

7 April 2009

Hon Nick Smith
Minister for ACC
Parliament Buildings
Wellington

Dear Minister

ACC

The recent publicity surrounding ACC highlights the need for well-informed discussion on its future focus, form and function.

Over the past few weeks, Business New Zealand has canvassed the views of a wide range of businesses in relation to ACC and the corollary issues of health and safety and the health system in general. Insofar as ACC is concerned, we have extracted some common concerns from our conversations and offer these for consideration as part of your deliberations. These are set out briefly below.

ACC now seen more as a revenue gatherer than an effective system for injury prevention and rehabilitation of injured New Zealanders .

You have noted yourself that ACC has become more focussed on social welfare outcomes than on injury prevent and injury management. The expansion of cover into gradual process and occupational disease and mental and self harm, the shifting of the burden of proof of many conditions onto employers and the removal of responsive mechanisms such as experience rating have increased costs and resulted in employers having little or no ability to influence the amount they pay as levies. Once the rate is set it provides predictable revenue to ACC but little incentive to employers of or employees to improve injury and rehabilitation rates.

Of particular concern is the Residual Claims Account where little apparent progress is being made to reduce the liability. This is a major factor in creating uncertainty and cost for business.

The Residual Claims Account in a number of ways is at the heart of the issues faced by ACC. It is the vehicle for much of the increased costs, and the expansion of cover of gradual process and occupational disease of long latency means that no true cost estimates of the ACC scheme's liability have been possible. The expansion of illness

coverage is also the primary source of criticisms of the apparently increased welfare orientation of ACC.

The significant expansion in residual claims cover in the past 2 years has exceeded expected costs and is not adequately catered for. Reviewing the focus of the scheme, and making it responsive to efforts to improve will be most beneficial.

Too much focus on compensation, not enough on rehabilitation and not nearly enough on risk management

The Woodhouse principles on which the ACC scheme is founded and indeed the title of the governing legislation suggest that the priorities for the scheme should be (in descending order) prevention, rehabilitation and compensation. Anecdotal observation suggests that current priorities are more oriented to processing claims for compensation than on prevention or rehabilitation. Some evidence for this is found in, indeed supported by your own recent observations of, over provision of services (some providers provide services well past effective completion of rehabilitation). This is assisted by the apparent ACC policy of paying for services promptly. Sheer volumes mean many bills are simply processed without query.

Levies fail to incentivise improved prevention and rehabilitation.

Arguably, the government's greatest ally in the fight to reduce injury rates and severity is the self-interest of employers, employees and citizens generally in avoiding harm. However, the system does not incentivise such self-interest. Instead it imposes arbitrary costs based on estimated *growth* in injury rates and severity. It provides employers in particular with little or no ability to lower that rate by demonstrating lower risks. Businesses tend to be "lumped" in with inappropriate risk groups eg industry management companies grouped with industry operating companies. This is exacerbated by the fact that the previously mentioned latent costs of the residual account levy create enormous uncertainty in terms of the real costs of coverage.

Again, the lack of effective management of the Residual Claims Account raises its head. Ten years on from the last claim being made live (1999), one could expect the liability to start reducing steadily as those affected are rehabilitated and returned to work. The fact that it is not is also a major concern.

At a more mechanical level, the present levy consultation process lacks transparency. While initial calculations are actuarially based, subsequent massaging at board and political levels, coupled with policy oversight and sometimes different views from the Department of Labour, means that final levy rates are not clearly connected to the risks they represent.

Disparity between the Accredited Employer and Workplace Safety Management Plan (WSMP) approaches

Business New Zealand believes that serious anomalies exist between the accredited employer and WSMP options. The most significant issue is that the first focuses on results, the second on having a system. Paradoxically, increases in Residual Claims Account costs have diminished returns to self-insurers and making the WSMP scheme relatively more attractive, despite the fact that the WSMP scheme is less focussed on results.

Another common perception is that the Accredited Employer (self insuring) scheme is seen as a departure from the norm, (the WSMP being a discount on the norm) not as a viable alternative despite wide disparity in relative performances between accredited employers and the main scheme.

Differential responsibility for managing work and non-work injury an issue

There is plenty of anecdotal evidence illustrating the frustration felt by employers when they can get a work injured employee back to work promptly yet wait for weeks for a clearance for an employee injured elsewhere. This is particularly true of self-insured employers in the Accredited Employer scheme. Many employers are willing to take responsibility for non work injuries as well as for work injuries as their focus is on having the employee viably back at work quickly whatever the cause of the injury.

One of the possible root causes of this concern lies in the policy dichotomy between the Department of Labour (workplace focussed) and ACC (injury and illness focussed). A review of employers' ability to influence (particularly) rehabilitation of employees who suffer non-work injuries would be welcome.

Disease coverage a risk to the viability of the scheme.

An important change in recent years has been the expansion of guaranteed cover for a range of occupational conditions and disease and cover for mental and self-harm. The primary cost burden of these changes has been in workplace coverage, thus altering the cost structure for employers far more than for any other group. It seems timely to review the coverage of the scheme, and consider whether or not a realignment of cover with the central tenets of ACC should take place. Based on such a review, decisions can be taken on how to manage anomalies. Any review should bear in mind that expansion outside of the injury construct is a costly departure from the original concept of ACC as a comprehensive no fault cover for injury. In short, the present scope of cover threatens to make the ASCC scheme unaffordable.

Options

When the concerns expressed here are considered, a number of possible changes suggest themselves. Clearly these must be balanced with the overall costs and

benefits of change, including the costs of relocating responsibility in other hands. Nonetheless we have formulated a short high-level list of possible options, some or all of which we believe would have a beneficial effect on the focus, performance and costs of the scheme. In no particular order they are;

- Split regulator, insurer, provider
- Remove government from service provision and introduce a choice of providers
- (Re)introduce incentives for reduced injury rates and improved rehab times.
- Require levies to be set actuarially with no subsequent "fiddling"
- Manage the Residual Claims Account levy separately to standing levies, eg a task force to manage and reduce claims and return fit people to work. Review coverage of the tail and the funding sources required.
- Give SMEs the option of self-insurance.
- Review gradual process and occupational disease coverage and proof requirements
- Review DoL/ACC functions and the health system in relation to workplace coverage

You will note that we make no specific recommendations about the need for privatisation of the ACC system. We believe that questions about ownership of risk and delivery of services will be answered if the issues traversed above are addressed effectively. Nor is there any attempt to design specific models using the options suggested. These too would be products of the process of an effective process of consideration by the government.

To conclude, the existing structure and administration of ACC is of doubtful effectiveness. Recent reviews of the "books" support this view. Furthermore, changes to the main scheme will do little if anything to manage the burgeoning cost of fully funding the Residual Claims Account or stop it from growing. This letter focuses on identifying the need to change and providing some headings for possible elements of change. I hope these thoughts are of use, my team and I are very willing to discuss any aspect of them with you, and welcome an early opportunity to do so.

Yours sincerely

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 Business New Zealand