Submission

By

Business NZ
The voice of business

to the

Transport and Industrial Relations Select Committee

on the

Injury Prevention, Rehabilitation, and Compensation Amendment Bill

November 2009

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INJURY PREVENTION, REHABILITATION, AND COMPENSATION AMENDMENT BILL

SUBMISSION BY BUSINESS NEW ZEALAND[1]

INTRODUCTION

1. Business New Zealand welcomes the opportunity to make a submission on the Injury Prevention, Rehabilitation, and Compensation Amendment Bill ("the Bill").

2. Business New Zealand generally endorses the Bill and recommends that it proceeds. Notwithstanding our general support, there are a number of recommendations within our submission that we believe could improve the Bill. There are also a number of issues which Business New Zealand raised in its submission to ACC (10 November 2009) on the 2010/11 Levy Rate Consultation Documents which are likely to be of interest to Select Committee members in the context of this Bill. A copy of our submission on the 2010/11 Levy Rate Consultation Documents is attached accordingly.

OBJECTIVE

3. The primary focus of an accident insurance scheme should be on providing an appropriate framework and incentives to reduce the number and severity of accidents. A secondary purpose is to provide effective treatment rehabilitation and compensation to those who do get hurt.

4. Reducing the overall costs associated with an accident insurance scheme requires that "stakeholders" (funders, claimants, health professionals and insurers) all face strong incentives to minimise the number of accidents and costs associated with them. In this respect, incentives for employers, employees, health professionals and insurers matter.

5. Business New Zealand believes that the measures in the Bill enhance the prospect of meeting these objectives, and together with effective levy setting and funding, are a step towards significant improvements to the existing scheme.

6. **Business New Zealand <u>recommends</u> that the Bill proceeds.**

RECOMMENDATIONS

7. **Business New Zealand <u>recommends</u> that:**

    A. **the Bill proceeds.**

    B. **all pre-1999 residual claims (i.e. the residual claims account, residual claims within the Earners' Account and residual claims within the Motor Vehicle Account, should be funded out of general**

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[1] Background information on Business New Zealand is attached as Appendix 1.

taxation as the least distortionary mechanism for funding what are, in economic terms, sunk costs.

C. **if recommendation (7b) is not acceptable, then consideration should be given to extending the timeframe by which residual claims across accounts must be funded beyond 2019 (as proposed in the Bill), in view of the sunk cost nature of the claims. Given the nature of these <u>residual claims</u>, Business NZ would not be averse to considering funding the <u>residual claims only</u> on a pay-as-you-go (PAYG) basis if this would spread the cost more efficiently. Alternatively, a low flat tax on employers, earners and motorists could be a viable option.**

D. **ACC should reinstate experience rating and risk sharing within the Work Account in conjunction with the Workplace Safety Management Practices (WSMP) scheme as proposed in the Bill. Consideration should be given to introducing experience rating in the Earners' and Motor Vehicle Accounts as well.**

E. **ACC, or the Department of Labour's Policy Unit should undertake further research to get a better understanding of the risk factors which determine Motor Vehicle accident claims and costs in order to understand better where responsibility for costs should lie. It is not immediately obvious that fuel use (de facto indicator of exposure on-road) is necessarily a very accurate indicator of risk. Other factors such as the vehicle type and individual driver may be more relevant in respect to accident risk.**

COMMENTS ON THE KEY CHANGES IN THE BILL

Full funding of residual claims liabilities

8. One of the greatest benefits of a fully-funded model is that the cost of a scheme is transparent. Premium payers are aware of the real costs associated with the scheme and are charged appropriate premiums. In other words, full funding encourages economic efficiency and reduces cross-subsidisation for current generations at the expense of future generations.

9. Any changes made by government in terms of policy settings will be immediately reflected in premium rates, so full funding encourages greater transparency with respect to government policy decisions.

10. A fully-funded model also assists implementation of experience rating as the full premium can be experience rated, unlike a pay as you go (PAYG) model. The PAYG model often means that only around 20% of the premium can be effectively experience rated as the remainder is used to pay for the ongoing costs of past claims which can last up to, and in some cases, beyond 50 years.

11. Finally, a fully-funded model is a pre-prerequisite if any of the ACC Accounts are to be opened up to competition from private sector providers as only a

state sanctioned monopoly provider such as ACC can effectively tax future premium payers for the underfunding of accounts.

12. Notwithstanding the above arguments in support for full-funding of future claims, the same does not apply in respect to funding residual claims (i.e. pre-1999 claims) which up until 1999 were based more or less on a PAYG model (with some variations over time). 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. In this respect the funding of those costs should arguably be borne by general taxpayers as the most efficient and least distortionary funding method.

13. While Business NZ's recommendation is that residual claims (across all the relevant accounts) should be funded out of general taxation, if this is not economically practical, then the costs of residual claims should be spread amongst as many people as possible and over as long a period as possible. This will ensure that the costs associated with what is effectively a "tax", are the least distortionary possible.

14. The Bill proposes to extend the time frame for the full funding of pre-1999 claims out to 2019 (currently 2014). However, there is a strong argument that, given the extent and ongoing cost associated with unfunded residual claims, the time frame to achieve full funding could be extended out further than 2019. Business NZ therefore considers that the Government could look at other options to fund residual claims to minimise the impact on current and future levy payers.

15. Business NZ considers a number of options could be investigated for funding residual claims such as reverting back to a PAYG system of funding *pre-1999* claims (i.e. fund simply the anticipated cost of exiting claims in the year they fall or impose a low flat levy (tax) on employers, earners and motor vehicle owners to pay for the ongoing costs of pre-1999 claims over time. Both these proposals would spread the costs of pre-1999 accidents (which are sunk costs) over a much longer time frame. thus lessening the impact on current and future premium payers.

16. Business New Zealand recommends that:

a. All pre-1999 residual claims (i.e. the residual claims account, residual claims within the Earners' Account and residual claims within the Motor Vehicle Account, should be funded out of general taxation as the least distortionary mechanism for funding what are in economic terms, sunk costs.

b. if recommendation (a) is not acceptable than consideration should be given to extending the timeframe by which the residual claims across accounts must be funded to 2019 (as proposed by Government) or even beyond in view of the sunk cost nature of the claims. Given the nature of these residual claims, Business

NZ would not be averse to considering funding the <u>residual claims only</u> on a Pay-as-you-go (PAYG) basis if this would spread the cost more efficiently. Alternatively, a low flat tax on employers, earners and motorists could be a viable alternative option.

Enable experience rating and risk sharing in Work Account

17. Business NZ is strongly supportive of the proposal in the Bill to reintroduce experience rating and risk sharing within the work account.

18. Business New Zealand submits that the current Workplace Safety Management Programme (WSMP) on its own is an ineffective injury prevention tool because there is no link to actual injury incidence, only to the implementation of systems which may or may not be effective. Conversely, notwithstanding a large increase in injuries, an employer enjoying the rewards of participation may not be penalised, simply because there was an audited system in place.

19. Extending the WSMP is not appropriate for small businesses as the compliance costs of meeting audit requirements mean that only a small proportion of enterprises (mainly medium to large-sized) are in a position where the level of discount available is greater than audit requirement costs.

20. Currently, there is little ability for small and medium-sized enterprises to reduce their premium levels irrespective of their claims record. This is particularly significant given that over 95% of all enterprises in New Zealand employ fewer than 20 persons. Neither can the vast majority of small and medium sized businesses access the self-insurance (accredited employers) scheme. They do not have the scale and resources to self manage injury in the manner required by the scheme. Without some form of recognition of their efforts to improve workplace safety, these employers are left with no option but to pay whatever costs are dictated. This is inherently unfair when, even now, options for self-insurance are available to larger employers.

21. Business New Zealand therefore continues to support the reintroduction of experience rating, either as a stand-alone system or in conjunction with a modified WSMP scheme. Such an initiative was, for a considerable time, the discount scheme of choice and provided positive incentives for employers of all sizes (and the self-employed) to strive to improve their workplace safety practices and to minimise risks. Experience rating is beneficial also to small businesses that cannot enter the Partnership Programme or for whom the WSMP scheme is too cumbersome.

22. While Business New Zealand supports WSMP, the scheme is systems-based rather than output based, meaning there is an assumption that if employers have received a satisfactory audit from ACC, the risk of accidents in the workplace is lower.

23. Business New Zealand considers that experience rating is essential in ensuring strong incentives are placed on employers so that those with

consistently lower than average accident rates (within their risk class) are rewarded. On the other hand, those with poorer than average accident rates will experience a negative impact.

24. Within similar industry and risk classes there are often substantial and consistently different accident rates attributable to a range of factors. Often similar businesses within the same industry have significant ongoing differences in accident claims and associated claims' costs, reinforcing the need to focus on individual enterprise risk. Experience rating is therefore crucial to ensuring employers benefit from better than average outcomes within their risk category.

25. Business NZ notes that the PriceWaterhouseCoopers (PWC) Report on the ACC Scheme Review (March 2008), commissioned by ACC, stated, in respect to experience rating: "…*in our view, experience rating which makes appropriate use of statistical credibility offers substantial fairness and economic resource allocation efficiencies, which if properly regulated, could outweigh the residual adverse incentive risk which may remain…" (p. xxxiii).*

26. Four arguments by critics of experience rating are worth mentioning briefly:

   a. The first is that accidents are unfortunate random occurrences and as such a system of experience rating cannot affect their outcome. Many accidents (and health states) are purely random with little that can be done to minimise them (other, possibly, than at great cost). On the other hand, a number of so-called "accidents" can be avoided through appropriate health and safety management.

   b. The second criticism of experience rating is that it provides limited incentives for employers to reduce the number of workplace accidents because they can pass on costs to consumers or employees, presumably through higher cost of product and/or lower wages than might otherwise be the case. In an insulated and protected environment where employers are not subject to competition, the above might be true. However, in reality, the ability to pass on costs is strictly limited. Most businesses are subject both to international and domestic competition; therefore the ability to sustain cost increases (even on the margin) is likely to be low.

   c. The third criticism of experience rating is that in some cases an employer may be experience-rated on an alleged "work-related" accident which they believe was completely beyond their control. While there will no doubt be some cases where employers feel unduly punished by experience rating, the benefits of experience rating need to be clearly understood.

   d. Finally, the argument is sometimes put forward that introducing experience rating will encourage employers to put pressure on their employees either not to report work-related claims or alternatively to report (work) claims as non-work related. Claims will then be funded out of the Earners' Account with reduced impact on the employer's experience rating. As mentioned in response to the previous criticism, there may theoretically be cases on the margin where such behaviour may occur, but these should not be used to diminish the positive impacts of experience rating. Moreover, effective claims' monitoring should ensure this kind of employer or employee behaviour is minimised.

27. It should also be noted that (irrespective of the existence of experience rating), in some cases there may be incentives for employees to report "non-work" related accidents as having occurred at work. Again this misreporting of accidents can be minimised through the effective monitoring of claims and by having appropriate systems in place to minimise and detect fraud.

28. Business New Zealand <u>recommends</u> that:

a. ACC should reinstate experience rating within the Work Account in conjunction with the Workplace Safety Management Practices (WSMP) scheme. Consideration should be given to introducing experience rating in the Earners' and Motor Vehicle Accounts as well.

Enable risk rating in Motor Vehicle Account for both vehicles and vehicle owners

29. Business New Zealand is strongly supportive of proposals in the Bill to allow for regulations to be made for risk rating in relation to Motor Vehicle Account levies.

30. Business NZ considers a thorough investigation of the funding of the Motor Vehicle Account is justified in order to align more closely the costs associated with the scheme to scheme claimants. This should result in the introduction of risk-rating premiums for the Motor Vehicle Account as well as for the Earners' and Work Accounts.

31. While some moves that are proposed in the ACC 2010/11 Levy Consultation Documents to reduce cross-subsidisation, levy proposals for the Motor Vehicle Account, are tentative to say the least. Proposals for the motor vehicle account are focused on removing some of the distortions within each class of vehicle (e.g. between small and large motorcycles) rather than on addressing cross-subsidisation between motorists and motor cyclists.

32. Notwithstanding, strong general support for risk rating the various ACC Accounts, current statistics do not appear robust enough to accurately assess what are the fundamental risk factors in on-road accidents. For example, it is not immediately obvious that petrol use is necessarily a good indicator of accident claims or severity. Currently, heavy users of petrol contribute a disproportionate amount to the Motor Vehicle Account simply because they spend more time on the road or have a bigger car. This does not take account of potential regional differences in the number and severity of accidents etc. Petrol use can therefore be seen as a rather crude indicator of risk. Similarly many of the safest drivers are those who drive the most miles, typically in the course of their work.

33. While it is perhaps obvious that certain risk factors are likely to be common to accident claims and severity, e.g. vehicle type and owner, there are numerous other factors which may or may not be relevant in determining risk. These other factors nevertheless need thorough investigation to ensure that a risk rating of the Motor Vehicle Account is soundly based. A number of examples could be given that **may or may not** be important risk factors:

    a. Whether the driver is licensed

    b. Time (exposure) on road

    c. Regional differences

    d. Road type

    e. Age of driver

    f. Sex of driver

    g. Experience with various NZ weather/driving conditions

34. While there may be many other potential risk factors that need to be considered, the point is that it is not immediately obvious what portion of risk associated with on-road accidents can be attributed to Motor Vehicle type or the Motor Vehicle owner, or indeed petrol use. Presumably the person behind the wheel is likely to be a crucial factor in determining risk of accident not necessarily who owns the vehicle or necessarily the vehicle type or the amount of petrol consumed on-road.

35. While strongly supporting the concept of risk-rating the Motor Vehicle Account, Business NZ would urge ACC to undertake further research in order to understand better all the main risks that determine accident claims and costs and thus where responsibility should lie. This will likely make for better long-term policy outcomes.

36. **Business New Zealand <u>recommends</u> that:**

    a. **ACC, or the Department of Labour's Policy Unit should undertake further research to get a better understanding of the risk factors which determine Motor Vehicle accident claims and costs in order to understand better where responsibility for costs should lie. It is not immediately obvious that fuel use (de facto indicator of exposure on-road) is necessarily a very accurate indicator of risk. Other factors such as the vehicle type and individual driver may be more relevant in respect to accident risk.**

Cover

Repeal changes made in 2008 to test for causation for workplace gradual process, disease or infection

37. Business New Zealand supports the reintroduction of the 3-part test for workplace causation. This is a robust approach. That said, Business NZ harbours a concern that returning to the 3-part test without addressing the recent extensive expansion of schedule 2 to include conditions such as asthma and contact dermatitis will not have all the desired impact.

38. Asthma and contact dermatitis occur frequently in the general community. By far the majority of cases have causes outside the workplace, especially so in the case of asthma. Many cases are mild, causing little or no discomfort in normal circumstances. However, the presence of specific irritant substances in workplaces may exacerbate such mild conditions, yet not be the cause of them.

39. We retain fears that while diagnosis may be conclusive the cause may not. Placing these conditions on Schedule 2 creates an expedient "out" for general medical practitioners to sign off the cause as workplace, simply because of the presence of, and exposure to, named irritant agents in the workplace. While the three-step test provides checks and balances against incorrect attribution, the inclusion of asthma and contact dermatitis (as indeed with all conditions) in schedule 2 alters this balance. Reinstatement of the 3 part test without removing such conditions from schedule 2 may not alter the burden of proof issues currently faced by many employers.

40. In pragmatic terms this may not be of great consequence for many conditions; the opposite is likely to be true for high frequency conditions occurring generally in the community.

41. Furthermore, there is a national shortage of qualified occupational medical people with the kind of expertise necessary to distinguish the causal issues and factors from the evidence of exposure. Making it easier for general practitioners to "hand the problem off" may mean that expert advice is not sought until the GP's diagnosis and attribution become a source of dispute. This is not the best use of their expertise.

Hearing loss claims: Cover

42. Business New Zealand supports the Bills proposal to set the threshold loss at 6%.

Weekly Compensation

Reinstate former calculations for long term (after 4 weeks) weekly compensation for non-permanent employees

43. Business New Zealand supports this move having opposed its earlier introduction

Return increasing weekly compensation to minimum weekly earnings rate after fifth week of incapacity, instead of from second week

44. Business New Zealand supports this move having opposed its earlier introduction

Abatement of holiday pay; return to provision that claimants leave entitlements after their employment ends are considered as part of weekly earnings when calculating weekly compensation

45. Business New Zealand supports this move having opposed its earlier introduction.

Reduce loss of potential earnings (LoPE) compensation for young people back to 80% of minimum weekly earnings

46. Business New Zealand supports this move. It provides consistency and therefore improved simplicity in the management of loss of potential earnings across the spectrum of income earners.

Vocational Independence and Rehabilitation

Replace vocational independence threshold of capacity to work for 35 hours with capacity to work for 30 hours per week

47. Business New Zealand supports this move. It will provide greater consistency with the definition of full time work used by Statistics NZ. Moreover, returning people to work does not require a return to complete former capacity. The lower threshold enhances prospects of an earlier return to meaningful work, a move widely accepted as having beneficial effects.

Make it optional for occupational assessors to consider pre incapacity earnings when undertaking initial and vocational independence assessments

48. Business New Zealand supports this move. This gives broader scope to assessors to develop responses to the particular circumstances of a client, than that having to apply a rigid set of criteria, not all which may assist a meaningful assessment.

Disentitlement

Wilfully self inflicted self injury and suicide

49. Business NZ supports the disentitlement to cover for wilfully inflicted self-harm. In 2008, Business NZ argued against the extension of entitlement to this category, warning that it might have far reaching consequences.

50. Self-harm is more than the extreme examples of suicide and self mutilation. Arguably it also includes less immediate sources of harm, the best known of which are obesity, smoking and drinking. The harmful effects and largely

avoidable consequences of these conditions are well published and promoted.

51. The harm attributable to such causes manifests in a variety of ways, including conditions such as asthma, which was included in schedule 2 by the previous government. Business NZ argued then that the removal of restrictions on cover for self harm, coupled with the Schedule 2 impact of attributing cause to the workplace as a default position for gradual process conditions (including those sourced through self harm) meant a considerably increased liability for employers.

52. Business NZ supports disentitlement to cover for self-harm, but also recommends that the Act recognise that the consequences of acts of self harm are wider than traumatic injury yet still inside the boundary of mental harm.

Strengthening disentitlement provisions for claimants for whom it would be repugnant to justice to provide entitlements

53. Business New Zealand supports this move. It has long been a concern among the business community and the community at large that ready access to compensation effectively has enabled some to profit from the commission of acts that are both criminal and repugnant to ordinary society. Disentitling the worst examples adds to the range of responses available to government to sheet home the consequences of such actions.

Ministerial Advisory panels

Remove requirement for Ministerial Advisory panels on Work Related Gradual Process, Disease, or Infection and Injury Surveillance

54. Business New Zealand supports this move.

Enable ongoing information sharing between IRD and ACC to ensure good customer service

55. Business New Zealand supports this move.

Enable Acc to provide non ACC related government services or entitlements to ACC claimants

56. Business New Zealand supports this move.

Require ACC to table financial conditions report in Parliament annually

57. Business New Zealand strongly supports the requirement in the Bill that ACC must provide a financial conditions report annually to the Minister of ACC which will be tabled in the House.

58. Business New Zealand has been concerned, for many years, about the potential for political manipulation of premiums to reflect wider political considerations rather than the sound financial management of the scheme.

59. Improving transparency of premium setting and the general soundness of the scheme's accounts, including risks, are strongly supported by premium payers. The fact that ACC is effectively a state-sanctioned monopoly demands no less.

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.