

It is a pleasure to be able to have the opportunity to supply the United Nations with a documentation about a selected changes in legislation to show New Zealand has adopted the same level of care and treatment over the whole community.

New Zealand introduced a world leading compensation package in 1974. Instead of suing the person at fault, compensation and rehabilitation was guaranteed under legislation for persons who became disabled through an accident whether or not at work, home, or during social activities.

Disability due to disease and natural unforeseen circumstances are dealt with under other legislation as forwarded to the **United Nations High Commissioner for Human Rights** in 2011 in the document Human Rights in New Zealand today[1].

In this paper we are looking at the legislation changes and see if the New Zealand Government has made changes to apply to the changes in the various convention under the United Nations, but answering the questions to the **Thematic Study on Work and Employment of Persons with Disabilities**.

History of Accident Compensation Corporation.

The Acts were completed and legislation was completed for the commencement in 1974. All persons who under the Act had incapacity were supplied with Vocational Rehabilitation as instructed under the Act.

Corporation to promote rehabilitation---

(1) The Corporation shall place great stress upon rehabilitation and shall take all practicable steps to promote a well co-ordinated and vigorous programme for the medical and vocational rehabilitation of persons who have cover and who become incapacitated as a result of personal injury by accident and are for the time being in New Zealand.

(2) The rehabilitation programme in relation to those persons shall have as its objectives---

- (a) Their restoration as speedily as possible to the fullest physical, mental, and social fitness of which they are capable, having regard to their incapacity; and
- (b) Where applicable, their restoration to the fullest vocational and economic usefulness of which they are capable; and
- (c) Where applicable, their reinstatement or placement in employment.

(3) Notwithstanding subsection (1) of this section, where an earner suffers personal injury by accident outside New Zealand and has cover in respect of the injury, the Corporation, after having regard to all the circumstances, may, in its discretion, make provision for the rehabilitation outside New Zealand of that person to such extent and on such terms and conditions as it thinks fit.

Cf. 1972, No. 43, s. 48

When Vocational Rehabilitation was completed the assessment of loss of earnings was completed

Assessment of permanent incapacity---

(1) Where an earner who suffers personal injury by accident does not completely recover from his incapacity due to the accident, as soon as the Corporation considers that (so far as the consequences of the injury are concerned) his medical condition is stabilised and all practicable steps have been taken towards his retraining and rehabilitation, the Corporation shall review his case and make an assessment in writing of---

- (a) The nature and extent of his permanent incapacity; and
- (b) Whether that permanent incapacity has resulted in a permanent loss or diminution of his capacity to earn; and
- (c) The percentage which that permanent loss or diminution (if any) bears to permanent total loss of his capacity to earn; and

(d) The weekly amount of his permanent loss of earning capacity (if any), which amount shall be the appropriate percentage (being the percentage assessed under paragraph (c) of this subsection) of his relevant earnings for the time being; and

(e) The weekly amount of earnings related compensation to be paid to him initially after the making of the assessment in respect of that permanent loss of earning capacity (if any), which amount shall, subject to subsection (8) of this section, be 80 percent of the weekly amount assessed under paragraph (d) of this subsection, or any greater weekly amount that may for the time being be payable to him in consequence of the injury in accordance with section 61 of this Act---

and shall pay him earnings related compensation in accordance with the assessment.

This continued until legislation change in 1992 then again in 1996 to be modified until now. The present legislation is as described as[2]

Vocational rehabilitation

85 Corporation liable to provide vocational rehabilitation

(1) The Corporation is liable to provide vocational rehabilitation to a claimant who—

(a) has suffered personal injury for which he or she has cover; and

(b) is—

(i) entitled to weekly compensation; or

(ii) likely, unless he or she has vocational rehabilitation, to be entitled to weekly compensation; or

(iii) on parental leave.

(2) Despite subsection (1)(b)(i), the Corporation is liable to provide vocational rehabilitation to a person who was entitled to weekly compensation and who would, but for clause 52 of Schedule 1 (relationship between weekly compensation and New Zealand superannuation), continue to be entitled to weekly compensation.

Compare: 1998 No 114 Schedule 1 cl 53

Section 85(2): added, on 1 October 2008, by section 15 of the Injury Prevention, Rehabilitation, and Compensation Amendment Act 2008 (2008 No 46).

86 Matters to be considered in deciding whether to provide vocational rehabilitation

(1) In deciding whether to provide vocational rehabilitation, the Corporation must have regard to the matters in section 87.

(2) In deciding what vocational rehabilitation is appropriate for the claimant to achieve the purpose of vocational rehabilitation under section 80,—

(a) the Corporation must consider whether it is reasonably practicable to return the claimant to the same employment in which the claimant was engaged, and with the employer who was employing the claimant, when the claimant's incapacity commenced; and

(b) if it is not, the Corporation must consider the following matters:

(i) whether it is reasonably practicable to return the claimant to an employment of a different kind with that employer:

(ii) whether it is reasonably practicable to return the claimant to the employment in which the claimant was engaged when the claimant's incapacity commenced, but with a different employer:

(iii) whether it is reasonably practicable to return the claimant to a different employment with a different employer, in which the claimant is able to use his or her experience, education, or training:

(iv) whether it is reasonably practicable to help the claimant use as many of his or her pre-injury skills as possible to obtain employment.

Compare: 1998 No 114 Schedule 1 cl 55

87 Further matters to be considered in deciding whether to provide vocational rehabilitation

(1) In deciding whether to provide vocational rehabilitation, the Corporation must have regard to—

(a) whether the vocational rehabilitation is likely to achieve its purpose under the claimant's individual rehabilitation plan; and

(b) whether the vocational rehabilitation is likely to be cost-effective, having regard to the likelihood that costs of entitlements under this Act will be reduced as a result of the provision of vocational rehabilitation; and

(c) whether the vocational rehabilitation is appropriate in the circumstances.

(2) The Corporation must provide the vocational rehabilitation for the minimum period necessary to achieve its purpose, but must not provide any vocational rehabilitation for longer than 3 years (which need not be consecutive).

(2A) Subsection (2) is subject to subsection (2B).

(2B) Despite subsection (2), the Corporation may, at its discretion, provide vocational rehabilitation for longer than 3 years if the Corporation considers that—

(a) the vocational rehabilitation would be likely to achieve its purpose under the claimant's individual rehabilitation plan; and

(b) the vocational rehabilitation would be likely to be cost-effective, having regard to the likelihood that costs of entitlements under this Act will be reduced as a result of the provision of vocational rehabilitation; and

(c) the vocational rehabilitation would be appropriate in the circumstances.

(2C) However, despite subsections (1)(b) and (2B)(b), the Corporation must not take into account as a factor against providing vocational rehabilitation that the claimant is, or may become, a person to whom clause 52 of Schedule 1 (relationship between weekly compensation and New Zealand superannuation) applies.

(3) This section is subject to any regulations made under section 324.

Compare: 1998 No 114 Schedule 1 cl 56

Section 87(2): substituted, on 11 May 2005, by section 60(6) of the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) 2005 (2005 No 45).

Section 87(2A): inserted, on 1 October 2008, by section 16 of the Injury Prevention, Rehabilitation, and Compensation Amendment Act 2008 (2008 No 46).

Section 87(2B): inserted, on 1 October 2008, by section 16 of the Injury Prevention, Rehabilitation, and Compensation Amendment Act 2008 (2008 No 46).

Section 87(2C): inserted, on 1 October 2008, by section 16 of the Injury Prevention, Rehabilitation, and Compensation Amendment Act 2008 (2008 No 46).

88 Vocational rehabilitation may start or resume if circumstances change

(1) The Corporation may, at any time, decide whether or not there has been a change of circumstances affecting the claimant's need for vocational rehabilitation.

(2) If the Corporation decides that there has been such a change, the Corporation and the claimant may agree to the modification of the claimant's individual rehabilitation plan to reflect the changed circumstances.

(3) The Corporation may resume providing vocational rehabilitation under the claimant's individual rehabilitation plan, with any agreed modifications, to a claimant who—

(a) had vocational rehabilitation; and

(b) as a result, obtained employment; but

(c) is unable to maintain the employment because of his or her incapacity.

(4) This section is subject to section 87(2) and (3).

Compare: 1998 No 114 Schedule 1 cl 57

89 Assessment of claimant's vocational rehabilitation needs

An assessment of a claimant's vocational rehabilitation needs must consist of—

(a) an initial occupational assessment to identify the types of work that may be appropriate for the claimant; and

(b) an initial medical assessment to determine whether the types of work identified under paragraph (a) are, or are likely to be, medically sustainable for the claimant.

The purpose of Vocational Rehabilitation is to

80 Purpose of vocational rehabilitation

(1) The purpose of vocational rehabilitation is to help a claimant to, as appropriate,—

(a) maintain employment; or

(b) obtain employment; or

(c) regain or acquire vocational independence.

(2) Without limiting subsection (1), the provision of vocational rehabilitation includes the provision of activities for the purpose of maintaining or obtaining employment that is—

(a) suitable for the claimant; and

(b) appropriate for the claimant's levels of training and experience.

Compare: 1998 No 114 Schedule 1 cl 54

The Completion of Vocational Rehabilitation is to be assessed as being Vocational Independent.

vocational independence, in relation to a claimant, means the claimant's capacity, as determined under section 107, to engage in work—

- (a) for which he or she is suited by reason of experience, education, or training, or any combination of those things; and
- (b) for 30 hours or more a week

Vocational independence

107 Corporation to determine vocational independence

(1) The Corporation may determine the vocational independence of—

- (a) a claimant who is receiving weekly compensation;
- (b) a claimant who may have an entitlement to weekly compensation.

(2) The Corporation determines a claimant's vocational independence by requiring the claimant to participate in an assessment carried out—

- (a) for the purpose in subsection (3); and
- (b) in accordance with sections 108 to 110 and clauses 24 to 29 of Schedule 1; and
- (c) at the Corporation's expense.

(3) The purpose of the assessment is to ensure that comprehensive vocational rehabilitation, as identified in a claimant's individual rehabilitation plan, has been completed and that it has focused on the claimant's needs, and addressed any injury related barriers, to enable the claimant—

- (a) to maintain or obtain employment; or
- (b) to regain or acquire vocational independence

The aim of the rehabilitation is to terminate the entitlement of compensation meaning the sole purpose of Vocational Rehabilitation is to obtain Vocational Independence.

In the Department of labour briefing to the Minister of Accident Compensation Corporation Vocational Rehabilitation was the termination of weekly compensation.[3]

The sole purpose of Vocational Rehabilitation to obtain an assessment claiming the injured and disabled person is assessed in occupations many are not occupations that are available in New Zealand.

Taking into consideration of Article 6 of **International Covenant on Economic, Social and Cultural Rights**[4] which New Zealand has ratified to, the legislation does not apply with this convention. In that article the primary goal is to achieve steady economic, social and cultural development and full and productive employment.

The legislation as it is written and how it is administrated confines to employment, only employment that is likely to achieved 30 hours per week. This prevents advancement in career, able to earn to the most efficient.

The legislation also prevents person with disability that can not return to employment at the time of accident and incapacity can not achieve self-employment, entrepreneur-ship, the development of co-operatives and starting one's own business. There is no requirement to have employment to become Vocational Independent or no requirement for the administrator to assist the finding of employment.

Year Ending	30 June 2011	30 June 2010	30 June 2009	30 June 2008	30 June 2008
New Compensation Claims	16,627	18,025	20,753	22,074	

Long Term Compensation Claimants	5,082	5,913	6,553	6,833	5,946
Difference per year	Decrease 831	Decrease 640	Decrease 280	Increase 887	

[5]

As can be seen from the records from the annual reports[6] there has been a reduction in the number of claims or the number receiving entitlements. The legislation claims the person can work 30 hours per week in one of the chosen employment's, not necessary the employment of choice of the person with the disability or the most efficient employment in the choice of the person with the disability.

The Accident Compensation Corporation does not keep records on persons who become Vocational Independent.

A report instigated by the Department of Labour in 2007[7] shows disabled persons being terminated from entitlements does not necessary are in employment. Only 13.3% of the claimants were in employment identified by the assessment despite the experts claiming all can work in the chosen occupation.

Status	1992 Act	1998 Act	2001 Act	Total	%
Full Time VI Job	3	10	8	21	13.13
P/T VI Job	5	5	6	16	10
Full time Non-VI job	15	9	7	31	19.38
P/T non - VI Job	7	6	5	18	11.23
Benefit	6	16	14	36	22.5
Superannuation	5	2	0	7	4.38
Weekly Comp	0	3	11	14	8.75
Not Working	6	7	2	15	9.38
Study	0	0	1	1	0.63
Not Specified	0	1	0	1	0.63
Total	47	59	54	160	100.01

[8]

- **redressing of grievances**

The legislation has given a number of ways to address grievances. Under the legislation there is the code of ACC claimants Rights.

This is ineffective as the staff are there to support the policy to terminate entitlements. Any complaint against a staff member, administrator, contractor or service provider will not be investigated if a successful investigation will prevent the exit of the person with disabilities.

There is a review and an appeal of the Accident Compensation Corporation decision. During this process there is no need for the Accident Compensation Corporation to confirm the information they are presenting is correct.

The Act has several sections that must be used in making a decision. Section 117 is very important as it says information in the Accident Compensation Corporations possession. The Accident Compensation Corporation is a public organisation and has the use of very good public medical libraries. They even have a research team to identify if treatment is correctly applied for.

Every time an entitlement is requested the case manager will then carry out to see if the symptoms can be due to some other cause.

Like the case manager the reviewer then the judge will ignore the information when the ACC accepted the injury. This action forces the claimant to have the injuries re-accepted, delaying the necessary Vocational Rehabilitation. The vocational Rehabilitation is requested to obtain other employment at the maximum earning capacity and not at to achieve 30 hours per week.

Privacy Act is part of the legislation the Accident Compensation Corporation has problems with. Accident Compensation Corporation is unable to check the information is correct before using it. If the ACC find the information correct then they will obtain information claiming the information is inaccurate. This will be by the way of assessments providing allegations of fraud, injuries not covered, carrying out physical activities not able to be completed on medical description. The Office of the privacy commission won't investigate the deliberate misuse of information as that would mean the case managers would loose employment.

An example of information changed for dis-entitlement.

In 1981 an injured was sustained due to a work related accident which fractured the L1 - L3 transfer processes, and sprained the spine. The returned to work was completed but there was never the return to full duties due to muscle spasms and pain.

Other work was taken up but this resulted in the compression of the vertebral and more time off work. The pain from those injury resolved and the ACC reported from advice from specialist the person with disability should not complete certain activities continuously for work. Due to the ACC decision saying the claimant can do activities the injured person worked in employment causing a deterioration to the covered injuries

A check by ACC found the injuries had been correctly covered and no error in accepting the injuries for cover. At this stage there was periods of Lumbago, Mechanical back pain associated with the instability, Vertebral compression, dysfunction if the intervertebral disc, strained deep paraspinal muscles. This along with the re-occurrence of the Loss of the Lumbar Lordosis.

Due to an administration error the AC had changed these injuries to "Back Pain in the thoracic spine due to fractures to the T2 vertebral". On realising the mistake by the ACC the request was under the privacy Act was completed to have the injuries corrected. A review was applied for but the reviewer claimed no jurisdiction and suggested the ACC obtain a medical report.

The report was obtained and the instruction to the assessor was claiming the injuries were not accepted on being presented to be added to the claim. Legislation under the various Act states that when the ACC disagrees with the information they must make a decision. No decision had been made to decline any of the presented injuries.

In the report request the case manager Mr Wilson changes Mr Matheson statement claiming a typographical error. Mr Matheson stated it was "*not common*" and not as Mr Wilson claimed. On the same page of the request Mr Wilson states

He stated he could not definitely say Mr Smith's "*current problem is not as the result of personal injury by accident*" [9]

When the reports states;

While disc degeneration at the lumbosacral junction is common in the population without injury, it is not possible at this stage to definitely say that his current problem is not as the result of personal injury by accident and should, in view of the documented spinal injury in 1981, constitute a valid claim against the Accident Compensation Corporation.[10]

This had already been to court and the court confirmed the injuries had cover and were causing the incapacity.

The assessment carried out was to see why the spines inability to maintain its patterns of displacement under physiologic loads so there is no initial or additional neurologic deficit, no major deformity, and no incapacitating pain.

As in Professor Theis report[11] the history shows a repeating of the injury deteriorating when ACC did not supply adequate vocational rehabilitation, forcing the claimant to take work causing a further deterioration. The assessor also note's the pain had not been continuous but the seriousness of the deterioration in 2004 made for a longer period of recovery.

There is no means to redress the problem of the Accident compensation Corporation supplying an assessor with the wrong information or having the assessor correct the report identifying the basic errors in such a report.

[Annual Report 2009](#)

[1]Human Rights in New Zealand today <http://www.jobsletter.org.nz/pdf/HRWork04.pdf>

[2]The present legislation

http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM99494.html?search=ts_act_Accident+Compensation_resele_25_h&p=1

[3]Rehabilitation was the termination of weekly compensation Page 5 of [COMMENTARY ON ACC'S SECOND QUARTER REPORT 2010/11](#)

[4]**International Covenant on Economic, Social and Cultural Rights**

<http://www2.ohchr.org/english/law/cescr.htm>

[5] [Annual Report 2011](#), [Annual Report 2010](#) , [Annual Report 2009/08](#) , [Annual Report 2008](#).

[6][Annual Report 2011](#), [Annual Report 2010](#) , [Annual Report 2009/08](#) , [Annual Report 2008](#).

[7][Vocational Independence outcomes for ACC Claimants](#)

[8][Vocational Independence outcomes for ACC Claimants](#)

[9] Professor Theis Request.

[10] Mr Swans report

[11] Professor Theis Report.