

Submission

By



to the

Department of Labour

on the

Increasing Choice in Workplace Accident Compensation Discussion Document

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INCREASING CHOICE IN WORKPLACE ACCIDENT COMPENSATION DISCUSSION DOCUMENT - SUBMISSION BY BUSINESSNZ¹

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to comment on the “Increasing Choice in Workplace Accident Compensation” Discussion Document (the “Discussion Document”).
- 1.2 An accident insurance scheme’s primary focus should be on developing a framework that is effective in reducing the number and severity of accidents.
- 1.3 Reducing the overall costs associated with an accident insurance scheme requires all stakeholders (funders, claimants, health professionals and insurers) to face very strong incentives to minimise both accident numbers and the costs of dealing with accidents. In this respect, incentives for employers, employees, health professionals and insurers *do* matter.
- 1.4 None of the above indicates that accident insurance schemes should necessarily be the domain of a state monopoly. Nor does central government have to be a service provider to meet its social and economic objectives.
- 1.5 BusinessNZ strongly supports the statement made on p.12 of the Discussion Document: *“ACC’s monopoly position means it is not exposed to competitive pressures to effectively manage its liabilities, control its costs or improve its delivery of treatment, rehabilitation and compensation. The Government wants to maintain the gains made in recent years and keep the pressure on for continuous improvement.”*
- 1.6 BusinessNZ notes that the Government will continue to set minimum standards for cover and service delivery, while the private sector (along with ACC retained as a Crown Entity) will underwrite workplace accident insurance. Within this framework, the 24-hour universal coverage and no-fault principles are retained.
- 1.7 BusinessNZ notes that while the proposals will allow employers a choice of workplace insurers, the Discussion Document states clearly: *“This proposal does not go as far as that recommended by the Stocktake or briefly allowed in 1999/2000, in that ACC remains an option” (p.3)*
- 1.8 While BusinessNZ strongly supports the general direction of the proposals outlined in the ACC Discussion Document - to provide for greater individual responsibility through the extension of the AEP programme to a wider range of businesses and to introduce a degree of competition into workplace accident insurance - a number of issues remain. These issues need to be examined to ensure both a level playing field for all and the fostering of vigorous competition, not only in respect to price, but also in terms of service provision and rehabilitation rates. Lacking a level playing field, there is a danger that the benefits of competition may not be fully realised.

¹ Background information on BusinessNZ is attached as Appendix 1.

- 1.9 BusinessNZ accepts that the Discussion Document's proposals are restricted to a reform of the Work Account. Nevertheless, BusinessNZ considers that elements of competition could also be incorporated in other ACC accounts, namely the Earners' and Motor Vehicle Accounts. To this end, BusinessNZ endorses the comments made in the Final Report prepared for the Minister of ACC by the Steering Group for the Stocktake of Accounts (30 June 2010): *"For the reasons we set out in this report, we have concluded that competition is both feasible and desirable, in our view it is appropriate that government consider this as a first threshold required. We can retain the compulsory, comprehensive, no fault nature of the accident insurance scheme, including prohibition on tort liability for personal injury, and still, with advantage, introduce competition in the Work, Earners' and Motor Vehicle Accounts."* (p.ii)
- 1.10 This submission is in two sections: The first looks at the benefits of increased competition. The second focuses on some of the key issues and questions outlined in the Discussion Document.
- 1.11 Paras 3.65 and 3.66 cover issues surrounding the ongoing costs of residual (pre-1999) claims.

SECTION 1: The role of competition in workplace accident insurance

- 2.1 Contestability in the provision of workplace accident insurance will provide both funders and claimants with an improved service since it will require providers to focus much more clearly on efficiency and cost-effectiveness than is currently the case with ACC.
- 2.2 Making workplaces safer, speedily implementing rehabilitation and managing this well when accidents occur, and providing fair and adequate compensation, will mean premium payers have a choice when deciding on which company to insure with.
- 2.3 BusinessNZ notes that the Discussion Document recognises the benefits of greater competition. The comprehensive Stocktake analysis shows that the Accredited Employers Programme (AEP) delivers safer workplaces, with 12% fewer claims and more effective rehabilitation, and 15% lower costs. The Stocktake's comparisons took into account differences in type of business and looked only at comparable businesses inside and outside the AEP programme.
- 2.4 Since the Discussion Document's recent release there has been a great deal of misinformation in the media, with some opponents of contestability producing a number of red herrings that deserve a considered response.
- 2.5 One such red herring is that the 24-hour universal no-fault system will somehow disappear or be severely undermined if private insurers can compete in the workplace accident insurance market. But, as mentioned earlier, central government does not have to be a monopoly service provider of accident insurance to meet its social and economic objectives. The legislation will set minimum standards to be enforced by the proposed Regulator.
- 2.6 Any perceived benefits in ACC retaining its current monopoly on accident insurance provision (e.g. potentially lower transaction costs), will be minor compared with the benefits of competition.
- 2.7 The significant problems associated with ACC run currently as a state-sanctioned monopoly are briefly outlined below, not necessarily in any order of importance.
 - **One-size-fits-all does not encourage improved outcomes:** Premiums often do not reflect the costs associated with the individual workplace. To an extent this recognises that the nature of accident insurance is to pool risks within similar risk categories but current policy adopts a one-size-fits all approach which may not reflect the needs and wants of individual enterprises. The only real form of "choice" is the ability to partially self-insure through the AEP. However, for most employers - small and medium sized enterprises - the AEP is not a realistic option.
 - **Monitoring of Claims:** The incentives on ACC to rigorously monitor claims are more likely to be driven by political considerations than sound commercial practice.

- **Potential for ministerial interference:** ACC premiums are ultimately determined by the Minister of ACC who can accept, reject, or modify the ACC Board's recommendations. The Minister's ability to change premium rate recommendations if new information comes to hand can be useful. However, there has been a tendency for successive ACC Ministers to tinker with ACC's recommendations and instead make recommendations of their own. When such decisions are not based on independent advice, there is, rightly or wrongly, a risk of seeing premiums as being set for political reasons, rather than on the basis of sound commercial practice. Furthermore, ACC could become the vehicle for government to achieve objectives apart from the organisation's principal function as an accident insurer. This is much more likely to happen if ACC retains its monopoly position with no contestability from the private sector.
- **Distorted premium setting processes:** A fully-funded model should see policy changes that impact on costs immediately reflected in employers', employees' and motorists' premiums. But in reality, current ACC premiums too often reflect political considerations (combined with ad hoc policy such as smoothing premiums) and so send employers, earners and motorists distorted signals as to the real cost of accidents.
- **Cross subsidisation:** Significant cross-subsidisation occurs within some accounts (principally the Motor Vehicle Account) again because of political considerations. For example, levies paid for motor cycles are significantly lower than either the number of motor cycle accidents, or perhaps more importantly, the number of claims' costs would justify. Significant cross-subsidisation is also apparent in the Work Account.

2.8 Contestability in the provision of ACC services and delivery would provide a number of benefits while having little downside risk. The following positive outcomes are much more likely under a competitive model.

- **Monitoring of claims and management of risk would likely be more pronounced,** with premiums more accurately reflecting actual risk and claims' history than at present.
- **Under a competitive model, any attempt to pass on an insurer's inefficiencies would result in levy payers shifting their business to another insurer.** Insurers trying to increase premiums beyond the level justified by the market would be penalised through reduced market share. Allowing new insurers to enter the market at any time would keep premiums at actuarially fair levels. Ultimately, employers would have the right to switch insurers if they experienced a significant and unwarranted increase in the amount of premium currently paid.
- **Premium "options" would be more likely to meet the unique needs of enterprises rather than a "one-size-fits-all" approach.** Greater use of risk sharing arrangements would likely be common under a competitive regime, while the ability of insurers to bundle insurance packages could make these quite attractive in some cases.

- **Private insurers would be likely to invest significant resources into the monitoring of claims** in order to ensure these were dealt with quickly, with appropriate treatment given and claimants encouraged back into the workforce as promptly as possible. This would likely reduce costs over time.
- 2.9 While opponents of contestability in the accident insurance market have often stated that it is only larger companies that would benefit from a move in this direction, evidence from the 1999 reforms (which opened up work-related accidents to competition) would suggest otherwise. The then NZ Employers' Federation submission on the *"Accident Insurance (Transitional Provisions) Bill"* (January 2000) stated that around three-quarters of companies reported lower costs of accident insurance under a competitive model, with some companies of fewer than 10 employees reporting savings of more than 40 per cent on their accident insurance premiums.
 - 2.10 A letter from the Department of Labour's Labour Market Policy Group (LMPG) to the Minister of Accident Insurance (29 August 1999) noted that: *"while initial data from the [Accident Insurance Market] Regulator has indicated a reduction in premiums, the data are not reliable enough to reach firm conclusions at this stage. However, anecdotal feedback from insurers and brokers indicates savings, particularly for large employers."*
 - 2.11 For businesses where current premiums do not reasonably reflect risk in the workplace accurately, premiums would likely increase. But as a corollary, those firms that had been effectively cross-subsiding such businesses would see lower premiums.
 - 2.12 A common misconception is that premiums under a competitive market would be unrealistically low at the start of a competitive regime (loss leading) in order to capture market share but increase rapidly once a significant share of the market had been established. Apropos allegations of loss leading, an independent actuarial assessment of the New Zealand accident insurance market post 1 July 1999 (during the competitive market phase) showed a 14 per cent reduction in premiums and employers paying around \$82 million per annum less than under the old ACC monopoly model.
 - 2.13 Actuary Mark Weaver (Melville Jessup and Weaver) considered up to 7 per cent of the \$82 million savings (i.e. about \$6 million) could be due to loss leading behaviour. However, in the context of the scheme, this amount was negligible. Weaver stated that any potential for loss leading to impact on future premium payments would be mitigated by ensuring private insurers got people back to work appropriately. *"If the loss leading can be covered by greater efficiencies then the premiums can remain low. If not then they will have to go up. Those getting it wrong will lose custom, especially if any more new players enter the market."*
 - 2.14 While significant issues need to be worked through before some accounts can be effectively opened up to competition, there are few obstacles to introducing greater competition into the Work Account. Business NZ is supportive of the general direction of Discussion Document proposals which would provide a

much greater opportunity for businesses to involve themselves in the AEP option and would also allow the private sector to compete with ACC for work-related injuries.

- 2.15 Notwithstanding the above support for the general direction of the Discussion Document's proposals, there are a number of issues, discussed in some detail in Section 2, which must be addressed if the benefits of a competitive work-place accident insurance market are to be fully realised.

SECTION 2: Questions and Issues outlined in the Discussion Document

- 3.1 The Discussion Document asks for responses to the 27 questions posed.
- 3.2 BusinessNZ agrees strongly with many of the questions asked and the analysis behind them, particularly in respect to the reforms of the AEP. The organisation therefore considers it should address the questions and key themes which require more thought, giving attention to areas crucial to developing a more competitive workplace accident insurance market or where potential fish-hooks exist. Obviously, BusinessNZ would be happy to meet with the submission reviewers to discuss any issues raised in more detail.
- 3.3 For ease of reference, responses to the questions posed will be in the order in which the Discussion Document raises them.

Questions relating to extending the Accredited Employers Programme (AEP)

Q1. Do you agree that there should be a greater range of claims management periods? Why or why not?

- 3.4 Yes. Flexibility is a key ingredient in better meeting the needs of individual businesses and their employees. A greater range of claims' management periods is simply part of the process, along with various risk-sharing arrangements.
- 3.5 Currently only 136 large employers are involved in the AEP, covering around 15% of employees in NZ (Discussion Document p.15). There is certainly significant scope for increasing the number of businesses engaged in this programme given the significant benefits of improved workplace risk management - fewer injuries and hence fewer claims and more effective rehabilitation (lower costs).
- 3.6 Ultimately, the only major issues are the ability of employees to get appropriate treatment as required and of businesses to meet their financial obligations as these arise. However, there are a number of possible approaches to ensuring ability to pay. These are referred to in the Discussion Document and endorsed by BusinessNZ.

Q2. Do you agree that the claims management period should be measured from the date of injury, rather than from the end of the current levy year?

- 3.7 BusinessNZ does not have a strong view either way on this point, although individual employers may have particular views which will no doubt be expressed in the various submissions made.

Q3. Do you agree that there should be more flexibility in the purchase of high cost claims cover and stop loss cover? If not, why not?

3.8 Yes.

Q4. Do you agree that employers should be able to purchase high cost claims cover and stop loss cover from an approved third party? If not, why not?

3.9 Yes.

Q5. Do you agree that an employer's claims history should be taken into account when setting PDP levies? Why or why not?

3.10 In principle, yes. It would seem logical to take account of an individual business's claim costs when setting PDP rates as there may well be considerable differences in claims' activity and costs between different businesses in the same sector. The key matter to be reflected in setting the PDP rate for individual businesses is total claims' costs (cost impact on the scheme) rather than other factors such as the number of claims. Such other factors may have little relationship to the overall costs of the scheme.

Q6. Do you agree that ACC should be required to take over management of any claim at the employer's request and cost? Why or why not?

3.11 In principle, no. Currently accredited employers can request ACC to take over the management of a claim at the employer's cost but ACC may refuse.

3.12 BusinessNZ would be loath to recommend that ACC be required to take over a claim at the employer's expense without a little more information on the merits or otherwise of such a requirement; or if indeed there is a significant problem with the status quo in terms of ACC voluntarily taking over a claim at the employer's expense.

3.13 If ACC does refuse to take over a claim, there are other options for the business, including the ability of the employer to contract with a third party administrator (TPA) to take over the claim's management.

Q7. Do you agree that in the Full Self cover option, there should be a choice of a full and final settlement? Why or why not?

3.14 Yes. Giving businesses greater choice in managing the risk of claims is sensible. An option of full and final settlement at an agreed price simply adds to the array of flexible arrangements available with a wider AEP.

Q8. Do you think that co-operatives, franchises or other groups should be able to enter the AEP? Why or why not?

- 3.15 Yes. The critical issue for Regulators and ACC is the ability for businesses to meet their financial and rehabilitation obligations as and when these arise. Provided such obligations can be met and risk appropriately managed, then extending the AEP to such groupings is sensible.

Q9. Do you agree with the proposal to allow employers to use financial instruments or forms of security as a means of meeting the AEP financial requirements? Why or why not?

- 3.16 Yes. This would provide for greater flexibility and offer more options for meeting liabilities as and when these arise.

Q10. Do you agree with the proposals to streamline injury management practice audits? If not, why not?

- 3.17 While it could be argued that the requirement to meet accredited employer injury management standards is one reason for accredited employers' improved performance, the more likely reason is the far greater responsibility for injury management borne by accredited, as compared with standard, employers. Therefore while some may be against the streamlining of injury management practice audits, the general view is likely to be that streamlining will leave employers free to respond to workplace accidents in the way most appropriate to the particular circumstances. What is important is that there should be – to the extent possible – a correct balance between effective self-insurance and claimants' timely receipt of necessary treatment and rehabilitation. Effective self-insurance will act as a natural discipline on accredited employers enabling them to develop and implement accident management systems uniquely applicable to their own businesses.

Q11. Should health and safety audits be voluntary? If not, why not?

- 3.18 As in response to Q10, there will be some who consider that health and safety audits should continue to be compulsory for accredited employers but most will consider that a focus on systems can impose an unnecessary degree of inflexibility. While an improved version of the WSMP audit could have merit, there are strong financial incentives on accredited employers to have in place their own rigorous workplace health and safety management systems and to ensure these are followed. Systems by themselves do not guarantee usage. Accredited employers will reap the benefits of self-insurance only by ensuring their health and safety management systems are observed and are effective.

Q12. Do you agree with offering a range of claims excess options outside the AEP? Why or why not?

- 3.19 Yes. The options outlined in the Discussion Document provide for greater choice in the way businesses will be able to manage their financial exposure to workplace injuries. Indeed, there is no conceptual difference between workplace injury management and the management by individuals and households of general insurance risk. Some will want very limited exposure to claims (i.e. full cover) while other businesses may be prepared to pay for the initial cost of claims up to a certain limit or time. Again, the only question for ACC or the Regulator is whether businesses have the financial ability to cover the costs associated with any claims' excess options, ensuring the injured person receives prompt attention and that any risks to the scheme or other participants in the market are minimised.

Questions relating to greater choice for self-employed people

Q13. Do you agree that self-employed people should be able to choose to purchase cover for both work-related and for non-work-related injuries from a private insurer? Why or why not?

- 3.20 Yes. The benefits of competition in the workplace accident insurance market would apply equally to the Earners' Account, as outlined in the comprehensive Stocktake report (June 2010). The ability of insurers to bundle insurance products could well be an attractive proposition for many self-employed.
- 3.21 Notwithstanding the above, the Discussion Document raises an important point about the complexity of opening up the self-employed part of the Earners' Account to competition, but not the entire Earners' Account: *"However, it would require claims for the self-employed under the Earners' Account to be handled differently from other Earners' Account claims, and might require ACC to establish a separate account for this purpose. There is also the added complexity in deregulating ACC's pricing of Earners' Account cover for this group only."*
- 3.22 The points raised by the Discussion Document are valid and suggest that further work should be done on opening up all of the Earners' Account to competition in order to avoid unnecessary regulatory and transition costs in setting up a separate Earners' Account for the self-employed. If this results in some delay in implementation then so be it, given that the overall objective should be to ensure a rigorous and robust framework which establishes a contestable market for accident insurance that stands the test of time. A Clayton's reform would simply add cost without the benefits of a truly competitive market.

Questions relating to choice in the Work Account

Q14. Do you agree that transparency and flexibility are necessary to facilitate a competitive environment? Are these proposals adequate? Why or why not?

- 3.23 While BusinessNZ is strongly supportive of transparency and flexibility as the key elements of a competitive environment, the proposal as currently structured cannot be described as facilitating a truly competitive environment. This point has been acknowledged by the Minister of ACC and is also made in the Discussion Document.
- 3.24 In answer to the second part of the question “*are these proposals adequate?*” the answer is possibly, rather than probably, for the reasons outlined below.
- 3.25 It is noted that the Discussion Document sets out proposals for how choice would be introduced. Two key proposals are that:
- “ACC would continue operating in its current organisational form as a Crown agent with measures to make its operation of the Work Account transparent to the market [and] ACC’s Work Account products and prices would be deregulated to provide it with flexibility to compete.” (Discussion Document p.7).*
- 3.26 While the above statements might, at a first reading, appear reasonable, the devil is very much in the detail. It is here that BusinessNZ has some concerns (expressed also by others such as the Stocktake) about ACC remaining in the market as a Crown Entity, not subject to taxation or the requirement for a return on capital.
- 3.27 Moreover, it is noted that the Discussion Document states that “restrictions” would be placed on ACC e.g. *“ACC would not be permitted to offer non-accident insurance products or cover over and above the minimum set in legislation....”*
- 3.28 BusinessNZ considers a number of issues need serious consideration in designing a reform package.
- 3.29 Some key issues (not necessarily in any order of importance) include:
- Will the reforms proposed in the Discussion Document deliver greater choice and competition in the workplace accident insurance market?
 - Are they economically robust and transparent and not subject to political interference so that they stand the test of time. In other words, will the reforms ensure an appropriate framework is developed which does not need to be tinkered with over the medium-longer term?
 - Will potential competitors in the market have confidence that the playing field is relatively level so that, given various set-up (transition) costs, they will be prepared to enter?
 - What are the political risks of interference in ACC premium setting if a crown entity is retained (despite the ring-fencing of accounts), in light of

successive government interference in premium setting - in defiance of ACC Board recommendations?

- What is the rationale for ACC remaining in the market as a Crown Entity rather than devolving workplace accident insurance to the private sector or setting up an SOE to compete, particularly as government does not have to be a service provider to meet its social and economic objectives?
- Will ACC Board members, when setting premiums, have the same commercial incentives facing private sector insurers if ACC remains a Crown Entity with an explicit government guarantee and retains the power to tax a large number of businesses in a succeeding year if premium calculations were wrong (i.e. had been set too low)? No such rights exist in the private sector and businesses would simply go elsewhere if any attempt were made to recoup a previous year's losses.
- If the ACC Board is to set the premiums for the ACC Work Account, why shouldn't it set the premiums for the other accounts as well, without the possibility of Ministerial veto?
- Why is the introduction of competition confined to the Work Account when the Stocktake suggested there should also be wider competition in the Earners' and Motor Vehicle Accounts?

- 3.30 It is accepted that some of the above issues are beyond the control of the current Government (e.g. whether reforms will be reversed by a future Government). But many of the above risks can be minimised through careful thought and rigorous analysis.
- 3.31 It is also accepted that the Discussion Document talks about the need for transparency etc with ACC "competing" in the market as a Crown Entity. The analysis is still very much at a conceptual level but it is important that the above issues are considered in depth before promoting any one particular model. For example, would it be appropriate to move ahead with the proposed AEP reforms and clarify some of the above issues before making perhaps more comprehensive reforms? To do this would appear to be logical and relatively straight forward, whether or not ACC retains its current monopoly on the provision of Workplace Accident Insurance.
- 3.32 The danger with the proposed model as outlined in the Discussion Document is that because the various controls try to mimic a competitive market, the number of competitors entering the market may be fewer than desirable, with the benefits to businesses and employees not as materially significant as they would be were a truly competitive market an option.
- 3.33 BusinessNZ considers that more thought needs to be given to the above issues to ensure the benefits of greater competition materialise as intended. This is particularly so given that the proposed reforms will have associated transition and administrative costs.

Q15. For what purposes would you require claims data? What type of and level of data access would be necessary and why?

- 3.34 While BusinessNZ accepts the rationale for a central data pool where relevant information is collected and shared, it is important for the information to be collected for a defined purpose related to the proper functioning of the market and for enforcement purposes. The pool should not be merely a gold-plated collection agency funded by insurers and ultimately by employers through premium increases.
- 3.35 The Discussion Document does not discuss who should be required to fund a central pool for data collection and sharing or, indeed, who would monitor it.
- 3.36 As is the case with the Regulator (discussed below), there may well be very strong incentives on government to over-regulate and develop a gold-plated regime to minimise its own risks, knowing that the costs will ultimately fall back on insurers, businesses and their employees.
- 3.37 A clear understanding of the need for information, of the purpose of collection and of the length of time it is to be collected is fundamental to ensuring such requirements do not become enormous and unwieldy obligations on businesses, employees, and insurers. Obviously, issues about privacy and the security of any data collected are also of utmost importance if there is to be confidence in the system.

Q16. Do you see other issues with the proposals to collect and share data? If so, how might they be addressed?

- 3.38 See response to Q15 (above).

Q17. Is continuous cover assured by the proposals to have ACC cover all workers unless private insurance is in place and a register of private insurance cover? Why or why not?

- 3.39 While the proposals outlined in the Discussion Document would likely meet the Government's objective of ensuring all employers and employees have adequate and continuous cover, BusinessNZ would again question the costs associated with the register.
- 3.40 The Discussion Document states that the operational costs of the register would be recovered from all employers through a levy on insurers (including ACC). Those responsible for the register and the market Regulator would therefore need to be accountable to their funders to ensure efficient operations. The danger with simply passing costs on to insurers (and ultimately employers and employees) is that Regulators may seek to minimise their own costs by trying to obtain "nice to have" information rather than information strictly necessary for the efficient operation of the market.

- 3.41 None of the above is to be taken as suggesting that a register is not necessary. Its purpose is to caution that the rules relating to a central data pool, the register, and the Regulator (referred to below) need careful consideration and discussion with relevant parties (employers, employees and insurers) as to what should be required.

Q18. Do you agree that the risks and consequences of insurer insolvency are adequately managed by the proposed approach? Why or why not?

- 3.42 Yes. While the chances of an insurer becoming insolvent will be relatively low (given that accident claim costs have to be fully funded and insurers will be subject to prudential regulation and fully licensed in order to operate as workplace accident insurers), it is crucial for injured parties to know they are covered in the unlikely event of an insurer becoming insolvent.
- 3.43 Although there are potentially many ways of covering claimants should an insurer fail, the proposal for a levy on all insurers should this happen, is reasonable – but obviously based on market share.
- 3.44 While the argument could be posed that insurers will take a relatively lax approach to setting premiums knowing that in the event of failure their claimants will be covered, the rigorous requirements on insurers entering the workplace accident insurance market will ensure the risk of failure is minuscule. However a suitable back-stop is required should this happen, as outlined in the Discussion Document.

Q19. Do you agree that the establishment of a market Regulator would adequately protect workers' rights and entitlements? If not, what additional practical steps could be taken?

- 3.45 BusinessNZ does not question the need for a market Regulator but notes the Document's statement that consideration is being given to determining to whom the market Regulator should be accountable and where the role would be located (as in which government agency).
- 3.46 Unlike the costs associated with the register (which the Discussion Document clearly indicates will ultimately fall on employers and their employees via insurer premiums), the Discussion Document is silent on who might pay for the Regulator, although presumably this cost will ultimately fall on business as well.
- 3.47 Such an outcome would likely be based on an assumption that the cost of setting up and administering the new competitive accident insurance regime should be financed by the regime's potential beneficiaries. In other words, premium payers who see benefit in the introduction of a competitive accident insurance market should pay the costs of its Regulatory framework. This will ensure the market operates efficiently with everyone entitled to cover in fact covered by the scheme.

- 3.48 BusinessNZ is not disputing the fact that the Regulator has an important role to play in a competitive market, particularly in terms of ensuring compliance, but there could be a problem with lack of accountability. To what extent will the Regulator ensure that any duties associated with the position are performed efficiently; indeed, what should the position's duties be?
- 3.49 If funding for the Regulatory regime came from general taxation, there would be far greater accountability on the Regulator as to both performance of duties and scope of action. Government expenditure decisions would ultimately be subject to Treasury scrutiny in terms of the annual Budget round, and possibly, by the relevant Select Committee and the responsible Minister.
- 3.50 The Regulator might also be susceptible to the lobby efforts of vested interest groups, including perhaps government itself, seeking to increase the scope or extent of the Regulator's activities, possibly for policy interest reasons. The absence of countervailing pressures could result in the Regulator bowing to vested interests to supply or obtain increased amounts of information from insurers (and ultimately employers).
- 3.51 BusinessNZ considers that if the decision is made to levy insurers for the costs associated with the Regulator, then the powers of the Regulator and the costs arising from the performance of the Regulator's duties should be subject to regular independent review with input from key stakeholders, namely insurers and employers (as levy payers) and employees (as claimants).

Q20. Do you agree with the proposal to provide for independent dispute resolution in alignment with existing frameworks? Why or why not?

- 3.52 Yes. The proposed dispute resolution regime would appear to provide a robust process for the quick and consistent settlement of disputes.

Q21. Do you agree that a single, central claims lodgment process would be effective?

- 3.53 A fundamental benefit of a competitive workplace accident insurance market is the potential for innovation and improved customer service. As part of a good workplace safety management regime, most, if not all, employees should be aware of the procedures that apply when a work place accident occurs.
- 3.54 If there were a strong enough justification for a single claims lodgment unit which directed all initial claims from treatment providers to the responsible insurer (if claimants did not know who their insurer was), it would be important for the unit to work efficiently so as to avoid unnecessary hold-ups. However, BusinessNZ believes that at this stage the Discussion Document does not provide a strong enough case for a centralised clearing house.

Q22. What else might be done to streamline claims administration processes and reduce the risk of increased transaction costs for providers?

- 3.55 In order for claims' administration processes to be streamlined, it is important for claimants to know who they are insured with. Clearly, this is something for individual businesses to communicate to their employees or alternatively, the relevant procedure (e.g. contact point) if an accident occurs.

Q23. Do you have any comment on how the cost of public health acute services could be fairly allocated?

- 3.56 It is understood that currently ACC purchases acute services via a bulk payment agreed annually between itself and the Ministry of Health. It is also understood that when competition was previously introduced into the Work Account, in 1999, the costs of acute care were essentially distributed amongst insurers based on market share.
- 3.57 The rationale for continuing to bulk-fund acute care is relatively weak and should be revisited in light of moves to ensure premium payers more accurately carry the true costs associated with medical and other necessary acute treatment. This would recognise that the nature of insurance is to pool risk within similar risk categories.
- 3.58 And since public hospitals now appear able to price the cost of non-acute (or elective) surgery, there seems to be no sound reason why acute care should not be priced on a relatively transparent basis as well. This is so even though it is understood the cost of acute care is around \$50 million per annum (although this might be seen a relatively small sum given the cost of the accident insurance scheme as a whole).
- 3.59 BusinessNZ considers that insurers (or other appropriate bodies) should be able to contract with hospitals directly for the provision and payment of acute services, ensuring costs associated with a particular treatment are as transparent as possible. The danger without such transparency is the cost of bulk-funding acute care falling on insurers (ultimately businesses) with little accountability to premium payers.

Q24. Do you agree that private insurers should be able to contract with treatment providers for alternatives to the minimum prices and conditions? Why or why not?

- 3.60 Provided that claimants are getting timely and appropriate treatment, whatever arrangements are determined between private insurers and treatment providers should be largely irrelevant to policy makers and Regulators.

- 3.61 Presumably, private insurers would enter into contracts with providers (and vice versa) only if there were benefits to be had from such transactions. Since legislation will still provide for minimum standards, this is a commercial issue which should not concern Regulators.

Q25. Do you agree with the proposed approach to managing gradual process claims? Why or why not?

- 3.62 In principle, yes. In order to ensure timely treatment for gradual process injuries, the approach suggested in the Discussion Document, whereby the insurer at the time a claim is made (ACC or private insurers) would be responsible for that claim, appears reasonable. The insurer would then be able to recover costs from previous insurers, including ACC, where an earlier injury or earlier employment had directly contributed to the claim, recognising the long latent periods associated with many gradual process injuries.

Questions on the impacts of the proposed changes

Q26. Do you have any comment on the impact of the proposed changes?

- 3.63 BusinessNZ outlined in Section 1 the benefits arising from a more competitive workplace accident insurance regime. The organisation has also pointed out some potential issues and risks associated with the Government's preferred approach to competition and choice in the workplace accident insurance market when compared with a purer form of competition. The issues canvassed earlier in this submission are not, therefore, repeated here.

Q27. Do you think the proposed risk mitigation and management measures would adequately address the risks? If not, do you have any suggestions for alternative ways to manage these risks?

- 3.64 See response to Q26 (above) and earlier comments.

Other Issues

Cost associated with pre-1999 (residual) claims

- 3.65 BusinessNZ wishes to express its concern that pre-1999 work injuries will continue to be funded by employers. More worrying however is that it is understood that about 20% of this cost relates to pre-1992 injuries caused outside the workplace (i.e. non-work accidents) which employers are still being required to pay for.
- 3.66 At a conceptual level, the costs associated with pre-1999 work accidents, pre 1999 non-work accidents and pre-1999 residual claims in the Motor Vehicle Account are, in economic terms, sunk costs. In other words, charging for

previous claims cannot affect the outcome of those claims – they have already been made. For this reason the funding of those costs should arguably be borne by general taxpayers as the most efficient and least distortionary funding method.

APPENDIX 1

BACKGROUND INFORMATION ON BUSINESS NEW ZEALAND

Business New Zealand is New Zealand's largest business advocacy organisation.

Through its four founding member organisations – EMA Northern, EMA Central, Canterbury Employers' Chamber of Commerce and the Otago-Southland Employers' Association – and 73 affiliated trade and industry associations, Business NZ represents the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business NZ contributes to Governmental and tripartite working parties and international bodies including the International Labour Organisation, the International Organisation of Employers and the Business and Industry Advisory Council to the Organisation for Economic Cooperation and Development.