

PSA Briefing

to the incoming
Minister of ACC

November 2008



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Background

New Zealand's Accident Compensation scheme was implemented in 1974 but had its genesis under a National Government and was supported by both major parties.

The 'Woodhouse Report'¹ which served as the basis for the scheme recommended a publicly owned mechanism to deliver a comprehensive no-fault scheme to victims of personal injury by accident. The corollary of the no-fault approach was that the right to sue for damages at common law was to be relinquished.

The goals for the scheme that the report identified were the prevention of accidents, the rehabilitation of the victims and compensation for injury. The Woodhouse principles that underpinned the scheme were:

- community responsibility – everyone is to be looked after in recognition of the benefit to society from the productive work of its citizens
- comprehensive entitlement
- complete rehabilitation – “if the well-being of the workforce is neglected, the economy must suffer”
- real compensation
- administrative efficiency.

The cost of treatment was to be met and earners were entitled to a lump sum payment for incapacity and 80 per cent of their earnings until they could return to work.

The rationale for opting for a state mechanism with an exclusive mandate to administer a scheme of social insurance, over the use of private insurers included:

- concern about the private insurers' dual motivations of minimising liability and maximising profits
- the value of collectivising the responsibility of personal injury by spreading the costs throughout the community
- the heavy administrative costs of the private sector.

National Party Policy

National Party policy on ACC announced prior to the election was to reward employers with good workplace safety records (experience rating) and encourage employers to buy more than the basic cover.

With this in mind, National supports the introduction of competition and choice to the ACC Work Account (covering employees and the self-employed at work).

¹ Royal Commission of Inquiry. *Compensation for Personal Injury in New Zealand: Report of the Royal Commission of Inquiry*. Wellington, Government Printer, 1967.

The plan is to review the scheme to evaluate progress to full funding and identify areas of cross-subsidy or cost-shifting, and underfunding of newly legislated entitlements. It would also involve the investigation of opening the Work Account to competition.

This is very similar territory to that which National covered when last in Government.

The Accident, Rehabilitation and Compensation Insurance Act 1992:

- reduced benefits
- introduced the work capacity test which could lead to benefits ceasing even if there was no job to go to against which the claimant could be assessed
- introduced individual as opposed to community responsibility
- limited the amount and extent of rehabilitation that could be given to an injured person.

The Accident Insurance Act 1998 effectively privatised ACC. It required all employers to purchase accident insurance from insurers other than ACC for both work-related and non-work related injuries (other than motor vehicle injuries).

Experience rating

An experience rating approach is inappropriate in the context of providing accident compensation in the workplace. Experience rating is a concept from private insurance rather than social insurance, and ACC is a form of social insurance that derives its legitimacy from the Woodhouse principle of 'community responsibility'.

Unlike private insurance, where the events to be insured against and the potential size of the losses must be measurable and delineated clearly, workplace health and safety can be complex and responsibility hard to allocate. A social insurance model has the ability to respond to new and unpredictable work disabilities.

An experience rating also assumes that there is no cross-subsidisation, in order that costs can be sheeted home to those who are responsible for them. In a social insurance scheme based on community responsibility, cross-subsidisation should occur because, for example:

- one person's job often depends on another person's job making responsibility hard to allocate
- injury that occurs in one environment (e.g. work) might be aggravated or caused by an injury that occurs in another environment (e.g. sport).

In many cases neither the employer nor employee can influence the outcome. If employers can influence the claims experience, as encouraged under an experience rating, then it could lead to the kind of pressure on employees that was identified by the Blue Lotus research on the competitive model introduced in 1998 (see below).

Finally, it is at the very least unproven whether an experience rating would change behaviour². Much more than one year's experience is needed to make the judgement and the new rating may be inappropriate by the time it is given.

² For example, Campbell (1966) cit. Susan St John, *Community Responsibility: Paper to the CTU conference on rebuilding ACC and beyond 2000*. July 1999.

Opening up the Work Account to competition

An evaluation of the privatisation of ACC in 1998, which was conducted by Blue Lotus Research³ on behalf of the Department of Labour's Labour Market Research Group, found that:

- it created additional administrative burdens for all treatment provider types
- private insurers were reluctant to approve claims and were often late in honouring invoices
- providers considered that claimants knew very little about their entitlements, including the identity of the workplace insurer
- providers expressed concern that employers were placing pressure on their employees not to lodge claims for workplace accidents
- providers were concerned that successful application for coverage depended on approval by their patients' employers. If not forthcoming, providers frequently absorbed the costs of treatment.

The 'PricewaterhouseCoopers report'

In 2007, ACC Board initiated a wide-ranging evidence-based research project addressing three main questions:

1. Using the Woodhouse principles as a framework for evaluation, what value has the scheme delivered to New Zealand in economic and social terms?
2. What are the key issues that, over the next five to ten years, will impact on the level of return?
3. How can the Woodhouse principles be best implemented in order to maximise this return in light of those issues?

PricewaterhouseCoopers was selected to conduct the research in what amounted to a rare comprehensive stock take , which "...almost stands alone in international studies in terms of comprehensiveness, methodological rigour and attempt to capture intangible elements..." and which "...provides a benchmark for ongoing policy analysis and operational development".⁴

This was a quality report, the findings of which cannot be lightly dismissed.

The report, which was published in 2008⁵, found that:

- ACC provided considerable economic and social benefits to New Zealand
- due to its coverage of all injuries and no-fault nature ACC offers broader coverage than every other accident compensation scheme around the world
- compared with other workers' compensation schemes ACC performs well in terms of return to work (88 per cent of New Zealand workers return to work within six months compared to an average of 85 per cent in Australia)

³ Blue Lotus Research, *Evaluation of the Impact of Competition on Health Providers and Review of Treatment Costs: Research results for Labour Market Policy Group*. 2000.

⁴ Alan Clayton, *The PWC Report: Presentation to the ACC Futures Seminar*, Bracton Consulting, September 2008.

⁵ PricewaterhouseCoopers, *Accident Compensation Corporation in New Zealand: Scheme Review*, March 2008.

- the ACC employer contribution as a proportion of wages is substantially lower than in comparable Australian workers' compensation schemes (78c for every \$100 compared to an Australian average of \$2 for every \$100);
- ACC motor vehicle contribution rates are also significantly lower than all Australian states
- New Zealand has lower claims management expenses (eight per cent) than all Australian schemes (9 per cent to 32 per cent) and lower total administration expenses (24 per cent of total expenditure) than the scheme providing comparable benefits (NSW 28 per cent, Victoria 31 per cent)
- ACC's dispute rate of (0.2 per cent) of "other benefit" claims in the workplace is low compared to Australia, where the average is around nine per cent
- internationally schemes which feature high levels of periodic payments and provide a wide spectrum of defined rehabilitation entitlements (like ACC) are all delivered through government monopolies
- "The ACC under its current implementation structure performs as well or better than most other schemes we can observe around the world"
- "Despite competitive market pressures, comparative evidence from other jurisdictions suggest that administrative cost levels under private underwriting would be likely to rise to some extent"
- "...although contracting out of claims management may potentially offer some conceptual advantages, there is no clear evidence that this approach would improve delivery of the ACC employers' account".

The report's writers concluded that these observations "lead us to form a moderately strong view that a government monopoly is the best observable mechanism for implementing the ACC employers' account."

Impact on the workforce

Our members at ACC are involved in the effective delivery of a world-leading service. In 2005/06 they were responsible for, among other things:

- processing 1.7 million claims through 48 operational units
- ensuring that 1.2 million people had injuries treated by their local GP and paid for by ACC
- sending 17,000 letters a day to claimants, levy payers and health providers.

Our members have performed their tasks diligently but now face the prospect of losing their jobs through no fault of their own. The privatisation of the late 1990s had a significant impact on staff and we expect that the implementation of National Party policy would do so again. The decision that the Government faces is also about the lives of the conscientious workers employed by the corporation.

Our members want to be involved in the future of ACC and improving the quality of service it offers, rather than collecting an unemployment benefit.

Review of ACC

In a post-election meeting with the PSA, which was represented by National Secretary Brenda Pilott and President Paula Scholes, and the New Zealand Council of Trade Unions, which was represented by Policy Director and Economist Peter Conway, the Prime Minister assured the unions that he intended to undertake a thorough review before moving to implement National Party policy on ACC.

He indicated the scope of the potential risks involved with the policy and the need to evaluate them, leaving the unions with the clear impression that the Government would take a long and careful look at the issue before it decided whether to act.

While the PSA welcomes these assurances, we wish to make clear our strong support for the retention of ACC in its current form.

Conclusion

We strongly support the retention of ACC in its current form.

An experience rating approach to ACC can only be applied by overriding the Woodhouse principle of community responsibility. It is not proven that an experience rating system improves safety and there are real issues about whether it is workable in the context of workplace accidents.

Opening up the Workers Account to competition did not work in the late 1990s and there is no economic case for doing so now. The evidence from the PricewaterhouseCoopers report supports this view.

Our members are delivering a highly effective scheme to the public of New Zealand and implementation of National Party policy will have a significant impact on them. There is plenty of scope to improve the scheme, and our members want to be part of this, but there is no case for undermining the scheme as proposed by the National Party's policy.

The PSA welcomes the Prime Minister's assurance that there will be a full review of ACC before any decisions are made.