

ACC Work-related Mental Injury (WRMI)

Key facts and legislative solutions

WORKERS EXPOSED TO REPEATED TRAUMATIC EVENTS ARE AT INCREASED RISK OF WORK-RELATED MENTAL INJURY

Research consistently shows that workers exposed to repeated traumatic events are at increased risk of psychological injury, as a result of their work:

- First responders, for example, have an increased prevalence of psychological injuries, when compared to the general population¹.
- **Repeated exposure to trauma (RET) has been shown to be a key mechanism in the development of psychological injury**- with the cumulative effect typically being greater than the impact of a single event².
- Current psychiatric classifications make no distinction, in terms of the lasting impacts, between trauma resulting from a single-event or multiple-events.

“It’s said that every cop carries a thousand ghosts. Every job and call leaves an indelible impression on you. These never go away. They’re always there. You never forget any of them. The faces, the sights, sounds and smells are always there. Sometimes driving past an address or scene brings all the memories flooding back. You find yourself in a state of perpetual vigilance, always on the lookout, always on guard.”

-NZ Police Officer

CURRENT LEGISLATION LIMITS COVER FOR WORKERS EXPOSED TO TRAUMATIC EVENTS

Work-related mental injury (WRMI) covered under Section 21B of the current Act includes several clauses which limit cover to:

- **Mental injuries that are caused by a single event (Subsection 1(b)), specifically excluding gradual processes (Subsection 7).**

The above clause directly excludes workers, such as first responders, whose mental injury occurs as the result of repeated exposure to traumatic events.

- **Events that the claimant is directly involved in or witnesses, while in close physical proximity to the event at the time it occurs (Subsections 2, 5 and 6)**

This clause is typically considered to exclude claimants, such as 111 call centre operators, who have been shown to have a higher prevalence of psychological injuries than first responders.

“Current research and thinking indicates that we can no longer ignore the collective impact of emergency service work in addition to specific jobs in isolation. Although my experience is that whilst there was one job that was the final trigger, I have absolutely no doubt that the cumulative effect of my previous years of service had a huge part to play in my diagnosed mental injury.”

-St John’s Ambulance Officer

¹ Beyond Blue Ltd, *Answering the call national survey: National mental health and wellbeing study of police and emergency services - Final Report*. 2018.

“It would mean a lot to me, and I’m sure my fellow colleagues, if the government would acknowledge the consequences of our repeated exposure to trauma with legislation that recognises the realities of our service and which truly supports us in our time of need.”

-FENZ Firefighter

The current wording of the legislation leaves workers who are repeatedly exposed to trauma struggling, and regularly having to fight, to get claims accepted- often at great personal cost. Where claimants have pursued their claims through the courts, their claims have typically been upheld (e.g. *MC v ACC* 2016 NZACC 264 ACR 117/15). This process is costly to the taxpayer and is only available to claimants who have the personal resources to undertake the lengthy legal review process.

First responders are particularly impacted by the current wording of the legislation, due to their regular exposure to traumatic events.

WRMI REPRESENTS A TINY PERCENTAGE OF ACC EXPENDITURE

According to information provided by ACC, under the Official Information Act:

- Section 27 of the ACC Act defines mental injury as “a clinically significant behavioural, cognitive or psychological dysfunction.”
- On average, ACC accepted between 80-100 WRMI claims (from all industries) per year between 2017 and 2022¹.
- Payments for WRMI totalled \$8m in the year 2021-22. **These payments constitute just 3% of all expenditure on mental injury and a tenth of a percent (0.1%) of all ACC claims expenditure.**
- The most likely claimants, first responders, were *not* strongly represented amongst these claims. No more than 20 claims² were accepted for WRMI amongst first responders per year between 2017 and 2022, with the lowest figure being 8 in a year (2017-18).
- In 2022, the total cost of payments to first responders with WRMI was \$574,143. This represents approximately one twenty thousandth (1/20,000) of total ACC claims expenditure for that year.

THERE IS LIKELY TO BE STRONG PUBLIC SUPPORT FOR AMENDING THE ACT

The work groups most likely to benefit from this amendment tend to be those persons dedicated to protecting and saving the lives of the New Zealand public e.g., first responders, veterans, and doctors and nurses working in acute medicine. Consequently, there is likely to be strong public support for these proposed amendments.

² This compares to approximately 2,674 claims accepted for sexual assault in 2022.

THE SOLUTIONS ARE STRAIGHTFORWARD, COST-EFFICIENT, AND READY TO IMPLEMENT

Three potential options for ACC legislation revisions have already been drafted, the wording of which is attached to this document. We believe there are three strong legislative options for change:

Revision 1*

Removes all limiting clauses related to 'single events' and 'direct exposure' from S21B of the ACC Act.

Revision 2

Removes all limiting clauses related to 'single events' from S21B of the ACC Act.

PLUS includes clearer provisions for traumatic injury due to occupational exposure to "actual or threatened death, serious injury or sexual violence" in a new section (21C)

Revision 3

Limits work-related traumatic injury to injury resulting *only* from exposure to "actual or threatened death, serious injury or sexual violence" in a new S21B of the Act

AND includes provision for repeated exposure and indirect exposure to trauma.

*Our recommended revision:

- Retains the requirement for injury to be clinically significant and work-related.
- Improves access for workers exposed to trauma.
- Is more closely aligned to Australian workplace protections
- Does not exclude other groups of claimants.
- Is unlikely to lead to large increases in expenditure.

This revision:

- Retains the requirement for injury to be clinically significant and work-related.
- Improves access for first workers exposed to repeated trauma.
- Is less aligned to Australian workforce protections
- Does not exclude other groups of claimants.
- Is unlikely to lead to large increases in expenditure.

This revision:

- Retains the requirement for injury to be clinically significant and work-related.
- Improves access for workers exposed to repeated trauma.
- Is less aligned to Australian workforce protections
- Potentially excludes other groups of claimants.
- Is unlikely to lead to large increases in expenditure.

**ANY OF THESE OPTIONS WOULD IMPROVE COVER FOR WORKERS EXPOSED TO TRAUMA
WITH VERY LIMITED IMPACT UPON ACC EXPENDITURE**

Appendix One:

Proposed Revisions to the Accident Compensation Act 2001

CURRENT WORDING

21B Cover for work-related mental injury

1. A person has cover for a personal injury that is a work-related mental injury if—
 - a. he or she suffers the mental injury inside or outside New Zealand on or after 1 October 2008; and
 - b. the mental injury is caused by a single event of a kind described in subsection (2).
2. Subsection (1)(b) applies to an event that—
 - a. the person experiences, sees, or hears directly in the circumstances described in section 28(1); and
 - b. is an event that could reasonably be expected to cause mental injury to people generally; and
 - c. occurs—
 - i. in New Zealand; or
 - ii. outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs.
3. For the purposes of this section, it is irrelevant whether or not the person is ordinarily resident in New Zealand on the date on which he or she suffers the mental injury.
4. Section 36(1) describes how the date referred to in subsection (3) is determined.
5. In subsection (2)(a), a person experiences, sees, or hears an event directly if that person—
 - a. is involved in or witnesses the event himself or herself; and
 - b. is in close physical proximity to the event at the time it occurs.
6. To avoid doubt, a person does not experience, see, or hear an event directly if that person experiences, sees, or hears it through a secondary source, for example, by—
 - a. seeing it on television (including closed circuit television):
 - b. seeing pictures of, or reading about, it in news media:
 - c. hearing it on radio or by telephone:
 - d. hearing about it from radio, telephone, or another person.
7. In this section, **event**—
 - a. means—

- i. an event that is sudden; or
 - ii. a direct outcome of a sudden event; and
- b. includes a series of events that—
 - i. arise from the same cause or circumstance; and
 - ii. together comprise a single incident or occasion; but
- c. does not include a gradual process.

27 Mental injury

Mental injury means a clinically significant behavioural, cognitive, or psychological dysfunction.

REVISION ONE

Drafting Notes

- This revision removes the ‘single event/gradual process’ requirement, ‘reasonableness’ requirement and ‘directly experience’ requirements from the current s 21B.
- With this revision, s 28 remains unaffected, meaning there is no change to the ‘causal link’ requirement between the claimant’s work and the mental injury.
- Section 27 also remains unaffected, meaning the mental injury must be clinically significant.
- The inclusion of subsection (2)(b) is an attempt to ensure that claimants know the key barriers that were in s 21B no longer exist. This is consistent with our firm view that ACC should not be gatekeeping entitlement to compensation.
- Subsections (1), (2)(a) and (3) are pulled across the existing 21B to ensure consistency.

Proposed Revision

21B Cover for work-related mental injury

1. A person has cover for a personal injury that is a work-related mental injury if—
 - a. he or she suffers the mental injury inside or outside New Zealand on or after 1 October 2008;
 - b. the mental injury is suffered in the circumstances described in section 28(1); and

- c. the mental injury is caused by an event or events that occur—
 - i. in New Zealand; or
 - ii. outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs.
 2. For the purposes of this section, it is irrelevant—
 - a. whether or not the person is ordinarily resident in New Zealand on the date on which he or she suffers the mental injury; and
 - b. whether or not the mental injury is caused by—
 - i. multiple events;
 - ii. a gradual process;
 - iii. an event or events that may not usually cause mental injury to people generally; or
 - iv. indirect exposure to an event or events, such as seeing the event or events in a picture, video or described in written text, hearing the event or events through audio, or hearing about the event or events from another person.
 3. Section 36(1) describes how the date referred to in subsection (2)(a) is determined.

REVISION TWO

Drafting Notes

- This revision proposes the amendment of s 21B and the addition of a s 21C.
- As in Revision One above, the 'single event/gradual process' requirement has been removed from s 21B. This has the effect of ensuring cover is more accessible to victims of the likes of bullying and harassment. However, the 'reasonableness' and 'directly experience' requirements from the current s 21B are still present.
- The new s 21C creates an additional avenue under which work-related trauma victims will also be entitled to cover. To this effect, subsections 21C(2) – (4) mirror Criterion A of the DSM-5 Diagnostic Criteria for PTSD.
- As with Revision One, sections 27 and 28 remain unaffected, meaning under both sections, the mental injury must still be:
 - work related (as per s 28); and

- clinically significant (as per s 27).
- The inclusion of s 21B(5)(b) is an attempt to ensure that claimants know the 'single event/gradual process' barrier in the current s 21B does not apply to this new s 21B.
- The inclusion of s 21C(6)(b) is an attempt to ensure claimants know that the key barriers in the current s 21B do not apply to this new s 21C.
- Given this revised s 21B no longer excludes multiple events, the exclusions outlined at the end of this document (e.g. excluding mental injury attributable to serious and wilful misconduct, or mental injury attributable to reasonable management action) can be added to this revised s 21B to limit its scope.
- There is also the option to define 'serious injury' in the revised s 21B by referring to the definition of a 'notifiable injury or illness' under [s 23 of the Health and Safety at Work Act](#).

Proposed Revision

21B Cover for work-related mental injury

1. A person has cover for a personal injury that is a work-related mental injury if—
 - a. he or she suffers the mental injury inside or outside New Zealand on or after 1 October 2008; and
 - b. the mental injury is caused by an event or events of a kind described in subsection (2).
2. Subsection (1)(b) applies to an event or events that—
 - a. the person experiences, sees, or hears directly in the circumstances described in section 28(1);
 - b. could reasonably be expected to cause mental injury to people generally; and
 - c. occurs or occur—
 - i. in New Zealand; or
 - ii. outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs.
3. In subsection (2)(a), a person experiences, sees, or hears an event directly if that person—
 - a. is involved in or witnesses the event himself or herself; and
 - b. is in close physical proximity to the event at the time it occurs.
4. To avoid doubt, a person does not experience, see, or hear an event directly if that person experiences, sees, or hears it through a secondary source, for example, by—

- a. seeing it on television (including closed circuit television):
 - b. seeing pictures of, or reading about, it in news media:
 - c. hearing it on radio or by telephone:
 - d. hearing about it from radio, telephone, or another person.
5. For the purposes of this section, it is irrelevant—
- a. whether or not the person is ordinarily resident in New Zealand on the date on which he or she suffers the mental injury; and
 - b. whether or not the mental injury is caused by—
 - i. multiple events; or
 - ii. a gradual process;
6. Section 36(1) describes how the date referred to in subsection (5)(a) is determined.

21C Cover for work-related mental injury caused by exposure to trauma

1. A person has cover for a personal injury that is a work-related mental injury under this section if—
- a. he or she suffers the mental injury inside or outside New Zealand on or after 1 October 2008;
 - b. the mental injury is suffered in the circumstances described in section 28(1);
 - c. the mental injury is caused by an event or events that occur—
 - i. in New Zealand; or
 - ii. outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs; and
 - d. the mental injury is caused by exposure to trauma, as defined in subsection (2).
2. **Exposure to trauma**, as referred to in subsection (1)(d), means exposure to actual or threatened death, serious injury, or sexual violence by—
- a. directly experiencing a traumatic event or traumatic events;
 - b. witnessing a traumatic event or traumatic events in person as the event or events occur to another person or other people;

- c. learning that a traumatic event has, or traumatic events have, occurred to a close family member or close friend; or
 - d. experiencing repeated and/or extreme exposure to aversive details of a traumatic event or traumatic events.
- 3. Subsection (2) applies subject to subsection (4).
- 4. A person does not suffer a work-related mental injury under this section if:
 - a. that person learns that a traumatic event has, or traumatic events have, occurred to a close family member or close friend; and
 - b. the traumatic event or events concern the actual or threatened death of the close family member or close friend; and
 - c. the traumatic event is, or events are, not **violent** or **accidental**.
- 5. For the purpose of subsection (4)(c):
 - a. A traumatic event is violent only if it is caused by physical and sudden force; and
 - b. A traumatic event is accidental only if, at the time it occurred, the event was not reasonably foreseeable to the claimant.
- 6. For the purposes of this section, it is irrelevant—
 - a. whether or not the person is ordinarily resident in New Zealand on the date on which he or she suffers the mental injury; and
 - b. whether or not the mental injury is caused by—
 - i. multiple events;
 - ii. a gradual process;
 - iii. an event or events that may not usually cause mental injury to people generally; or
 - iv. indirect exposure to an event or events, such as seeing the event or events in a picture, video or described in written text, hearing the event or events through audio, or hearing about the event or events from another person.
- 7. Section 36(1) describes how the date referred to in subsection (6)(a) is determined.

This revision would also require the following changes (in red) to ensure consistency throughout the Act:

- Section 22(7):

A person who suffers personal injury that is work-related mental injury in circumstances described in section 21B or 21C has cover under those sections, but not under this section.

- Section 26(1)(da):

Personal injury means—

...

(da) work-related mental injury that is suffered by a person in the circumstances described in section 21B or 21C; or

- Section 28(4A):

Work-related personal injury includes work-related mental injury that is suffered in the circumstances described in section 21B or 21C.

- Section 36(1):

The date on which a person suffers mental injury in the circumstances described in section 21, 21B, or 21C is the date on which the person first receives treatment for that mental injury as that mental injury.

- Section 57(1)(a):

This section applies to a claim for cover—

(a) for mental injury in the circumstances described in section 21, 21B or 21C:

- Section 119(3)(b):

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

...

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

REVISION THREE

Drafting Notes

- This revision replaces the existing s 21B with the new s 21C as seen in Revision Two. In doing so, this revision focuses on claimants who suffer work-related mental injury as a result of work-related trauma – i.e. actual or threatened death, serious injury, or sexual violence.
- Note this revision could be seen as a step backwards, as it excludes work-related mental injury caused by non-trauma events, such as bullying. This potential ‘step backward’ is evident in light of the judiciary more recently exhibiting a willingness to afford ACC cover to bullying victims.
- As in Revision Two, there is also the option to define ‘serious injury’ in the revised s 21B by referring to the definition of a ‘notifiable injury or illness’ under s 23 of the Health and Safety at Work Act.

Proposed Revision

21B Cover for work-related mental injury caused by exposure to trauma

1. A person has cover for a personal injury that is a work-related mental injury under this section if—
 - a. he or she suffers the mental injury inside or outside New Zealand on or after 1 October 2008;
 - b. the mental injury is suffered in the circumstances described in section 28(1);
 - c. the mental injury is caused by an event or events that occur—
 - iii. in New Zealand; or
 - iv. outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs; and
 - d. the mental injury is caused by exposure to trauma, as defined in subsection (2).
2. **Exposure to trauma**, as referred to in subsection (1)(d), means exposure to actual or threatened death, serious injury, or sexual violence by—
 - a. directly experiencing a traumatic event or traumatic events;
 - b. witnessing a traumatic event or traumatic events in person as the event or events occur to another person or other people;

- c. learning that a traumatic event has, or traumatic events have, occurred to a close family member or close friend; or
 - d. experiencing repeated and/or extreme exposure to aversive details of a traumatic event or traumatic events.
- 3. Subsection (2) applies subject to subsection (4).
- 4. A person does not suffer a work-related mental injury under this section if:
 - a. that person learns that a traumatic event has, or traumatic events have, occurred to a close family member or close friend; and
 - b. the traumatic event or events concern the actual or threatened death of the close family member or close friend; and
 - c. the traumatic event is, or events are, not **violent** or **accidental**.
- 5. For the purpose of subsection (4)(c):
 - a. A traumatic event is violent only if it is caused by physical and sudden force; and
 - b. A traumatic event is accidental only if, at the time it occurred, the event was not reasonably foreseeable to the claimant.
- 6. For the purposes of this section, it is irrelevant—
 - a. whether or not the person is ordinarily resident in New Zealand on the date on which he or she suffers the mental injury; and
 - b. whether or not the mental injury is caused by—
 - i. multiple events;
 - ii. a gradual process;
 - iii. an event or events that may not usually cause mental injury to people generally; or
 - iv. indirect exposure to an event or events, such as seeing the event or events in a picture, video or described in written text, hearing the event or events through audio, or hearing about the event or events from another person.
- 7. Section 36(1) describes how the date referred to in subsection (6)(a) is determined.

ADDITIONAL LIMITING CLAUSES

The following clauses could be added to any of the above revisions to limit compensation payable by ACC.

Additional Clause One:

Note this clause broadly mirrors subclause (2)(b) in the current s 21B.

1. A person is not entitled to cover under this section unless the event or events that caused the mental injury could reasonably be expected to cause mental injury to people generally.

Additional Clause Two:

Note this clause has been largely reproduced from the 'Workplace Injury Rehabilitation and Compensation Act 2013' (Victoria, Australia).

1. A person is not entitled to cover under this section if the mental injury is attributable to that person's serious and wilful misconduct.
2. Serious and wilful misconduct, as referred to in subsection (1), includes, but is not limited to, being under the influence of alcohol and/or a drug.

Additional Clause Three:

As above, this clause has been reproduced from the 'Workplace Injury Rehabilitation and Compensation Act 2013' (Victoria, Australia).

1. A person is not entitled to cover under this section if the mental injury is cause wholly or predominantly by any one or more of the following—
 - a. management action taken on reasonable grounds and in a reasonable manner by or on behalf of that person's employer;
 - b. a decision of that person's employer, on reasonable grounds, to take, or not to take, any management action;
 - c. any expectation by that person that any management action would, or would not, be taken or any decision made to take, or not to take, any management action.
2. For the purpose of subsection (1), **management action** includes, but is not limited to, any one or more of the following—
 - a. appraisal of the person's performance;
 - b. counselling of the person;
 - c. suspension or stand-down of the person's employment;
 - d. disciplinary action taken in respect of the person's employment;
 - e. transfer of the person's employment;
 - f. demotion, redeployment, or retrenchment of the person;
 - g. dismissal of the person;

- h. promotion of the person;
- i. reclassification of the person's employment position;
- j. provision of leave of absence to the person;
- k. provision to the person of a benefit connected with the person's employment;
- l. training a person in respect of the person's employment;
- m. investigation by the person's employer of any alleged misconduct—
 - i. of the person; or
 - ii. of any other person relating to the employer's workforce in which the person was involved or to which the person was a witness;
- n. communication in connection with an action mentioned in any of the above.