

Briefing for the incoming Minister for ACC

27 November 2023



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1. Welcome to the ACC portfolio

1. As the incoming Minister for ACC, we would value an early opportunity to discuss your priorities for the ACC portfolio, and how the portfolio can support all-of-government priorities, such as establishing specific and measurable targets, and using the Social Investment approach to identify and fund interventions. From these discussions, we would work to support you to develop a portfolio work programme.
2. The purpose of this briefing is to:
 - provide background information about the ACC portfolio (contained in sections 2, 4 and 5 of this briefing)
 - provide initial advice on the strategic issues facing the ACC portfolio (section 3 of this briefing)
 - help you implement your portfolio priorities, and identify further key areas for your consideration where MBIE considers policy settings within your portfolio could be improved.
3. We will provide further briefings to you as needed, focussing on specific topics in greater depth, including the links between this portfolio and your role as Minister for Mental Health.

2. Portfolio overview

Purpose of this section

4. This section sets the scene for the ACC portfolio by outlining the Accident Compensation scheme's (the scheme) function, funding, and Ministry of Business, Innovation and Employment (MBIE) staffing arrangements.
5. This is supplemented by section 4 of this briefing, which provides a more detailed breakdown of legislative responsibilities, the Accident Compensation Corporation (ACC) as a Crown entity, appropriations, and major links with other portfolios (with further information in Annexes 1 to 4).

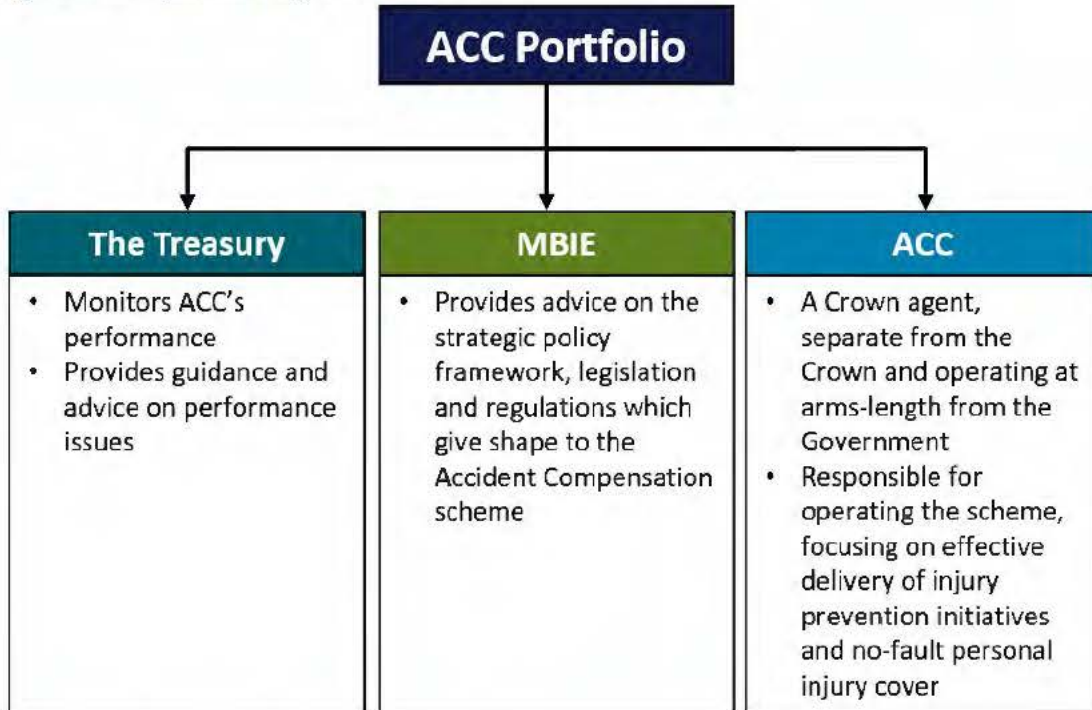
Responsibilities

6. The Minister for ACC is responsible for the strategic policy framework, legislation and regulations which give shape to the scheme.
7. The scheme is premised on a social contract between the New Zealand Government and levy payers. It provides no-fault personal injury coverage for everyone in New Zealand, in part as a replacement for the tort right to sue for compensatory damages for personal injury. The scheme provides:
 - entitlement-based fair (not full) compensation for the loss that a claimant suffers
 - health treatment
 - other forms of rehabilitation to restore to the maximum practicable extent a person's health, independence, and participation.
8. In addition to its broader role in dealing with all injuries caused by accident in New Zealand, the scheme is a key labour market institution. The scheme supports balanced labour market settings by:
 - Providing certainty about workplace injury and work-related illness cover for workers, in line with International Labour Organization obligations concerning workers' compensation.
 - Funding this cover through levies on employers and self-employed people, that reflect industry risk and employer experience of injuries, encouraging employers to manage their risk of workplace injury, as a complement to their obligations under other regulatory regimes (e.g. Health and Safety).
 - Placing obligations on employers and injured workers to support rehabilitation from injury to encourage a return to work as quickly as is feasible from a health and work perspective.
 - Enabling income resilience for injured workers, with compensation to cushion loss of earnings, and rehabilitation to return to the labour market, in work identified as suitable for each person.

Departmental arrangements

9. You are supported by three government departments, each with their specific but complementary areas of focus:

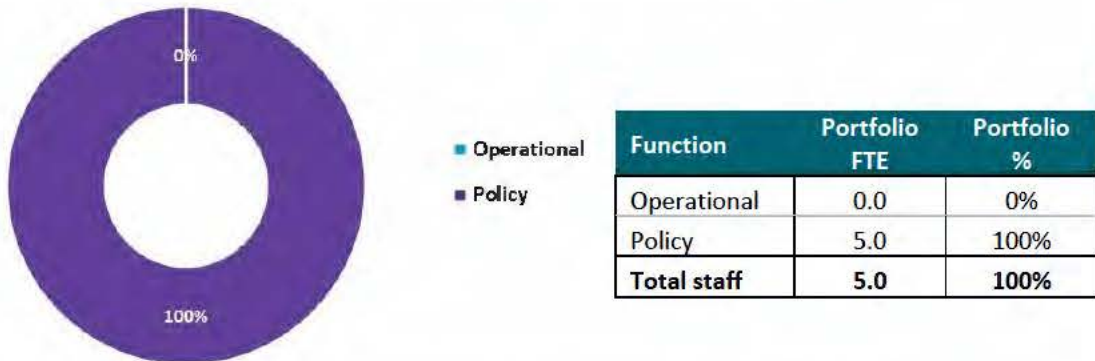
Figure 1: ACC portfolio agencies



10. The AC scheme governed by the Accident Compensation Act 2001 (the AC Act), and ACC as an organisation is also governed by the Crown Entities Act 2004 (the Crown Entities Act). The division of responsibility between MBIE and ACC reflects ACC's status as a Crown agent and allows ACC to focus on the effective and efficient delivery of the scheme.
11. The ACC portfolio falls within Vote Labour Market. For 2023/24, the appropriation for Vote Labour Market is \$3.07 billion, of which \$2.2 billion is for the ACC portfolio, principally for claim costs for non-earners (children, those who are retired, and others who are not employed, including overseas visitors). The Vote Labour Market appropriations also include \$2.2 million for policy advice to the Minister for ACC. However, most of ACC's funding comes from levies, with around \$3.9 billion in levy funding in 2022/23.
12. Further details are on page 18 and in Annex 1. We are cognisant of the current fiscal environment, including the \$110 million Fiscal Sustainability Payment likely to be submitted to Treasury in November. Confidential advice to Government
13. Within MBIE, the ACC portfolio (as at 30 September 2023) consists of 5.0 FTE, which is 0.1% of the total MBIE workforce. All are policy staff, and your main relationship with MBIE is conducted via the Accident Compensation policy team.

14. The Vote Labour Market appropriations for policy advice were based on a higher level of resourcing for the Accident Compensation Policy Team than its current size (as the team has had a number of vacancies), and also incorporated budget for legal fees, consultancy costs for an independent review of the Schedule 2 list of occupational diseases, and contribution to MBIE-wide enablement functions (e.g. finance, and ICT).
15. Detail on the functions MBIE performs is outlined in Section 5.

Figure 2: Portfolio staff at MBIE by function, as at 30 September 2023



** The portfolio view does not include enablement functions (e.g. finance, legal, communications, ICT, Ministerial Services).*

Note:

All numbers are represented as FTE

Data is as at 30 September 2023

Overview of Accident Compensation scheme funding

16. Funding for the scheme comes from levies on those covered, their employers and government appropriations.
17. The scheme funds are allocated to five accounts. The coverage of these accounts is based on who is injured and where and how the injuries occurred. The method of funding varies, with:
 - The Work, Earners’ and Motor Vehicle Accounts which are funded through levies.
 - The Non-Earners’ Account funded from government appropriations, set via the Budget process.
 - The Treatment Injury Account funded from contributions from the Earners’ and Non-Earners’ Accounts.

Levied accounts

18. Levies for the Work account are collected from employers and the self-employed to fund work-related injuries. Levies for the Earners' account are collected from employees and self-employed people to cover their non-work-related injuries. Levies for the Motor Vehicle Account are collected from motorists to cover motor vehicle injuries. The Treatment Injury Account covers injuries caused by medical treatment, and is funded from the Earners' and Non-Earners' Accounts.
19. In the Work and Motor Vehicle Accounts only, some levy rates reflect the injury risk of those covered. These include levy classifications for different industries, to reflect the relative risk of work-related injuries. For example, meat processing has a higher levy rate than wood product manufacturing.
20. In addition to industry classifications, the Experience Rating Programme uses individual businesses' claims history to adjust their levies. In the Motor Vehicle Account, different types of vehicle (e.g. light vehicle, heavy vehicle, or motorcycle) have different levy rates.

Non-Earners' Account

21. The entitlements for children, those who are retired, and others who are not employed (including overseas visitors) are covered by the Non-Earners' Account, which is funded through a government appropriation as part of Vote Labour Market.

3. Strategic choices in the ACC portfolio

Overview of this section

22. The incoming Government has stated that it will place a strong emphasis on lifting New Zealand's economic performance, including by constantly re-testing to ensure our regulatory environment is responsive to business needs and fit for purpose. We look forward to supporting you to implement your priorities in this ongoing work.
23. This section of the briefing describes the contribution that labour market portfolios can make towards improving New Zealand's economic performance, and key challenges and opportunities facing the scheme. It concludes by identifying areas where policy changes could be explored.

The economic context

24. As outlined in MBIE's separate briefing on the economic context, New Zealand's economy faces a number of long-term challenges. These include weak productivity, increasing stresses on our economic resilience, negative impacts on the natural environment, and significant disparities between different population groups. Compounding these, are global 'megatrends', such as changes in climate, technology, and demography, and rising geopolitical tensions. In the short-term, our economy also faces immediate headwinds. These challenges and trends present both risks and opportunities to the economy. MBIE can help you to work collaboratively across portfolios and with stakeholders, such as business and local communities, to achieve your immediate portfolio priorities and address these challenges.
25. Your portfolio supports these challenges both directly and in collaboration with other portfolios. **The closest links are with the other labour market portfolios** (Immigration, Employment, Education, Social Development and Workplace Relations and Safety). While New Zealand's labour market has performed well in terms of job creation and absorbing large shifts in the workforce such as the shift to higher skilled occupations, increases in women's labour force participation, and fluctuations in net migration, there remain long-standing challenges such as low labour productivity, high rates of work-related harm, high recorded skill mismatches and poor participation and outcomes for some population groups.
26. Coordinating action across the labour market portfolios will enhance the effectiveness of interventions to:
 - Improve labour market productivity.
 - Ensure the right settings in the labour market regulatory systems so they are fit-for-purpose and supporting business performance.
 - Reduce disparity between the participation and outcomes of different population groups.
 - Identify the support needed for labour market transitions resulting from shifts in the economy.

27. Given the interdependencies and synergies between portfolios at both the ministerial and agency level, there is a strong case for setting up effective governance mechanisms to ensure co-ordination. We can discuss options for this governance with you.

Scheme context

28. Your portfolio supports resilience in responding to economic challenges. The scheme is a key social and economic institution because it enables resilience for:
- Businesses and other institutions, which can operate without risk of litigation for personal injury.
 - Injured people, by providing treatment, income support, and rehabilitation based on need, to support health, independence, and participation.
29. It is important to keep in mind how the scheme works in the broader context of the economy and the Government's finances, how it functions alongside the health system, and its contribution to the Government's wider injury prevention objectives. ACC has a significant impact on the economy through its investment portfolio, levies, and its contribution to preventing injury and returning injured people to work.

Scheme scope

30. The boundary that determines whether a person will be covered under the accident compensation system is the determination of the injury as an accident, rather than an illness, with a few exceptions. Work-related gradual process diseases and infections are covered under section 30 of the AC Act (including some specific illnesses that have a work-related cause and are listed in Schedule 2 of the AC Act).
31. The AC Act also includes coverage for mental injury if it is the result of a physical injury; the result of a one-off work-related event; or where it results from the person being a victim of a sexual violence criminal offence of the kind listed in the AC Act.
32. The AC Act was expanded in 2022 to provide cover for maternal birth injuries.

System interactions

Health and social development systems

33. While the scheme sits alongside the health and social development systems, its settings have a number of distinct design features.
34. The scheme takes an individual entitlement, demand-driven approach, with ACC required to provide statutory entitlements to all eligible people. This means increases in claims put pressure on levy rates. This contrasts with the way other government systems, such as the health system, can prioritise allocations within capped funding. Income replacement also provides earnings compensation at 80% of a person's prior earnings, without any asset or means testing, which differs from the safety net and means-tested approach of the social development system.

35. Accident compensation claimants often receive health or social development supports at the same time as scheme entitlements. For example, a person injured while unemployed would receive treatment services from the scheme but would not be eligible for income compensation, so may continue to receive social development payments during their recovery from injury. Accident compensation claimants may also receive health services alongside scheme services, where they have an injury covered by the scheme, as well as separate health conditions not caused by injury. Delivery of services to people across different systems can result in complexity for them.
36. Where people receive support from different systems, the types of services, or level of services, they receive can differ. For example, where a person is incapacitated from work due to injury, they may be eligible for weekly compensation under the AC Act at 80% of their earnings before injury. If a person is incapacitated from work due to a health condition, they may be eligible for a benefit from the social development system, which would generally be lower than AC Act weekly compensation. These system boundary issues are discussed further below on pages 13-14.
37. The Coalition Agreement between the National and New Zealand First parties includes a commitment to renegotiate the Crown funding agreement with St John with a view to meeting a greater portion of their annualised budget. ACC is a funder of ambulance services, along with Te Whatu Ora – Health New Zealand, so responding to this commitment will require consideration across ACC and health agencies.

Other systems

38. The AC scheme also has key connections with other systems and agencies, as outlined in **Figure 4** on page 19.
39. The connections include Inland Revenue and Waka Kotahi – New Zealand Transport Agency for levy collection. This means that the commitment in the Coalition Agreement between the National and ACT parties to work to replace fuel excise taxes with electronic road user charging will affect AC scheme levy collection in the Motor Vehicle Account. We will work with transport agencies as this proposal is developed and as we progress advice on the next levy round.

Opportunities for improvement and challenges

40. The system is relatively stable – the scheme is 50 years old, and the current accident compensation legislation has been in place for over 20 years (although with several amendment acts). There is value to New Zealand in the scheme’s settings remaining stable, predictable and sustainable. Any proposals for reform should consider this key trade-off.
41. Overall, the scheme is working well for most people and we do not see a need for significant reform at this time.
42. We have been progressing, or are scheduled to progress, a number of initiatives to ensure scheme settings are up-to-date and fit-for-purpose, including responding to cost-of-living pressures, clinical evidence, and workforce changes. These are:

- The triennial levy consultation and levy setting process, due to occur across 2024.
- Completing changes to the Accredited Employers Programme (this provides eligible employers with the flexibility to decide to 'stand in the shoes of ACC' in return for a substantial levy discount) to make employers more accountable and improve worker experience.
- Updating treatment provider and registered health professional definitions set in regulations.
- Reviewing the list of occupational diseases in Schedule 2 of the AC Act.
- Increasing the rates for treatment services set in regulations.
- Updating the hearing assessment regulations to align with the current international standard.
- Confidential advice to the Government [REDACTED]

43. We have provided more information on these existing or scheduled initiatives in **Table 2** on pages 22-24.

44. There are also a number of broader challenges, and choices about whether to focus on opportunities in one or more of these areas:

- Boundaries that are often contested through advocacy and the courts, with the courts sometimes setting difficult precedents on boundaries, with significant implications¹.
- A long-term trend of declining rehabilitation rates, increasing sensitive claims (claims for mental injury from sexual abuse), and increasing care costs.
- Some population groups (including Māori, Pacific people, and women) accessing ACC less than others.
- Less scrutiny over spending decisions and prioritisation of spend than many other agencies, as (unlike other parts of the public sector) ACC's surpluses or deficits are not good indicators of the effectiveness and efficiency of injury prevention and rehabilitation activity. This can mean there are limited levers to support ACC performance, as efforts to reduce

¹ Two current significant cases are currently under appeal with the Court of Appeal are:

- *AZ v ACC* – the High Court found that a claimant (AZ) with spina bifida is entitled to scheme cover as a treatment injury, because the spina bifida was not picked up at the 20 week ultrasound scan of her mother's pregnancy, and the mother lost her right to elect to terminate the pregnancy. Therefore, the failure to diagnose the foetal condition of spina bifida constituted a treatment injury for the foetus. This case has the potential to significantly expand scheme cover to certain health conditions, where they are misdiagnosed in the foetus during pregnancy.
- *TN v ACC* – the High Court made a decision on the date of injury for mental injuries, which expands eligibility for weekly compensation for loss of potential earnings (which can be available to people who are injured before turning 18 years old).

the scheme's long-term liability are overshadowed by economic factors that are outside ACC's control.

Boundary issues

45. There are key boundary issues between the scheme and the public health, social development, and disability systems. The scheme provides similar services and supports to these other systems (e.g. treatment, income support, and aids and appliances), but the principles underpinning the scheme are quite distinct.
46. The health and social development systems are needs-based. Trade-offs in the health and social development systems are made to best meet the needs of the population. In contrast, the scheme is entitlement-based, where individual loss is compensated without a prioritisation of needs across the population.
47. The significance of the distinction can be most clearly demonstrated in examples such as differences in:
 - Elective surgery prioritisation, where the scheme can provide faster access to treatment.
 - Standards of equipment or housing modifications provided to people with impairment or disability, where the scheme may provide more extensive supports.
 - Income supports, where weekly compensation would generally significantly exceed benefits from the social development system.
48. Additionally, the coordinated approach of Accident Compensation support (across health treatment, social and vocational rehabilitation, compensation, and educational support) for some New Zealanders can be contrasted with the experiences of New Zealanders not covered by the scheme who must navigate multiple support systems independently.
49. The differences in support between systems often lead to pressures to expand scheme cover to include additional circumstances. These pressures can take place through the court appeals of ACC decisions, and through stakeholder policy advocacy. These pressures principally reflect challenges within other systems, rather than problems with scheme settings.
50. ACC's role in the wider health and social support systems can also impact on workforce utilisation across the system. For example, the mental health workforce is under significant strain, and the delivery of services through the scheme for mental injury claimants may have impacts on the availability of providers to meet other system needs. In the health portfolio, your manifesto includes developing capacity in the mental health workforce and delivering more resources to frontline providers, to increase access to mental health services.

Responding to challenges

51. Responses to challenges could include review of:
 - Confidential advice to the Government

Confidential advice to the Government

- Confidential advice to the Government

- Confidential advice to the Government

52. Across these possible responses, we will look for opportunities to use the Social Investment approach as a framework to support effective spending, and consider how specific and measurable targets can drive improvement.

53. There are also further reforms that could be considered, but which MBIE does not recommend at this time, as they are broadly-based changes, which would occur as part of a major Act reform or re-write. These are:

- **Modernising the drafting of the legislation.** Current legislation does not follow modern drafting practice and could be modernised. Fully modernising the AC Act would involve a commitment to a significant reform or re-write, and would likely open up questions on key settings across the scheme, including entitlements and coverage. Economic and technological changes (e.g. updating the levy system to better accommodate electric vehicles) will create pressures to change settings, but these changes can be made without a full re-write of the AC Act.
- **Considering how to express the role of the Treaty of Waitangi in the scheme.** Stakeholders have expressed support for explicitly reflecting the Treaty of Waitangi in the AC Act. If progressed, this would require not simply the inclusion of an isolated Treaty provision, but amendment of provisions across the AC Act. We would not recommend amending the Act in this way, at this time, as this would be more appropriate and practical to progress as part of a major Act reform or re-write. An amendment targeted on Treaty provisions specifically is unlikely to be successful, as embedding the Treaty in the AC Act would raise substantive policy questions across a range of scheme functions, and cover and entitlement settings. This is consistent with the commitment in the Coalition Agreement between the National and New Zealand First parties, to replace references to “The Principles of the Treaty of Waitangi” with specific wording on the relevance and application of the Treaty, or to repeal these references.

Previous proposal for a New Zealand Income Insurance scheme

54. The previously proposed New Zealand Income Insurance scheme was intended to be delivered by ACC, to leverage ACC’s institutional features and functional capabilities. The Income Insurance Scheme (Enabling Development) Act 2022 provided the statutory authority for ACC to undertake preparatory work on the income insurance scheme. ACC’s preparatory work was shut down across February and March 2023, and unspent implementation funding returned to the Crown.

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55. MBIE's Briefing for the incoming Minister for Social Development and Employment includes advice on income resilience to job loss and responds to manifesto commitments relating to the previous income insurance proposal.

4. Portfolio responsibilities

Overview

56. This section summarises the Ministerial responsibilities in the ACC portfolio, including legislation, institutions, and accountability processes.

Legislative responsibilities

57. The Minister for ACC is responsible for the Accident Compensation Act 2001 (AC Act) and regulations made under the AC Act. Key regulations that are regularly reviewed are the levy regulations for the different Accounts and the regulations setting out payments for treatment by health providers.

58. Annex 2 provides a full list and description of regulations made under the AC Act.

59. Responsibilities related to scheme settings include:

- Developing proposals to improve the policy framework of the scheme, as set out in the AC Act and related regulations. MBIE assists in administering the AC Act and is the lead advisor on policy, legislative and regulatory change.
- Undertaking consultation with the public or specific stakeholders before making regulations, depending on the nature of the regulatory changes being considered. MBIE generally undertakes this consultation on behalf of the Minister (e.g. on the levy framework), although ACC can also undertake this work from time to time (for example levy rates).
- Considering recommendations on levy rates to fund the Work, Earners' and Motor Vehicle Accounts, and making recommendations to Cabinet for their implementation by regulation.
- Making recommendations on Budget appropriations to fund the Non-Earners' Account or other initiatives, which are implemented through the annual Budget processes. MBIE is responsible for administering the appropriations and advising the Minister on the appropriateness of ACC's estimation of required appropriations.

ACC as a Crown entity

60. The Minister oversees and manages the Crown's interests in ACC, and is responsible for managing the Crown's response to any issues of concern or risks arising from the activities of ACC. The Minister also manages the Crown's relationship with ACC, through the ACC Board and, in particular, the Chair of the Board. The Treasury monitors ACC's performance and provides guidance and advice on performance issues.

61. Responsibilities related to ACC's operations include functions and powers to:

- Appoint and remove Board members to ensure an effective Board is in place.
- Determine the remuneration of Board members.
- Give directions to ACC.
- Review the operations and performance of ACC.

- Request information from ACC.
 - Participate in the process of setting ACC's strategic direction and performance expectations.
 - Monitor ACC's financial and non-financial performance against key performance measures and targets set out in the Statement of Intent and the Service Agreement, along with the Minister of Finance.
 - Enter into an annual service agreement with the Minister of Health to purchase public health acute services for the scheme.
62. The Board Chair's term expires on 30 April 2024 and a further four members' terms expire on 30 June 2024. The Treasury is the lead advisor to you on ACC Board appointments, and will provide you with advice on the expiry of these Board members' terms.
63. The Crown Entities Act 2004 (Crown Entities Act) provides a consistent framework for the establishment, governance, and operation of Crown entities and to clarify accountability relationships between Crown entities, their board members, their Responsible Ministers on behalf of the Crown, and the House of Representatives. Annex 2 describes the relevant provisions in the Crown Entities Act.

The role of the Associate Minister for ACC

64. A formal letter is the mechanism for you to delegate responsibilities for the Associate Minister for ACC and set out working arrangements. In recent administrations it has been common for the Associate Minister's delegated responsibilities to include matters in respect of ACC operations relating to individual claimant concerns. Further delegated responsibilities have varied across Ministers.

Key stakeholders

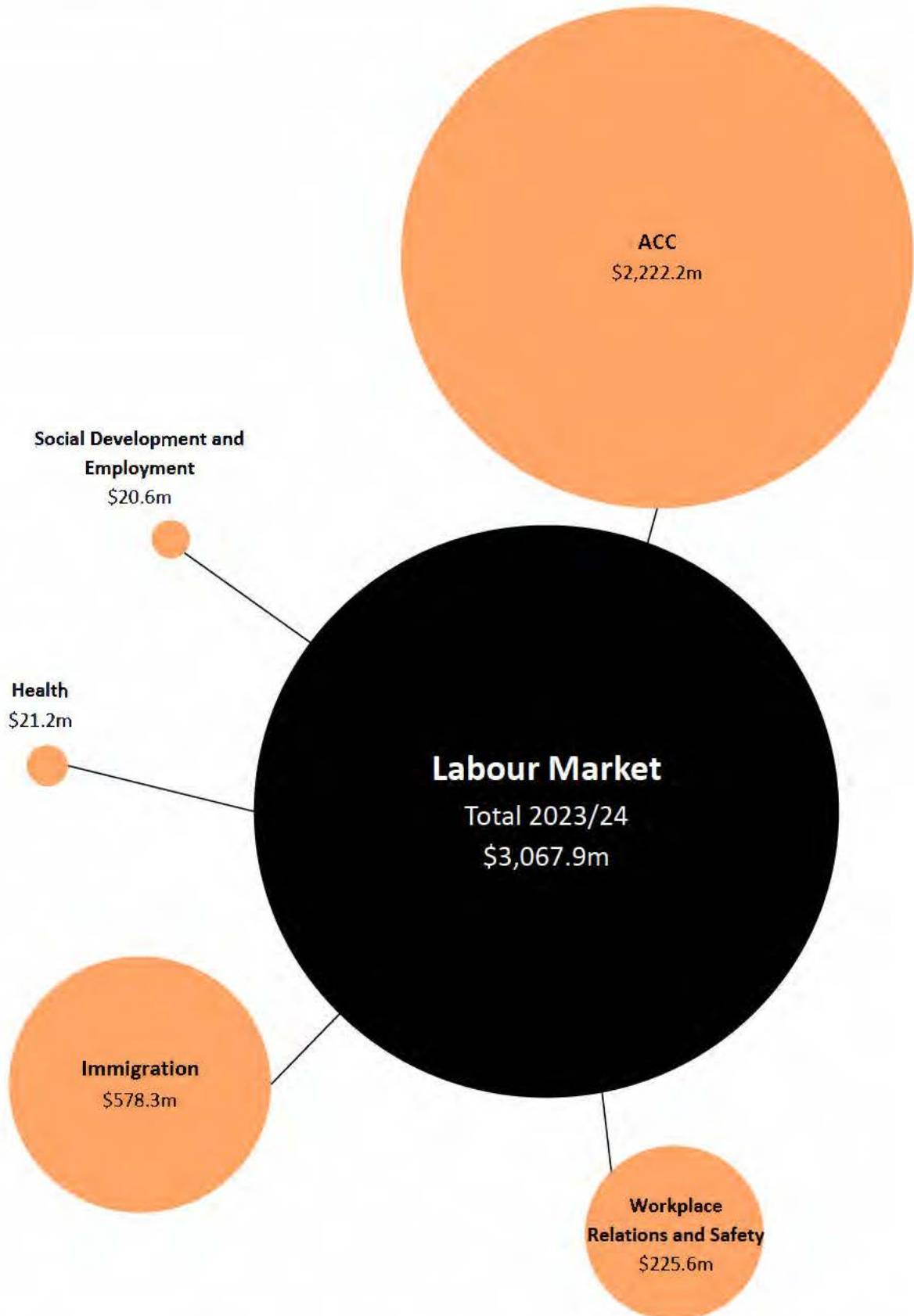
65. The scheme is of interest to a broad range of stakeholders. A list of key stakeholders is provided in Annex 4.

Vote Labour Market

66. You are responsible for appropriations that fall within Vote Labour Market, totalling \$2.2 billion in 2023/2024, primarily to cover the estimated cost of injury prevention, claims processing, medical services and social rehabilitation for claims in the Non-Earners' Account. The other appropriations within Vote Labour Market are the responsibilities of the:
- Minister of Immigration.
 - Minister of Education.
 - Minister of Social Development and Employment.
 - Minister for Workplace Relations and Safety.
67. **Figure 3** overleaf sets out the 2023/24 appropriations for Vote Labour Market, and further information about appropriations is provided in Annex 1.

Figure 3: 2023/24 Vote Labour Market appropriations

The diagram below sets out the total for Vote Labour Markets 2023/24 appropriations following the October Baseline Update.



Major links with other portfolios

68. The scheme includes a number of key functional roles undertaken through other systems. These include collection of some levies through Inland Revenue and the transport system, delivery of acute services through the public health system, the use of the courts for dispute resolution processes, and partnering with WorkSafe on workplace injury prevention. These portfolio connections are shown in Figure 4 below.

69. MBIE will support you in your role on any relevant Cabinet Committees and Ministerial groups.

Figure 4: Key connections with other portfolios and agencies



5. How MBIE assists you

Our primary ways of engaging with you

70. We engage with you primarily through the following mechanisms:
- Meetings with MBIE officials, based on your preference.
 - Weekly update reports on key policy and operational issues in the portfolio.
 - Monthly work programme reporting.
71. We are happy to adjust any of these based on your preferred ways of working.

MBIE provides Accident Compensation scheme policy advice

72. MBIE is responsible for advising you on matters relating to the scheme, including policy settings, broader scheme direction and performance as well as the legislation and regulations governing the scheme. MBIE also administers the appropriation for the Crown funded Non-Earners' Account and provides you with advice on the setting of levy rates, including an independent actuarial review of ACC's levy proposals.
73. Responsibility for providing advice on the scheme sits within MBIE's Workplace Relations and Safety Policy Branch, which is in the Labour, Science and Enterprise Group.

MBIE works with ACC and Treasury to support you

74. MBIE and ACC maintain a close working relationship in order to deliver scheme outcomes effectively. This means that the Minister may receive joint briefings (including with the Treasury, from time to time) on matters relating to the scheme.
75. The Treasury is the Crown's monitor of ACC performance. The Treasury provides support to the Minister for ACC through governance and performance advice on ACC as well as supporting the Board appointment and evaluation process.




The Minister of Finance has historically had interest in the scheme

76. The Treasury also supports the Minister of Finance directly with advice for Crown Financial Institutions, of which ACC's investment function is one, and policy and fiscal advice.
77. The Minister of Finance has tended to have a strong interest in ACC from both a performance and financial perspective. ACC has a significant impact on the Crown balance sheet. It is often commented on at Economic Fiscal Updates and has the potential to affect fiscal targets.

Key MBIE officials

78. The table overleaf sets out the key MBIE officials who will support you in this portfolio.

Table 1: Key MBIE officials

Contact	Role	Contact details
<p>Carolyn Tremain</p> 	<p>Secretary for Business, Innovation and Employment</p>	<p>Privacy of natural persons</p>
<p>Nic Blakeley</p> 	<p>Deputy Chief Executive, Labour, Science and Enterprise</p> <p>The Labour, Science and Enterprise (LSE) Group helps boost the New Zealand economy by developing New Zealand's skills system, science and innovation systems and labour market policy. It does this through advising on labour market, immigration, industry, investment, science, tourism, health and safety at work, and accident compensation policy. LSE supports major events, just transitions, leads the science and innovation system, and invests significant public funds. LSE works through international partnerships in its trade remedies, innovation, and space regulation functions.</p>	<p>Privacy of natural persons</p>
<p>Anna Clark</p> 	<p>General Manager, Workplace Relations and Safety Policy</p> <p>The Workplace Relations and Safety Policy Branch provides policy and regulatory advice in relation to employment relations and standards, health and safety, international labour, and accident compensation.</p>	<p>Privacy of natural persons</p>

6. Current and upcoming work programme items

- 79. This section sets out the current work programme items that we consider may be a priority for you. These items are intended to ensure scheme settings are up-to-date and fit-for-purpose, including responding to cost-of-living pressures, clinical evidence, and workforce changes.
- 80. In addition to these work programme items, there will be an opportunity to consider other options for wider policy priorities, as outlined on pages 11-14.

Table 2: current and upcoming work programme items

Item	Description	Action/next step
Levy setting process	Scheme levies are set using a triennial cycle. The upcoming levy-setting round will take place over 2024, and will set the levy rates for 2025/26 to 2027/28, across all the levied accounts.	Briefing on the process and approach to the levy funding round.
Completing changes to the Accredited Employers Programme	<p>The Accredited Employers Programme allows employers to ‘stand in the shoes of ACC’ in return for a substantial levy discount) to make employers more accountable and improve worker experience.</p> <p>Following an extensive co-design process with Accredited Employer and worker representatives updates to the Accredited Employers Framework were developed, to tighten standards and monitoring, identify poor performers more quickly, and provide a greater range of sanctions for poor performance.</p> <p>Officials have been working on drafting instructions to the Parliamentary Counsel Office for a new Framework.</p>	<p>Confidential advice to the Government</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
Updating treatment provider and registered health professional definitions	<p>Confidential advice to the Government</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>Confidential advice to the Government</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

BRIEFING FOR INCOMING MINISTER FOR ACC

Item	Description	Action/next step
<p>Reviewing the Schedule 2 list of occupational diseases</p>	<p>The list of occupational diseases contained in Schedule 2 of the AC Act has not been reviewed since its last amendment in 2008. A review is currently underway, and involves an independent literature review and expert panel consideration, to be followed by MBIE policy advice to you on any recommended changes.</p>	<p>Delivery of report following independent panel consideration.</p> <p>MBIE policy advice, considering the report and wider policy considerations.</p>
<p>Increasing the contributions for treatment costs set in regulations</p>	<p>Every two years, ACC is required to review the rates set in the Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003 and Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010.</p> <p>Keeping these rates up to date with the market maintains affordable co-payments for claimants, by reducing the likelihood of providers passing on costs to claimants through higher co-payments.</p> <p>Confidential advice to the Government</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>Confidential advice to the Government</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
<p>Updating the age adjustments for hearing loss</p>	<p>The current age adjustments in the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999 (Hearing Assessment Regulations) use an old international standard.</p> <p>MBIE consulted on updating the age adjustments regulations to align with a new standard, and to make additional minor technical changes.</p>	<p>Confidential advice to the Government</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

BRIEFING FOR INCOMING MINISTER FOR ACC

Item	Description	Action/next step
<p>Abuse in Care Royal Commission recommendations</p>	<p>The Royal Commission, in its December 2021 report <i>He Purapura Ora, he Māra Tipu: From Redress to Pūretumu Torowhānui</i> recommended changes to scheme and civil litigation settings, including reinstating that the right to sue for compensatory damages for survivors of abuse in care. Ministers deferred decisions on scheme and civil litigation recommendations until the Royal Commission’s final report. Actioning this recommendation would be a significant change to scheme settings.</p> <p>The final report is due in March 2024. The Royal Commission is required to provide recommendations to the Crown by the end of November 2023 to enable government to respond promptly to the report when it is published.</p> <p>The Crown Response Unit to the Abuse in Care Inquiry will co-ordinate the government’s response to the final report. The Crown Response is part of the Public Service Ministerial portfolio.</p>	<p>MBIE will review the Royal Commission’s recommendations, and final report, when available, and will liaise with the Crown Response Unit on consideration of Accident Compensation scheme recommendations.</p> <p>MBIE will brief you further on the report and the process in the coming weeks.</p>
<p>Confidential advice to the Government</p>	<p>Confidential advice to the Government</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>Confidential advice to the Government</p>

Annex 1: Scheme funding

Vote Labour Market: Budget Structure

Five Ministers are responsible for appropriations in Vote Labour Market. As of October 2023, for 2023/24:

- The **Minister for ACC** is responsible for appropriations totalling \$2,222.2m, primarily to cover the estimated cost of injury prevention, claims processing, medical services and social rehabilitation for claims on the Non-Earners' Account, and for treatment injuries.
- The **Minister of Immigration** is responsible for appropriations totalling \$578.3m, primarily for the provision of immigration services, including assessment and processing services, settlement and integration of refugees and integrity and security of the New Zealand immigration system.
- The **Minister for Social Development and Employment** is responsible for appropriations totalling \$20.6m for the operation of Regional Skills Leadership Groups and the provision of employment information and facilitation services.
- The **Minister for Workplace Relations and Safety** is responsible for appropriations totalling \$225.6m (including \$4.6m capital), primarily for the provision of employment relations services and work-related health and safety services.
- The **Minister of Health** is responsible for one multi-year appropriation with \$21.2m allocated within it for 2023/24, for the provision of border support services from MBIE to Customs New Zealand to support the Traveller Health Declaration System.

The lead minister for Vote Labour Market (see below) also has overall responsibility for a multi-category appropriation (MCA) of \$28.4m to provide Policy advice and related services to Ministers in the areas of ACC, Income Insurance, Employment, Immigration and Workplace Relations and Safety – this amount per portfolio is reflected in the totals above.

MBIE is responsible for administering Vote Labour Market.

During the course of the financial year, each minister with responsibility for appropriations within the Vote receives:

- October and March Baseline Updates.
- In-Principle Expense and Capital Transfers, and Retentions of Underspend (June).
- Estimates and Supplementary Estimates (Budget documentation, April).
- Select Committee Estimates Examination material (July).
- Preparatory material ahead of the Estimates debate (usually August) and Annual Review (usually May) debate in the House, if required.

Vote Lead Minister

For administrative simplicity, one Minister is usually selected to take overall responsibility for the final submission of Budget-related documentation for each Vote. For Vote Labour Market, the responsibility has historically sat with the Minister for Workplace Relations and Safety or the Minister of Labour. The Vote Lead Minister is also named as the technical owner of the Policy Advice and Related Services MCA, but for practical purposes any decisions on each category are usually delegated to the respective portfolio Ministers.

ACC portfolio appropriations

In Budget 2023/24, there are Vote Labour Market appropriations of:

- \$1.9 billion for claims in the Non-Earners' Account
- \$283.0 million for non-earners' claims in the Treatment Injury Account
- \$13.0 million for providing victims of sexual abuse access to treatment, referrals to further services and obtaining forensic evidence
- \$1.4 million for work on the New Zealand Income Insurance scheme (information on this work programme is provided on pages 14-15)
- \$0.1 million for regulatory services related to the Crown's ongoing risks resulting from the introduction of the competitive accident insurance market during 1999/2000
- \$2.2 million for Policy Advice and Related Services to Ministers for the ACC Portfolio. This is part of the wider Policy Advice and Related Services MCA.

ACC levied and Non-Earners' Accounts

The table below outlines who contributes to each of the Accounts, the cover each Account provides, the amount collected, and the amount paid out in claims in 2022/23.

ACC Account funding and expenditure for 2022/23

Account	Who funds it	What is covered	Amount collected by ACC in 2022/23	Amount paid out in claims by ACC in 2022/23
Work Account	Levies from employers: based on wages paid to employees Levies from self-employed: based on income earned	Work related injuries	\$1,025 M	\$1,076 M
Earners' Account	Levies from employees: levy based on income earned	Non-work injuries to people in employment	\$2,294 M	\$2,342 M

Account	Who funds it	What is covered	Amount collected by ACC in 2022/23	Amount paid out in claims by ACC in 2022/23
	Levies from self-employed: levy based on income earned			
Motor Vehicle Account	Levies from vehicle owners: levy on petrol use and motor vehicle licensing	Injuries that involve motor vehicles on public roads	\$474 M	\$762 M
Non-Earners' Account	Government appropriations, reviewed as part of the Budget process	Injuries to people not in employment (e.g. children, retired people), excluding Motor Vehicle Account injuries	\$1,798 M	\$1,648 M
Treatment Injury Account	Contributions from the Earners' and Non-Earners' Accounts	Injuries arising from medical treatment	\$363 M	\$363 M
ACC total			\$5,954 M	\$6,191 M

Accounts cannot be cross-subsidised

Under the AC Act, funds in one account cannot be used to cover a shortfall in another account, because the funds in each account are collected for a particular purpose. For example, employers and self-employed people fund the costs of work injuries, because of their role in managing workplace injury risks.

This is because it would be unfair to levy payers to use the funds collected for one account, for one purpose, to meet the costs of injuries in another account. Clearly connecting levies with different types of injury also provides a signal on the true costs of injury, and encourages management of injury risk.

Accordingly, a shortfall in an account must be met by an increase in the related account levy, or government appropriation in the case of the Non-Earners' Account.

Similarly, a surplus must be returned to relevant levy-payers through reduced future levies and cannot be used to cross-subsidise other accounts or to settle Crown liabilities.

Full funding for lifetime costs

The AC Act requires that the cost of all claims under the levied accounts be fully funded.

This means that ACC aims to collect sufficient money for each account during each levy year to cover the full lifetime costs of every claim occurring in that account in that year. However, the actual levies collected may be less than required for 'full funding', depending on other factors like the account being in surplus, estimated investment returns, and prior government policy decisions.

Unlike the levied Accounts, the Non-Earners' Account is not legally required to be fully funded, but since 2001 the aim has been to operate it on a fully funded basis. Pre-2001 non-earners' claims are funded on an annual pay-as-you-go (PAYG) basis, meaning the funding collected in any given year is equal to the amount expected to be paid out in that year for those claims.

In contrast to PAYG, full funding makes visible the true cost to ACC of injuries that extend over several years. Full funding ensures costs are funded at the time they are incurred rather than being deferred to be paid by future generations (offsetting cost pressures from an ageing population).

ACC has an investment arm, and a portion of levies collected each year is invested to fund the future cost of long-term injuries sustained during the year. ACC invests these contributions for future costs until they are needed, to minimise the total levy contribution required to provide the necessary accident cover.

The full-funding approach focuses on lifetime cost projections, which are sensitive to small movements in interest rates and economic assumptions. This means that the scheme and ACC organisational performance can be difficult to measure and understand, as efforts to reduce the scheme's long-term liability can be overshadowed by economic factors outside ACC's control.

Government Funding Policy Statement

There is a Funding Policy Statement that sets out how the government intends to fund the accounts that make up the scheme. It is set by government, in accordance with the AC Act, and must specify:

- A target level or band for the funding of each Account.
- An approach to managing deviations from the target level or band for the funding of each Account over a period of time.
- Limits (if any) on any annual levy changes for all or any of the Accounts.
- The circumstances (if any) in which levy changes are not required.

The funding policy aims to balance levy stability (i.e. limiting the amount that levy rates can fluctuate) with financial stability (i.e. ensuring that the scheme has sufficient funds).

The current funding policy for ACC was agreed by Cabinet in April 2021. The policy sets a funding target of 100% of reported liabilities over a 10-year horizon, with any annual increase to the aggregate levy rate for an Account limited to 5% (in addition to inflation adjustments for the Motor Vehicle Account).

Separate from the Funding Policy Statement required under the AC Act, annual cost pressure increases in appropriation were set at a limit of 7.5%.

Levy-setting process

The levy setting process occurs three yearly. ACC recommends a levy rate for each of the levied accounts in accordance with the principles of financial responsibility in the Act and the Funding Policy Statement.

ACC consults with the public on levy rates before making a recommendation to the Minister for ACC. As Minister for ACC, you must consider ACC's levy rate recommendations, but you have discretion to recommend levy rates for Cabinet's consideration that balance other matters of public interest. MBIE provides advice on the setting of levy rates, and responsibility for setting levy rates to achieve fully funded Accounts lies with the Government of the day.

The three-yearly levy review cycle was implemented by the government to give more certainty about future levy rates and keep the levy setting decisions distant from election years. The next levy-setting round will take place over 2024, and will set the levy rates for the 2025/26 to 2027/28 years. We have started planning for the levy review, but you are not required to make any decisions on the process and approach to the levy funding round until early 2024.

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In 2021 the Government agreed the levy rates for the 2022/23 to 2024/25 levy period as follows:

Levy rates for 2022/23 to 2024/25

Year	Earners' Account Average levy rate per \$100 of liable earnings (excl. GST)	Work Account Average levy rate per \$100 of liable earnings (excl. GST)	Motor Vehicle Account Average levy per vehicle
2022/23	\$1.27	\$0.63	\$113.94
2023/24	\$1.33	\$0.63	\$113.94
2024/25	\$1.39	\$0.63	\$113.94

MBIE's role as your policy advisor on the scheme includes providing you with advice separately from ACC on levy rates, the funding policy and levy-related policy proposals. MBIE reviews ACC's application of the funding policy and considers whether ACC's recommended rates are consistent with it. MBIE also seeks actuarial advice on the assumptions underlying ACC's costings and application of the funding policy. MBIE then provides recommended levy rates.

Responsibility for setting levy rates to achieve fully funded Accounts lies with the Government of the day. As Minister for ACC, you must consider ACC's levy rate recommendations, but you have discretion to recommend levy rates for Cabinet's consideration that balance other matters of public interest.

Non-Earners' appropriation

The Non-Earners' Account has historically had a funding ratio much lower than the funding target of 100% of reported liabilities, and before 2020 the funding gap was growing each year.

To address this, in 2020 Non-Earners' Account moved to a new funding approach, where a forecast adjustment is made each year as opposed to seeking funding from the operating allowance through the Budget process each year. Capping the annual increases at 7.5% each year means the Account would reach a funding ratio of 100% over a 10 year horizon.

Since this change in funding approach, the Non-Earners' Account has gone from a funding ratio of 55%, to 80.7% as at June 2023. This has improved accountability and transparency, because the true costs of the scheme are visible to Ministers and the public.

Annex 2: Relevant legislation

Accident Compensation Act 2001

The purpose of the AC Act is to enhance the public good and reinforce the social contract represented by the scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs), through:

- Establishing as a primary function of ACC the promotion of measures to reduce the incidence and severity of personal injury.
- Providing for a framework for the collection, co-ordination, and analysis of injury-related information.
- Ensuring that ACC monitors access to the Accident Compensation scheme by Māori and identified population groups in order to deliver services under the AC Act in a manner that supports access to the scheme by injured Māori and injured persons in those population groups.
- Ensuring that, where injuries occur, ACC's primary focus should be on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to the maximum practicable extent a person's health, independence, and participation.
- Ensuring that during their rehabilitation, people receive fair compensation for loss from injury, including fair determination of weekly compensation and, where appropriate, lump sums for permanent impairment.
- Ensuring positive interactions with ACC through the development and operation of a Code of ACC Claimants' Rights.
- Ensuring that persons who suffered personal injuries before the commencement of the AC Act continue to receive entitlements where appropriate.

Regulations made under the AC Act

Regulations	Description
Levies	
<i>Accident Compensation (Work Account Levies) Regulations 2022</i>	Details the ACC levy to be paid by businesses
<i>Accident Compensation (Earners' Levy) Regulations 2022</i>	Details the ACC levy to be paid by workers
<i>Accident Compensation (Motor Vehicle Account Levies) Regulations 2022</i>	Details ACC levy to be paid by motorists including motorcyclists
<i>Accident Compensation (Experience Rating) Regulations 2022</i>	Provides for an experience rating system for businesses based on ACC claims made by a business in the prior three years, which may result in an increase or decrease in the Work Account levy paid by that business
<i>Accident Compensation (Effective Date for Repeal of Residual Levies Provisions) Notice 2015</i>	Provided an effective date to repeal residual levies provisions, when the levied accounts became fully funded for all claims, and there was no need for residual levies to fund historical claims

BRIEFING FOR INCOMING MINISTER FOR ACC

Regulations	Description
<i>Accident Compensation (Experience Rating – Canterbury Adverse Event) Notice 2011</i>	Provided that injuries in the 2010-2011 Canterbury earthquakes and aftershocks do not contribute to a businesses' experience rating
<i>Injury Prevention, Rehabilitation, and Compensation (Refund of Fuel Levy) Regulations 2003</i>	Sets out a process for claiming a refund on payment of the ACC levy on petrol where the petrol is used for specified purposes. A refund rate is specified
<i>Injury Prevention, Rehabilitation, and Compensation (Interest Rate for Late Payment of Levies) Regulations 2002</i>	Provides a method of calculating interest for the late payment of any levy
The Accredited Employers Programme	
<i>Framework for Accredited Employers Programme</i>	Sets out the provisions required to be met to be part of the Accredited Employers Programme. There are a range of programmes offered from full self-cover to partial self-cover
Health providers and treatment	
<i>Accident Compensation (Definitions) Regulations 2019</i>	Sets out key definitions that impact who can provide ACC funded treatment and whose treatment is covered by the treatment injury provisions
<i>Accident Compensation (Apportioning Entitlements for Hearing Loss) Regulations 2010</i>	Sets out ACC payments to claimants for hearing devices, assessments, repairs and fittings
<i>Accident Compensation (Liability to Pay or Contribute to Cost of Treatment) Regulations 2003</i>	Sets out payments to be made for treatment to health providers such as GPs and physiotherapists on behalf of claimants
<i>Accident Compensation (Ancillary Services) Regulations 2002</i>	Sets out payments and payment conditions for services ancillary to treatment such as transport and pharmaceuticals
<i>Injury Prevention, Rehabilitation, and Compensation (Public Health Acute Services) Regulations 2002</i>	Defines public health acute services for the purpose of calculating the payment to be made to the Crown by ACC for treatment of claimants in the public health system
<i>Accident Insurance ("Counsellor") Regulations 1999</i>	Prescribes the organisations a "counsellor" must belong to before ACC will pay for treatment of a claimant by that counsellor
Entitlements	
<i>Injury Prevention, Rehabilitation, and Compensation (Indexation of Maximum Weekly Compensation) Regulations 2004</i>	Detailed a method of calculating the wage inflation increase in maximum weekly compensation for the 2004/05 year. This calculation for future years is now included in the <i>Injury Prevention, Rehabilitation, and Compensation (Indexation) Regulations 2002</i>
<i>Injury Prevention, Rehabilitation, and Compensation (Indexation) Regulations 2002</i>	Details a method of calculating wage and price inflation increases for a range of entitlements
<i>Injury Prevention, Rehabilitation, and Compensation (Lump Sum and Independence Allowance) Regulations 2002</i>	Details a method for assessing eligibility for a lump sum or independence allowance. Also includes a scale for the payment of lump sums

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Regulations	Description
Work-related gradual process, disease, or infection	
<i>Injury Prevention, Rehabilitation, and Compensation (Occupational Diseases) Order 2007</i>	Added additional diseases to Schedule 2 of the AC Act. Schedule 2 sets out the diseases that are considered to be likely to be work-related and therefore eligible for accident compensation entitlements as a work-related gradual process disease or infection
<i>Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999</i>	Details procedures for conducting hearing loss assessments and the degree of hearing loss to be attributed to old age (presbycusis)
Disputes and service standards	
<i>Accident Compensation (Review Costs and Appeals) Regulations 2002</i>	Provides for the award to the applicant of legal costs and other expenses on review and the rules for the appeal to the District Court
<i>Injury Prevention, Rehabilitation, and Compensation (Code of ACC Claimants' Rights) Notice 2002</i>	Approved the ACC Code of Claimants' Rights. The Code sets out the service level a claimant should expect from ACC
Legacy provisions from the period of scheme competition	
<i>Injury Prevention, Rehabilitation, and Compensation (Applications to Determine Previous and Subsequent Injury Entitlements) Regulations 2003</i>	Provided for disputes between ACC and a private insurer over who is liable for payment of entitlements for a subsequent injury (an injury that occurs as a result of a previous injury) to be heard in the District Court. These regulations remain from the period where the scheme was open to competition
<i>Accident Insurance (Prescribed Rate of Interest) Regulations 1999</i>	Prescribed the rate of interest applicable to debts due under various sections of the Accident Insurance Act 1998
<i>Accident Insurance (Insurer Returns) Regulations 1999</i>	Provided for private insurers to make statistical returns for the period of accident compensation competition
<i>Accident Insurance (Interest on Crown Advances) Regulations 1999</i>	Prescribed the way interest was to be paid on Crown advances to the Insolvent Insurers Fund and the Non-Compliers Fund under the Accident Insurance Act 1998

Relevant provisions in the Crown Entities Act 2004

Crown Entities Act sections	Description
Sections 25-28 and 86-88	Outline the roles and responsibilities of the Board, Minister and Monitor as well as the Board appointment process
Sections 49-51 and 138-156	Set expectations of Board accountability (referenced by sections 271-278 of the AC Act)

Annex 3: ACC Board members

Board member	Date of original appointment	Expiry date of present term
Hon Steve Maharey (Chair)	1 May 2021 (Board member) 1 August 2021 (Chair)	30 April 2024
Dr Tracey Batten (Deputy Chair)	1 Feb 2019 (Board member) 1 January 2022 (Deputy Chair)	30 June 2024
Pat Bowler	1 February 2021	30 June 2024
Mark Cross	1 August 2021	30 June 2024
David Hunt	1 September 2021	30 June 2024
Kim Gordon	11 September 2023	31 August 2024
Dr Helen Nott	1 February 2021	30 June 2025
Bella Takiari-Brame	1 February 2021	30 June 2026

Annex 4: Key stakeholders

Crown Entities and Other Related Bodies	
ACC	Chair: Hon Steve Maharey Chief Executive: Megan Main
WorkSafe New Zealand	Chair: Jennifer Kerr Deputy Chair: Bill Moran Chief Executive: Steve Haszard
Business	
Business New Zealand	Chief Executive: Kirk Hope
Business Leaders' Health and Safety Forum	Chair: George Adams Executive Director: Francois Barton
New Zealand Association of Accredited Employers	Chair: Rachel Moon
Worker/Union	
Council of Trade Unions	President: Richard Wagstaff Secretary: Melissa Ansell-Bridges
Legal profession	
New Zealand Law Society Health and Disability Law Committee	Co-convenors: Peter Sara and Holly Hedley