i) The period to which the payment related; and

“(ii) The amount of the payment; and

“(iii) The nature of the payment; and 15

“(iv) Any other factors the Corporation considers relevant.”

**12. New sections substituted**—The principal Act is hereby amended by repealing sections 49 to 51, and substituting the following sections: 20

“**49. Cessation of weekly compensation when person has capacity for work**—Every person assessed under **section 51** of this Act as having a capacity for work shall cease to be entitled to receive compensation for loss of earnings or loss of potential earning capacity upon the expiration of 3 months after the person is notified of that assessment. 25

“**50. Procedure for assessment of capacity for work**—  
(1) For the purposes of **section 51** of this Act, the Corporation shall develop a procedure for the assessment of the capacity for work of persons covered by this Act. 30

“(2) The Corporation shall publicly notify a draft of its proposed procedure by publishing in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin, a notice relating to the draft of the proposed procedure. 35

“(3) The notice shall—

“(a) State that a draft procedure has been developed; and

“(b) State where copies of the draft procedure may be obtained; and

*Struck Out (Unanimous)*

“(c) Explain the reasons why the Corporation has chosen the draft procedure or state where a copy of those reasons may be obtained; and

5 *New (Unanimous)*

“(c) Explain the Corporation’s draft procedure, or state where a copy of that explanation may be obtained; and

10 “(d) Invite members of the public to make written submissions on the draft procedure; and

“(e) State the last date on which the Corporation will receive written submissions on the draft procedure (which date shall be not less than 42 days after the date of the publication of the notice in the *Gazette*).

15 “(4) The Corporation shall—

“(a) Consider all submissions on the draft procedure that are received by the Corporation not later than the date stated pursuant to **subsection (3) (e)** of this section; and

20 “(b) Make such amendments to the draft procedure as the Corporation considers appropriate; and

“(c) Publicly notify the Corporation’s final draft of the procedure by publishing in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin, a notice—

25 “(i) Stating either that the draft procedure has been amended or that no amendments have been made; and

30 “(ii) Stating where copies of the final draft of the procedure may be obtained; and

“(iii) Explaining (*the reasons*) why the Corporation has amended, or has decided not to amend, the draft procedure; and

35 “(iv) Inviting members of the public to make written submissions on the final draft of the procedure; and

- “(v) Stating the last date on which the Corporation will receive written submissions on the final draft of the procedure (which date shall be not less than 28 days after the date of the publication of the notice in the *Gazette*); and 5
- “(d) Consider all submissions on the final draft of the procedure that are received by the Corporation not later than the date stated pursuant to **paragraph (c) (v)** of this subsection; and
- “(e) Make such amendments to the final draft procedure as the Corporation considers appropriate; and 10
- “(f) Publicly notify its final version of the procedure (hereafter in this section referred to as the procedure) by publishing in the *Gazette* a notice—
- “(i) Setting out in full the procedure or giving a summary of it; and 15
- “(ii) Stating where copies of the procedure may be obtained; and
- “(g) Forthwith after publishing a notice under **paragraph (f)** of this subsection, deliver a copy of the notice to the Minister, who shall, (*as soon as practicable*) within 10 working days after receiving a copy of the notice, lay a copy of the notice before the House of Representatives. 20
- “(5) The object of the procedure is to provide a reasonable method of making assessments under **section 51** of this Act. 25
- “(6) The procedure shall not be invalid merely because the procedure disregards—
- “(a) Any inability to do any thing that does not result from— 30
- “(i) Personal injury covered by this Act; or
- “(ii) Personal injury by accident in respect of which a claim has been accepted under the Accident Compensation Act 1972 or the Accident Compensation Act 1982; or
- “(b) Whether or not there are any employment opportunities existing in any employment for which the person is then suited. 35
- “(7) The procedure may allow for the provision of professional, technical, specialised, or other advice.
- “(8) The Corporation may from time to time— 40
- “(a) Amend the procedure; or
- “(b) Revoke the procedure, and substitute a new procedure,—

and the provisions of **subsections (2) to (4)** of this section, with any necessary modifications, shall apply to any proposed amendment or substituted procedure unless the changes are of a minor or technical kind and the Corporation is satisfied that compliance with all or any of those provisions is unnecessary.

*New (Unanimous)*

“(9) The consultation procedure contained in **subsections (2) to (4)** of this section constitutes a code that sets out all the obligations of the Corporation in relation to consultation over the development of the procedure for the assessment of the capacity for work of persons covered by this Act.

“**51. Assessment of capacity for work**—(1) For the purposes of determining whether or not a person who is receiving compensation for loss of earnings or for loss of potential earning capacity, or who may have any entitlement to compensation for loss of potential earning capacity, has a capacity for work, the Corporation shall determine the person’s capacity for work in accordance with this section.

“(2) For the purposes of this Act, the term ‘capacity for work’, in relation to any person, means the person’s capacity to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things, and that capacity shall be determined having regard to the consequences of the person’s personal injury.

“(3) Every assessment under this section shall be carried out—

“(a) In accordance with the procedure for the time being determined by the Corporation under **section 50** of this Act; and

“(b) In accordance with the principles of natural justice.

“(4) Every assessment under this section shall be undertaken by or on behalf of the Corporation and at its expense.

“(5) The Corporation may require a person to be assessed at any time and from time to time at such reasonable intervals as the Corporation considers appropriate in each case.

“(6) If a person’s entitlement to compensation for loss of earnings or loss of potential earning capacity has ceased, whether by virtue of this section or otherwise, and the Corporation considers that the person’s capacity for work has deteriorated since that cessation,—

- “(a) The Corporation may reassess the person’s capacity for work under this section; and
- “(b) If the person is assessed as no longer having a capacity for work, then, subject to the provisions of this Act, the person shall be entitled, as from such date as the Corporation shall determine, to compensation for loss of earnings or loss of potential earning capacity. 5
- “(7) If a person is assessed under this section as having a capacity for work, then,—
- “(a) For the purposes of section 37A of this Act, that assessment shall be regarded as a determination that the person is able to engage in employment in which the person was engaged when the personal injury occurred. 10
- “(b) For the purposes of section 37B of this Act, that assessment shall be regarded as a determination that the person is able to engage in work for which the person is suited by reason of experience, education, or training, or any combination of those things.” 15

**13. New sections substituted**—The principal Act is hereby amended by repealing section 54, and substituting the following sections: 20

**“54. Independence allowance**—(1) Subject to the provisions of this section, every person who has cover under this Act is entitled to receive an independence allowance at the appropriate prescribed rate if the person’s personal injury has or personal injuries have resulted in a degree of whole-person impairment of 10 percent or more. 25

“(2) No person’s entitlement to the independence allowance shall be assessed or reassessed until— 30

*Struck Out (Unanimous)*

- “(a) The expiration of fifty-two weeks after the date of the personal injury; or
- “(b) The Corporation has received a certificate from a registered medical practitioner to the effect that the person’s condition arising from the personal injury has stabilised and that it is likely that there is impairment resulting from the personal injury,— 35

*New (Unanimous)*

5 “(a) The Corporation has received a certificate from a registered medical practitioner to the effect that the person’s condition arising from the personal injury has stabilised and that it is likely that there is impairment resulting from the personal injury; or

10 “(b) Fifty-two weeks have expired since the date of the personal injury and the Corporation has received a certificate from a registered medical practitioner to the effect that, despite the fact that the person’s condition arising from the personal injury has not yet stabilised, it is likely that there is impairment resulting from the personal injury,—

whichever first occurs.

15 “(3) The assessment of whether or not a person’s condition has stabilised for the purposes of **subsection (2)** of this section shall be undertaken by or on behalf of the Corporation and at its expense.

20 “(4) The assessment of a person’s entitlement to the independence allowance shall be carried out in accordance with **section 54A** of this Act and if, and only if, the entitlement is established by such an assessment, it shall be payable in accordance with **subsection (8)** of this section.

“(5) No person shall—

25 “(a) Be assessed as having more than 100 percent whole-person impairment; or

“(b) At any time receive more than one independence allowance,—

irrespective of the number of claims lodged by that person.

30 “(6) Subject to **(subsection (7) of this section)** any regulations made under **section 167 (1) (aa)** of this Act, the maximum amount of the independence allowance shall be \$60 a week.

*Struck Out (Unanimous)*

“(7) Regulations made under this Act—

35 “(a) May increase the maximum amount of the independence allowance set out in **subsection (6)** of this section:

*Struck Out (Unanimous)*

“(b) Shall prescribe the graduated rates at which the independence allowance is payable.

“(8) The following provisions apply in relation to payment of an independence allowance:

5

*Struck Out (Unanimous)*

“(a) If the independence allowance is payable, it shall be paid with effect on and from the date of assessment:

*New (Unanimous)*

“(a) Except where **section 54A (5)** of this Act applies on the reassessment of a person’s whole-person impairment, the date on and from which the independence allowance is payable is the date on which the person to whom it is payable lodged a claim for cover in respect of the personal injury from which the impairment results:

10

15

“(b) (*Subject to paragraph (a) of this subsection,*) Payment in respect of any period after the completion of the assessment of the degree of impairment shall be made by the Corporation quarterly in advance:

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“(c) Where, during a quarter, the impairment of a person decreases or the entitlement of a person to an independence allowance ceases, the Corporation shall not take any action to recover the whole or any part of the quarterly payment made to that person by way of an independence allowance in respect of that quarter:

25

“(d) When a person dies, that person’s entitlement to an independence allowance shall cease on the date of the person’s death.

30

*Struck Out (Unanimous)*

5 “54A. **Assessment and reassessment**—(1) For the purposes of **section 54** of this Act, a person’s whole-person impairment shall be assessed in accordance with regulations made under this Act, and any such regulations may—

“(a) Refer to or incorporate by reference, in whole or in part, the American Medical Association Guides to the Evaluation of Permanent Impairment:

10 “(b) Prescribe guides other than or in addition to the American Medical Association Guides to the Evaluation of Permanent Impairment:

“(c) Do any combination of the things referred to in **paragraphs (a) and (b)** of this subsection.

15 “(2) If the initial assessment is carried out after the expiration of the 52-week period referred to in **section 54 (2) (a)** of this Act but before the Corporation has received a certificate from a registered medical practitioner to the effect that the person’s condition arising from the personal injury has stabilised and is likely to have resulted in impairment, the person shall be  
20 reassessed following stabilisation of his or her condition.

*New (Unanimous)*

25 “54A. **Assessment and reassessment**—(1) For the purposes of **section 54** of this Act, a person’s whole-person impairment shall be assessed in accordance with regulations made under this Act.

30 “(2) If the initial assessment is carried out after the expiration of the 52-week period referred to in **section 54 (2) (b)** of this Act, but before the Corporation has received a certificate from a registered medical practitioner to the effect that the person’s condition arising from the personal injury has stabilised and that it is likely that there is impairment resulting from the personal injury, the person shall be reassessed following the receipt of such a certificate.

35 “(3) If the injured person’s impairment increases after the date of assessment, the Corporation shall reassess the person following verification, by a certificate from a registered medical practitioner, of the increase in impairment, but not more than

1 such reassessment (other than a reassessment under subsection (2) of this section) shall be undertaken in any 12-month period.

“(4) If the injured person’s impairment decreases after the date of assessment, the Corporation may reassess the person, but not more than 1 such reassessment (other than a reassessment under subsection (2) of this section) shall be undertaken in any 5-year period. 5

“(5) If a reassessment is undertaken in accordance with this section, the Corporation shall make any necessary adjustment to the level of entitlement to the independence allowance with effect on and from the date of the next quarterly payment. 10

“(6) An assessment of a person’s whole-person impairment under this section shall not include as impairment any impairment that does not result from personal injury that is covered by this Act or that does not result from personal injury by accident in respect of which a claim has been accepted under the Accident Compensation Act 1972 or the Accident Compensation Act 1982. 15

“(7) If any person who has received a payment under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982 is assessed for the purposes of establishing an entitlement to the independence allowance, the percentage or percentages of permanent loss or impairment of bodily function upon which any payment or payments under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982 were based shall be deducted from the person’s impairment as assessed under this section. 20 25

“(8) Every assessment and reassessment of a person’s impairment under this section shall be undertaken by or on behalf of the Corporation and at its expense.” 30

**14. Funeral grant**—The principal Act is hereby amended by repealing section 55, and substituting the following section:

“55. If a person dies as a result of personal injury covered by this Act, the Corporation shall pay to the personal representatives of the deceased a funeral grant of— 35

“(a) The actual costs of the funeral; or

“(b) ~~(\$2,500)~~ \$3,000,—  
whichever is the lesser.”

**15. Management of claims by employers**—The principal Act is hereby amended by repealing sections 105 to 107, and substituting the following section: 40

5 “105. (1) The Minister shall establish a framework under which the Corporation and any employer may agree that the employer shall be an agent of the Corporation for the purposes of managing and meeting the cost of claims for work injury under this Act.

10 “(2) Without limiting anything in section 156 of this Act, the Corporation and any employer may, in accordance with any framework established under subsection (1) of this section, agree that the employer shall be an agent of the Corporation for the purposes referred to in subsection (1) of this section; and, for the purposes of this Act, a decision of an employer under any such agreement shall be regarded as a decision of the Corporation.”

15 **16. Reserves**—(1) The principal Act is hereby amended by repealing section 128 (as substituted by section 40 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following section:

20 “128. (1) The Corporation shall establish, and may from time to time amend, a reserves policy which, in relation to each Account, has regard to the estimated liability arising from—

“(a) Claims already lodged with the Corporation; and

“(b) Estimated future claims.

25 “(2) The Corporation shall, before establishing or amending a reserves policy under subsection (1) of this section,—

30 “(a) Publicly notify its intention to establish or amend a reserves policy under that subsection by publishing in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin, a notice—

“(i) Setting out in full, or giving a summary of, the proposed reserves policy or amendment; and

“(ii) Stating where copies of the proposed reserves policy or amendment may be obtained; and

*Struck Out (Unanimous)*

35 “(iii) Giving the Corporation’s reasons for the proposed reserves policy or amendment, or stating where a copy of those reasons may be obtained; and

*New (Unanimous)*

“(iii) Explaining the basis for the Corporation’s proposed reserves policy or amendment, or stating where a copy of that explanation may be obtained; and

5

“(iv) Inviting members of the public to make written submissions on the proposed reserves policy or amendment; and

“(v) Stating the last date on which the Corporation will receive written submissions on the proposed reserves policy or amendment (which date shall be not less than 28 days after the date of the publication of the notice in the *Gazette*); and

10

“(b) Consider all submissions on the proposed reserves policy or amendment that are received by the Corporation not later than the date stated pursuant to **paragraph (a) (v)** of this subsection.

15

*Struck Out (Unanimous)*

“(3) The content of the reserves policy established or amended under **subsection (1)** of this section shall be subject to any direction given by the Minister under section 159 of this Act.

20

“(4) The Minister shall, not later than the **30th day of September 1997**, and as soon as practicable thereafter whenever there is a change in the reserves policy of the Corporation,—

25

“(a) Publish in the *Gazette*; and

“(b) Lay before the House of Representatives—  
a copy of the reserves policy or amended reserves policy of the Corporation.”

*New (Unanimous)*

30

“(3) The content of the reserves policy established or amended under **subsection (1)** of this section shall be subject to any direction for the time being in force under **section 159** of this Act.

*New (Unanimous)*

“(4) The Minister shall, not later than the 30th day of September 1997, and within 10 working days of any change in the reserves policy of the Corporation,—

5 “(a) Publish in the *Gazette*; and

“(b) Lay before the House of Representatives—  
a copy of the reserves policy or the amended reserves policy of the Corporation.

10 “(5) The consultation procedure contained in subsection (2) of this section constitutes a code that sets out all the obligations of the Corporation in relation to consultation over the establishment and amendment of a reserves policy.”

15 (2) Any reserves policy, or amended reserves policy, of the Corporation in force on the day on which this section comes into force shall continue in force until a reserves policy is established under section 128 of this Act as substituted by subsection (1) of this section.

20 **17. Cessation of compensation**—The principal Act is hereby amended by repealing section 139, and substituting the following section:

25 “139. The continued eligibility of any person to receive compensation continued by virtue of section 138 of this Act shall be determined in accordance with this Act, except that section 51 of this Act does not apply if the Corporation is satisfied that the determination is unlikely to find that the person has a capacity for work.”

**18. Board of Corporation**—Section 157 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

30 “(1) The Board of the Corporation shall consist of not more than 8 members appointed by the Minister.

“(2) Without limiting the functions of the Board, the principal function of the Board is to ensure the efficient and effective management of the Corporation and the Accounts.”

*Struck Out (Unanimous)*

**19. Corporation to comply with Government policy—**  
Section 159 of the principal Act is hereby amended by adding the following subsections:

“(3) The Corporation shall, if so directed in writing by the Minister, enter into and comply with one or more service agreements with the Minister. 5

“(4) A service agreement may set out—

“(a) The Government’s desired outcomes and objectives in relation to the performance and exercise of the functions, duties, and powers of the Corporation: 10

“(b) The Government’s desired outcomes and objectives in relation to the performance of the Accounts:

“(c) Policy directions under subsection (1) of this section:

“(d) Reporting requirements of the Corporation either in relation to the Accounts or in relation to the Corporation’s functions and powers or in relation to both: 15

“(e) Such other matters relating to the performance and exercise of the functions, duties, and powers of the Corporation as the Minister thinks expedient. 20

“(5) The Minister shall, as soon as practicable after entering into a service agreement, lay a copy of the service agreement before the House of Representatives. 25

“(6) The inclusion in a service agreement of a policy direction under subsection (1) of this section is sufficient compliance with the obligation under subsection (2) (a) of this section to publish a copy of the direction in the *Gazette*.

“(7) It is hereby declared that, in exercising any function or power under this Act, the Minister shall have regard to the public interest and, in particular, the interests of taxpayers, premium payers, claimants, and potential claimants.” 30

*New (Unanimous)*

**19. Corporation to comply with Government policy—** 35  
The principal Act is hereby amended by repealing section 159, and substituting the following section:

*New (Unanimous)*

5 “159. (1) In the performance and exercise of its functions, duties, and powers, the Corporation shall comply with any directions relating to the policy of the Government that are given by the Minister to the Corporation by notice in writing and that are for the time being in force.

10 “(2) Without limiting subsection (1) of this section, the Minister may from time to time give the Corporation a direction under that subsection that any item referred to in section 26 (2) of this Act shall be provided only under regulations made under this Act, and not otherwise.

15 “(3) Subject to subsection (5) of this section, where a notice is given to the Corporation under subsection (1) of this section, the Minister shall, within 10 working days after the giving of the notice,—

“ (a) Publish a copy of the notice in the *Gazette*; and

“ (b) Lay a copy of the notice before the House of Representatives.

20 “(4) A policy direction given under this section may be annexed to a service agreement entered into under section 159AA of this Act.

25 “(5) The annexing of a policy direction to a service agreement under subsection (4) of this section, and the laying of that service agreement before the House of Representatives under section 159AA (6) of this Act, constitute sufficient compliance with the obligations contained in subsection (3) of this section.”

**19A. New sections inserted**—The principal Act is hereby amended by inserting, after section 159, the following sections:

30 “159AA. **Service agreements between Corporation and Minister**—(1) In this section, the term ‘year’ means a period of 12 months commencing on the 1st day of July and ending with the 30th day of June.

“ (2) Once a year the Corporation shall enter into a service agreement with the Minister.

35 “ (3) Every service agreement entered into under this section shall—

“ (a) Revoke any existing service agreement; and

*New (Unanimous)*

- “(b) Be signed by the Minister and the Corporation no later than the 30th day of June in the year before the first year to which it relates; and
- “(c) Relate, at least, to the year after the year in which it is signed and to the next 2 following years. 5
- “(4) A service agreement entered into under this section may set out—
- “(a) Desired outcomes and objectives in relation to the performance and exercise of the functions, duties, and powers of the Corporation: 10
- “(b) Desired outcomes and objectives in relation to the performance of each of the Accounts referred to in Part VII of this Act:
- “(c) Reporting requirements of the Corporation either in relation to the Accounts or in relation to the Corporation’s functions and powers or in relation to both: 15
- “(d) Such other matters relating to the performance and exercise of the functions, duties, and powers of the Corporation as the parties may agree. 20
- “(5) The Corporation shall comply with every service agreement it enters into under this section.
- “(6) The Minister shall, within 10 working days after entering into a service agreement with the Corporation, lay a copy of the service agreement before the House of Representatives. 25
- “159AB. **Public interest**—It is hereby declared that, in exercising any function or power under this Act, the Minister shall have regard to the public interest and, in particular, the interests of taxpayers, premium payers, claimants, and potential claimants.” 30

*Struck Out (Unanimous)*

- 20. Regulations**—(1) Section 167 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph: 35
- “(a) Prescribing the assessment to be used to establish the degree of whole-person impairment for the

*Struck Out (Unanimous)*

purposes of **section 54** of this Act; and prescribing the maximum amount and rates of the independence allowance payable under that section.”.

5 *New (Unanimous)*

**20. Regulations**—(1) Section 167 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraphs:

10 “(a) Prescribing the assessment to be used to establish the degree of whole-person impairment for the purposes of **sections 54 and 54A** of this Act:

“(aa) Increasing the maximum amount of the independence allowance payable under **section 54** of this Act:

15 “(ab) Prescribing the graduated rates at which the independence allowance is payable under **section 54** of this Act:

“(ac) Specifying when a person’s condition is to be regarded as having stabilised for the purposes of **sections 54 and 54A** of this Act:

20 “(ad) Defining the term ‘registered medical practitioner’ for the purposes of **sections 54 and 54A** of this Act.”.

(2) Section 167 (1) (d) of the principal Act is hereby amended by inserting, after the words “deemed minimum”, the words “and optional”.

25 (3) Section 167 (1) of the principal Act is hereby amended by repealing paragraph (g), and substituting the following paragraphs:

30 “(g) Prescribing the rates of premiums (including minimum and optional premiums for those persons with earnings other than as an employee):

“(ga) Prescribing the rates of deemed weekly earnings for the purposes of **section 41A** of this Act.”.

35 (4) Section 167 of the principal Act is hereby amended by repealing subsection (1) (i) and also subsection (5A) (as inserted by section 16 (2) of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993).

*New (Unanimous)*

(5) Section 167 (2) of the principal Act is hereby amended by inserting, after the expression “paragraphs (a),”, the expression “(aa),”.

**20A. Regulations relating to assessment and reassessment**—The principal Act is hereby amended by inserting, after section 167, the following section: 5

“167AA. (1) Without limiting **section 167 (1) (a)** of this Act, the Governor-General may from time to time, by Order in Council, make regulations for the purposes of **sections 54 and 54A** of this Act that— 10

“(a) Refer to or incorporate by reference, in whole or in part, the American Medical Association Guides to the Evaluation of Permanent Impairment:

“(b) Prescribe guides other than or in addition to the American Medical Association Guides to the Evaluation of Permanent Impairment: 15

“(c) Do any combination of the things referred to in **paragraphs (a) and (b)** of this subsection.

“(2) Any material referred to or incorporated by reference in regulations pursuant to **subsection (1)** of this section shall be deemed for all purposes to form part of the regulations; but any amendment made to the material after the commencement of the regulations shall not have effect until regulations have been made incorporating the amendment into the regulations. 20 25

“(3) Any material referred to or incorporated by reference in regulations pursuant to **subsection (1)** of this section shall be made available by the Corporation to the public for inspection free of charge at any office of the Corporation.” 30

**21. Regulations relating to premium setting**—The principal Act is hereby amended by inserting, after (*section 167*) **section 167AA**, the following section:

“167A. (1) The Minister shall not recommend the making, under **section 167 (1) (g)** of this Act, of regulations prescribing the rates of premiums unless the Minister has first received and considered a recommendation from the Corporation made in accordance with the provisions of this section. 35

“(2) The Corporation shall consult premium payers before recommending to the Minister that such regulations be made, and that obligation to consult is satisfied if—

5 “(a) The Corporation publicly notifies its intention to recommend to the Minister that such regulations be made by publishing in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin, a notice—

10 “(i) Stating that the Corporation is proposing to recommend that such regulations be made; and

“(ii) Stating where copies of the proposed regulations may be obtained; and

*Struck Out (Unanimous)*

15 “(iii) Giving the Corporation’s reasons for its proposal to recommend the making of the proposed regulations, or stating where a copy of those reasons may be obtained; and

*New (Unanimous)*

20 “(iii) Explaining the Corporation’s proposal to recommend the making of the proposed regulations, or stating where a copy of that explanation may be obtained; and

25 “(iv) Inviting members of the public to make written submissions on the proposed regulations; and

30 “(v) Stating the last date on which the Corporation will receive written submissions on the proposed regulations (which date shall be not less than 28 days after the date of the publication of the notice in the *Gazette*); and

35 “(b) The Corporation considers all submissions on the proposed regulations that are received by the Corporation not later than the date stated pursuant to paragraph (a) (v) of this subsection.

“(3) The Corporation shall, before recommending to the Minister the making, under section 167(1)(g) of this Act, of

regulations prescribing the rates of premiums, have regard to the relevant reserves policy established under **section 128** of this Act.

*New (Unanimous)*

“(3A) The Corporation shall, after recommending to the Minister the making, under **section 167 (1) (g)** of this Act, of regulations prescribing the rates of premiums, publish in the *Gazette*, and in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin, a notice—

“(a) Stating that such a recommendation has been made; and

“(b) Stating where copies of the recommendation, and any information that accompanied the recommendation, may be obtained.

“(4) Nothing in this section obliges the Minister to accept the Corporation’s recommendation or prevents the Minister recommending that the regulations prescribe rates of premiums different from the rates recommended by the Corporation.

*New (Unanimous)*

“(5) The consultation procedure contained in **subsection (2)** of this section constitutes a code that sets out all the obligations of the Corporation in relation to consultation over the process of recommending to the Minister that regulations be made.”

**22. Further amendments to principal Act—**(1) The principal Act is hereby further amended in the manner indicated in the **Schedule** to this Act.

(2) The office of Managing Director of the Corporation is hereby abolished.

(3) The person who, immediately before the day on which this section comes into force, holds office as the Managing Director of the Corporation shall become instead, as from the commencement of that day, the Chief Executive of the Corporation as if that person had been appointed to the office of Chief Executive of the Corporation under **clause 20** of the Second Schedule to this Act (as substituted by **subsection (1)** of this

section); and, subject to **subsection (2)** of this section, the remuneration and terms and conditions of employment that applied immediately before the commencement of that day in respect of that person, in that person's capacity as the holder of the office of Managing Director of the Corporation, shall continue to apply to that person in that person's capacity as Chief Executive of the Corporation as if that remuneration and those terms and conditions of employment had been determined under **clause 20** of the Second Schedule to this Act (as so substituted).

**23. Repeals**—(1) Sections 25, 30, 32A, and 68 of the principal Act are hereby repealed.

(2) The following enactments are hereby consequentially repealed:

15 (a) The Accident Rehabilitation and Compensation Insurance Amendment Act 1992:

(b) Sections 3, 4, 6, 7, 8, 9, and 16 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993:

20 (c) Sections 9 (2), 11, 12, 13, 15(2), 17, 19, 20, 22, 28 (2), 35, 40, 54, and 55 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993:

(d) Section 4 of the Finance Act 1994:

25 *New (Unanimous)*

(e) Section 3 of the Finance Act 1995.

**24. Transitional provision relating to existing health purchasing contracts**—Notwithstanding the repeal of section 27 of the principal Act by **section 5** of this Act and without limiting anything in the Acts Interpretation Act 1924, section 27 (6) of the principal Act (as it read immediately before the date of commencement of **section 5** of this Act) shall continue to apply in respect of the provision of any specified services under any contract entered into under section 27 of the principal Act and in force immediately before that date.

**25. Transitional provisions relating to independence allowance**—(1) Any person who was, immediately before the date of commencement of this section, receiving the independence allowance shall be deemed to have been assessed

under **section 54** of the principal Act (as substituted by **section 13** of this Act) as having a degree of whole-person impairment of 10 percent or more and, until reassessed under **section 54A** of that Act (as so substituted), shall continue to receive the allowance at the rate payable on that date.

5

(2) On the reassessment of the person under **section 54A** of that Act (as so substituted), any adjustment to the rate at which the independence allowance is being paid shall—

(a) If the entitlement is to be reduced or is to cease, be effective 3 months after the date on which the person is notified of the Corporation's decision in respect of the level of impairment:

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*Struck Out (Unanimous)*

(b) If the entitlement is to be increased, be effective as from the commencement of this section.

15

*New (Unanimous)*

(b) If the entitlement is to be increased, be effective as from the date of the certificate verifying the increase in impairment or from the date of the commencement of this section, whichever is the later.

20

*Struck Out (Unanimous)*

**26. Regulations providing for transitional matters—** Without limiting anything in section 167 of the principal Act, the Governor-General may from time to time, by Order in Council, make regulations prescribing transitional and savings provisions relating to the coming into force of this Act and such regulations may be in addition to, but not in place of, any of the provisions of **sections 24 and 25** of this Act.

25

*New (Unanimous)*

**26. Regulations providing for transitional matters—** (1) Without limiting anything in section 167 of the principal

30

*New (Unanimous)*

Act, the Governor-General may from time to time, by Order in Council, make regulations prescribing transitional and savings provisions required by the coming into force of—

- 5 (a) This Act, on receipt of the Royal assent; or  
(b) **Sections 13 and 25** of this Act, and the amendments to sections 71 and 148 of the principal Act in the **Schedule** to this Act, on the **1st day of July 1997**.
- (2) Regulations made under **subsection (1)** of this section shall  
10 not—  
(a) Have retrospective effect; or  
(b) Displace any of the provisions of **sections 24 and 25** of this Act (but may be additional to any such provisions).
- (3) This section shall cease to have effect one year after this  
15 Act receives the Royal assent.

**27. Amendment to Health and Disability Services Act 1993**—Section 33 of the Health and Disability Services Act 1993 is hereby amended by adding the following subsection:

- 20 “(3) Notwithstanding anything in this Act, a regional health authority may, for the purposes of **section 29A** of the Accident Rehabilitation and Compensation Insurance Act 1992, enter into an agreement or contract or arrangement, including a purchase agreement, with the Accident Rehabilitation and Compensation Insurance Corporation in relation to the  
25 purchase of goods, services, or facilities for the purposes of the Corporation.”

Section 22

SCHEDULE

FURTHER AMENDMENTS TO PRINCIPAL ACT

Provision of Principal Act			Amendment
Section 3	...	...	By omitting from paragraph (e) of the definition of the term "arising in the course of employment" the words "or the exempt employer". By repealing the definition of the term "exempt employer". By omitting from the definition of the term "incapacity" the words "or an exempt employer". By repealing the definition of the term "public health care costs" (as inserted by section 2 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993).
Section 15 (3)	...	...	By omitting the words ", and an exempt employer may,".
Section 20	...	...	By repealing subsection (4) (as substituted by section 9 (2) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following subsection: "(4) Before any individual rehabilitation programme is implemented, the Corporation may approve the programme in whole or in part and shall meet only the costs of matters in respect of which and to the extent to which the Corporation has given its prior approval."
<i>Struck Out (Unanimous)</i>			
Section 24	...	...	By inserting in subsection (2), before the words "The Corporation may", the words "Subject to section 23 (2) of this Act,". By repealing subsection (3).
<i>New (Unanimous)</i>			
Section 24			By repealing subsection (2), and substituting the following subsection:

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*Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
<i>New (Unanimous)</i>	
Section 24— <i>continued</i>	<p>“(2) Subject to <del>section 23</del> (2) of this Act, the Corporation may at any time reassess the incapacity of any person, the person’s rehabilitation needs, and the potential market for that person’s skills and, if satisfied that there has been a change of circumstances of such a nature that the Corporation can expect vocational rehabilitation or further vocational rehabilitation to be cost-effective, commence or make further contributions to the vocational rehabilitation of the person.”</p> <p>By repealing subsection (3).</p>
Section 28 (4)      ...      ...	<p>By omitting the words “agreement under section 27” in both places where it occurs, and substituting in each case the words “agreement or contract or arrangement under <del>section 29A</del>”.</p> <p>By adding the words “or contract or arrangement”.</p>
Section 29      ...      ...	<p>By omitting the words “or under any agreement made under section 27 of this Act” (as added by section 6 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993), and substituting the words “or under an agreement or contract or arrangement under <del>section 29A</del> of this Act”.</p>
Section 31      ...      ...	<p>By omitting the words “, including any exempt employer,”.</p>
Section 39 (2)      ...      ...	<p>By omitting the words “except to the extent that it is payable by an exempt employer under section 106 of this Act”.</p>
Section 42 (2)      ...      ...	<p>By repealing paragraph (b) (as substituted by section 15 (2) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph:</p> <p>“(b) In respect of any period of incapacity after the period referred</p>

40 *Accident Rehabilitation and Compensation Insurance  
Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 42 (2)— <i>continued</i>	<p>to in paragraph (a) of this subsection, the total of—</p> <p>“(i) The person’s weekly earnings calculated under paragraph (b) or paragraph (c) of section 40 (2) of this Act, whichever is applicable in the circumstances; and</p> <p>“(ii) One fifty-second of the weekly earnings of the person calculated under section 41 of this Act multiplied by the number of weeks or part weeks during the 52 weeks immediately preceding the commencement of the incapacity during which the person earned weekly earnings other than as an employee.”</p>
Section 46 (1) ... ..	<p>By repealing paragraph (c) (as substituted by section 17 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph:</p> <p>“(c) If the person has been assessed under section 51 of this Act, has been assessed as not having a capacity for work; and”.</p>
Section 60 (3) ... ..	<p>By repealing paragraph (c) (as substituted by section 25 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph:</p> <p>“(c) Attaining capacity for work, as assessed under section 51 of this Act.”</p>
Section 63(3) ... ..	<p>By omitting the words “either directly or pursuant to an agreement made under section 27 of this Act” (as inserted by section 9 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993), and substituting the words “either directly or under an agreement or contract or arrangement under section 29A of this Act”.</p>

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*Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 65      ...      ...	By omitting from subsection (2) the words “(other than an exempt employer)”.
Section 71      ...      ...	By repealing subsections (3) and (5). By omitting the words “independence allowance”, and substituting the words “amount specified in <b>section 54(6)</b> of this Act”.
Section 72      ...      ...	By omitting the words “or exempt employer” wherever it occurs.
Section 73      ...      ...	By omitting from subsection (1) the words “and any exempt employer may,”. By omitting from subsection (1A) the words “an agreement made under section 27”, and substituting the words “an agreement or contract or arrangement under <b>section 29A</b> ”.
Section 74 (1)    ...      ...	By omitting from subsection (2) the words “and any exempt employer may,” and also the words “or exempt employer”.
Section 77 (10)    ...      ...	By omitting the expression “ <b>section 54(3)</b> ”, and substituting the expression “ <b>section 54</b> ”.
Section 77 (10)    ...      ...	By omitting the words “an agreement under section 27”, and substituting the words “an agreement or contract or arrangement under <b>section 29A</b> ”.
Section 80      ...      ...	By omitting the words “or exempt employer” wherever they occur.
Section 82      ...      ...	By omitting from subsection (3) the words “, and an exempt employer may,”. By omitting from subsection (4) the words “or an exempt employer”.
Section 82      ...      ...	By omitting from subsection (4) the words “or the exempt employer and in the case of the Corporation”, and substituting the word “and”.
Section 84      ...      ...	By omitting from subsection (1) the words “or exempt employer” and also the words “, or the exempt employer may,”. By omitting from subsection (2) the words “or exempt employer”.
Section 86 (2) (h)    ...      ...	By omitting the words “or exempt employer”.
Section 87 (2) (a)    ...      ...	By omitting the words “an agreement made under section 27”, and substituting the words “an agreement or contract or arrangement under <b>section 29A</b> ”.

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Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 89     ...     ...	<p>By omitting from subsection (1) the words “or exempt employer” where they first occur, and also the words “or exempt employer, as the case may be,”.</p> <p>By omitting from subsection (6) the words “or exempt employer”.</p> <p>By omitting from subsection (6A) the words “an agreement made under section 27”, and substituting the words “an agreement or contract or arrangement under section 29A”.</p>
Section 90     ...     ...	<p>By omitting from subsection (1), and also from subsection (7), the words “or exempt employer, as the case may be,”.</p> <p>By omitting from subsection (4) (a), and also from subsection (5) (a), the words “or exempt employer”.</p> <p>By omitting from subsection (4) (b) the words “or the exempt employer”.</p>
Section 91     ...     ...	<p>By repealing subsection (2) (b).</p> <p>By omitting from subsection (6) the words “and the exempt employer (if any)”.</p>
Section 95     ...     ...	<p>By omitting the words “or the exempt employer”.</p>
Section 96 (1) ...     ...	<p>By omitting the words “or the exempt employer”.</p>
Section 100    ...     ...	<p>By omitting from subsection (1) the words “public health care costs, and”.</p> <p>By repealing paragraph (a) of subsection (3) (as substituted by section 55 (1) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph:</p> <p style="padding-left: 40px;">“(a) Paying the Crown for goods, services, and facilities provided or arranged by the Crown under any contract or agreement or arrangement under section 29A of this Act; and”.</p>
Section 108    ...     ...	<p>By omitting from subsection (1) the words “public health care costs, and”.</p> <p>By repealing paragraph (a) of subsection (3) (as substituted by section 55 (2) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2)</p>

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*Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 108— <i>continued</i>	1993), and substituting the following paragraph: “(a) Paying the Crown for goods, services, and facilities provided or arranged by the Crown under any contract or agreement or arrangement under <b>section 29A</b> of this Act; and”.
Section 109 (4)      ...	By omitting the words “paying public health care costs”, and substituting the words “the payments to be made”.
Section 121 (4)      ...	By repealing paragraph (a) ( <i>of subsection (3)</i> ) (as substituted by section 55 (3) of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993), and substituting the following paragraph: “(a) Paying the Crown for goods, services, and facilities provided or arranged by the Crown under any contract or agreement or arrangement under <b>section 29A</b> of this Act; and”.
<i>New (Unanimous)</i>	
Section 148	By repealing subsection (3), and substituting the following subsection:

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Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
<i>New (Unanimous)</i>	
Section 148— <i>continued</i>	<p>“(3) Notwithstanding subsection (1) of this section, any person who suffered personal injury by accident within the meaning of the Accident Compensation Act 1972 or the Accident Compensation Act 1982 before the 1st day of July 1992, and who has, since the 1st day of July 1992, suffered an increased degree of permanent loss or impairment of bodily function resulting from that personal injury by accident, may apply for an independence allowance under and subject to the conditions of sections 54 and 54A of this Act, but any such independence allowance shall be calculated by deducting from any whole-person impairment assessed under those sections any percentage permanent loss or impairment of bodily function in respect of that personal injury by accident in respect of which a payment has been made under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982.”</p>
Section 166     ...     ...	<p>By inserting in subsection (1), before the word “treatment” in both places where it occurs, the word “payment”.</p> <p>By inserting in subsection (1), after the words “or allowance under this Act”, the words “(whether or not authorised under this Act)”.</p> <p>By omitting from subsection (2) the words “or the exempt employer, as the case may be,”.</p> <p>By omitting from subsection (3) the words “, for which a person is liable on summary conviction to a fine”.</p>
Section 179 (5)     ...	<p>By omitting the words “, irrespective of whether or not the employer is an exempt employer under this Act”.</p>

*Accident Rehabilitation and Compensation Insurance*      45  
*Amendment (No. 2)*

SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
<p>Second Schedule      ...</p>	<p>By repealing clause 19, and substituting the following clause:  “19. <b>Chief Executive</b>—(1) There shall be appointed from time to time by the Board, acting after consultation with the Minister, a Chief Executive of the Corporation, who shall not be a member of the Board.  “(2) The remuneration and terms and conditions of employment of the Chief Executive of the Corporation shall be determined from time to time by the Board, acting after consultation with the Minister”.</p> <p>By repealing (<i>paragraph (b)</i>) <u>paragraph (a)</u> of clause 20 (2), and substituting the following paragraph:  “(a) Every reference to the Chief Executive shall be read as a reference to the Chief Executive of the Corporation; and”.</p> <p>By omitting from clause 29A (as inserted by section 53 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993) the words “specified services as defined in section 27”, and substituting the words “purchased services as defined in section 27 (1)”.</p>