

The future of Accident Compensation (ACC)

PensionBriefing 2011-1

15 September 2011

A one-day ACC Forum: *The future of ACC*, was held on 26 August 2011 at the Owen Glenn Building, Business School, the University of Auckland. The event was co-hosted by the University of Auckland's Retirement Policy and Research Centre and ACC Group, the ACC Futures Coalition, and AUT's Centre for Occupational Health and Safety Research. This *PensionBriefing* provides a short summary of each presentation, with links to the slides, papers, and reading resources on the RPRC and ACC Group websites.

1. Introduction

On 21 December 2010, following controversial measures in 2009 and 2010 which were said to be "about stopping ACC haemorrhaging after \$7.2 billion in losses", the ACC Minister Nick Smith released the long awaited Stocktake and Financial Condition Reports on ACC. He claimed that reform of ACC was about improving "incentives for workplace safety; services for claimants; and affordability of levies".

Then on 1 April 2011, **experience rating** was introduced into the Work Account, the **Accredited Employers' Programme** was extended, and the **Disputes Resolution Service** was given greater independence. These steps, the Minister said, were "preparatory to introducing **choice in the Work Account** after the 2011 election".

The purpose of this Forum was to examine the Minister's claim that: "These reforms provide a fair and balanced way forward where accident claimants get proper care, rehabilitation and compensation, while minimising the costs to levy payers and fiscal risks for the Government."

The Forum in large part reflected a viewpoint that has been buried in the intensity of the insurance-based reform process. Despite the extent and range of the consultative documents and submissions, the options for the way forward have been driven by the apparent crisis over funding and subsumed in the insurance model. A critical appraisal of this policy direction has yet to be articulated clearly. [More \(slides\)](#)

2. Labour's position on the ACC

Chris Hipkins, MP, and Labour's spokesperson on ACC

New Zealand has the best accident compensation scheme in the world at a lower cost because of its no-fault basis and administrative simplicity. Despite these things, the ACC has been under attack in what has been a manufactured crisis.

The ACC is not insolvent but levies have increased and benefits have reduced. No case has been made for introducing competition and, for structural reasons, that is unlikely to work. Labour is opposed to experience rating, and to extending the Accredited Employer Programme (AEP) to small and medium employers. Labour will return to ACC's founding principles and reverse privatisation when elected. ACC is a social contract, not an insurance contract.

[More \(speech notes\)](#)

2. Historical context of ACC as social insurance

Susan St John, co-director of the RPRC and member, ACC Group

There are two opposing world-views of ACC – one that suggests it should act and be structured on the same basis as a private insurer. The alternative ‘founding’ view sees the ACC as an instrument of social policy and part of a social insurance framework. Private insurance and social insurance travel in opposing directions and the balance at the moment is in the direction of private insurer and this paradigm drives current ACC reform.

Is there a bridge between the two paradigms or does one direction preclude the other? Paradoxically, it seems as though Australia may be moving towards the original foundations on which the ACC was built. Are we going in the opposite direction to Australia, just as they are tentatively catching up? [More \(slides\)](#)

3. What has happened to ACC since the election?

Glenn Barclay, Convenor of the ACC Futures Coalition, and PSA policy advisor

Since 2008 ACC has taken a new direction with major changes affecting the large numbers of groups affiliated to the ACC Futures Coalition. Among the concerns is the removal of union representatives on the ACC Board, and their replacement by business interests.

Policy changes for ACC claimants and health treatment providers have taken place within a climate of panic and fear engendered by the manufactured crisis over the ACC’s finances. However driven by panic these policy changes may have been, they are consistent with one theme – a narrowing of the focus of the ACC: away from being “social welfare in nature and purpose”¹ to an insurance model, concerned primarily with cost saving and structured to support a shift to privatisation.

[More \(slides\)](#)

[More \(paper\)](#)

4. The case for a PAYG ACC

Michael Littlewood, co-director of the RPRC

The cost of any insurance programme (public or private) is the benefits paid plus administration. Pre-funding does not change the cost; only the incidence of that cost. Both pay-as-you-go (PAYG) and fully pre-funded schemes should cost about the same to administer so a comparison can focus on just the benefits.

Private benefit promises depend on the promisor’s financial strength so accounting standards (particularly NZ IFRS 4) say how the promisor must report on its benefit and other obligations. That is because the promisor might disappear. NZ IFRS 4 makes no exceptions for a public provider like the ACC despite the fact it will not disappear. The government is therefore a hostage to inappropriate reporting requirements.

A PAYG system would be transparent and simple to run, even if the ACC were partially privatised. A rolling, five year-smoothed premium calculation would give all the certainty that is needed; and \$12.8 billion of government debt could be repaid. Changes to public sector accounting are at hand; might the accountants now be listening? [More \(slides\)](#)

5. Commentary: Is there a happy compromise to full funding?

Bill Rosenberg, Economist and Director of Policy at the NZCTU

A detailed examination of the data suggests that the intergenerational equity argument for full funding shows few advantages, even with an ageing population.

¹ Sir Owen Woodhouse, Speech to the ACC Futures Seminar, September 2008 p. 4
http://issues.co.nz/library_images/accfutures/sir-owen-woodhouse_speech.pdf

The history of forecasting levy, claim, liability and surplus results shows levy revenue and claim costs are in general accurately forecast, however, there is a huge variance in the forecasting of liabilities and surpluses, leaving the fully funded scheme very open to attack. A PAYG scheme with a reserve of less than 12 months seems very viable. [More \(slides\)](#)

6. The 1999 experience of Work Account privatisation: Implications for litigation

Peter Sara, a lawyer specialising in ACC, and a member of Law Society's ACC Committee

Background: In 1998, the National government changed the ACC legislation to allow private insurers to provide work-related accident insurance from 1 July 1999. The 1998 Accident Insurance Act repealed the Accident Rehabilitation and Compensation Insurance Act 1992 and opened the competitive market for work-related injuries. The Office of the Accident Insurance Regulator was established to oversee the private market. The expressed rationale for this change was that it would create more incentives for employers to make workplaces safer and reduce the cost of injuries to society. With the return of the Labour government, the law was changed again in April 2000 to restore the provision of workplace accident insurance to ACC. From 1 July 2000, ACC was again the sole provider of accident insurance for all work and non-work injuries for all New Zealanders.

Results: There was no verifiable diminution in the rates of workplace injuries but there was an increase in the number of disputed claims for cover, often between the private insurers themselves. In a number of cases, workers did not see a focus on improving workplace safety. A culture of non- or under-reporting of workplace accidents developed instead. This had a toxic effect on employment relationships in many cases. Where claims for cover were made for work accidents, some workers experienced open hostility from their employers following a denial of responsibility initiated and indeed directed by the private insurers. The regulatory effect of the Office of the Accident Insurance Regulator was difficult to discern. Complaints to the Regulator were not welcomed and were not handled in a way to promote confidence that effective policing and supervision was being done. Consequently, more applications for review were generated.

Conclusion: The theory that private enterprise could achieve the core goals of the Woodhouse Report better than the ACC was not proven in practice. More not less litigation was generated.

7. The Stocktake report: implications and future thinking re privatisation

Mark Weaver, a partner of Melville Jessup Weaver Consulting Actuaries, and contributor to the 2010 Stocktake on ACC

The presentation gave an overview of ACC's different accounts and included figures used by the ACC Stocktake Steering Group in its review of the Work Account along with conclusions and key recommendations of the Stocktake Group are summarised. So how do the Stocktake's recommendations relate to the government's current proposals? Whatever decisions are eventually made, they must be cognisant of the fact that the ACC is the fifth largest financial institution in New Zealand; and any changes must be cemented in to achieve long-term, sustainable outcomes. The session closed with comparative performance results of the Accredited Employer Programme and ACC-managed claims. As noted during a subsequent discussion, while some of the results show remarkable differences in outcomes, they are based on sound and widely accepted methodologies. At the same time it was acknowledged that the Government may have chosen to be selective in the use of some of the work completed. [More \(slides\)](#)

8. Are the Government's proposals for privatisation of the Work Account set up to fail?

Peter Harris, policy analyst and consultant

The government is consulting on introducing private insurance as an option within the ACC Work Account. The ACC itself would remain a part of the market and would be the default insurer.

This falls well short of the ACC Stocktake Steering Group's recommendations proposing private insurance of workplace injuries, non-work injuries to employed people, and for motor vehicle accidents, but with no role for the ACC as a competitor.

The model being consulted on cannot work. Firstly, including ACC in the private market will double the size of the market overnight. That in itself is destabilising. Secondly, there are far too many unknowns in the regulatory regime to create sufficient certainty for potential market participants. Thirdly, the introduction of experience-rating will remove any trading margin that private insurers have to work within. And fourth: because the ACC does not have to pay tax or earn a return on capital, it will always be a more cost effective option for employers.

Government advisors acknowledge this and say that an expanded Accredited Employer Programme (AEP) and experience-rating is preferred to private insurance. So the 'market' will not get off the ground, or if it does it will fail. Will this kill the argument, or create grounds for market advocates to suggest that the government's proposal was too timid?

[More \(slides\)](#)
[More \(paper\)](#)

9. What is required for an Accredited Employer Programme to work?

Ian O'Keefe, the University of Auckland's Health, Safety and Wellness Manager

The AEP has advantages as well as challenges. The employer needs to have sufficient financial capacity and resources to manage work-related injury claims. In addition, suitable policies are required, along with processes that check and audit the Accredited Employer's responsibilities.

10 Accredited Employer Programme: A Provider's Perspective

David Wood, General Manager of WorkAon

Over 20% of the workforce is employed by employers who self-insure for workplace accidents through the Accredited Employer Programme. The AEP requires a higher standard of early intervention and contact with injured employees. It is in part a consequence of this approach that the average entitlement claim through WorkAon is \$7,200 while, through ACC, the average entitlement claim is \$25,000.

The entitlements provided through both ACC and the AEP are the same minimum entitlements, yet many of the self-insured employers provide more than the minimum. The Stocktake report indicated that the AEP achieved better outcomes than the standard ACC Work Account. So why does the AEP work, and if it seems successful, why are there so few Accredited Employers?

[More \(slides\)](#)

11. A union perspective: Effective Relationships – the roles of stakeholders

Todd Valster, Organiser for the Rail & Maritime Transport Union

The AEP depends on effective relationships and union participation to work well: it needs to be a 'partnership' programme. The partners in this case are the employer, the employees, and the union. There have been successes and difficulties experienced at KiwiRail, along with contractual arrangements with the Rail and Maritime Transport Union, and its Injury Management Programme.

In summary, the RMTU opposes the proposed extension of the AEP and the lowering of entry requirements to the AEP.

12. The CTU's view of the Accredited Employer Programme (AEP)

Bill Rosenberg, Economist and Director of Policy at the NZCTU

An analysis of ACC claims from the Stocktake Report highlights significant methodological issues that mean its results must be treated with caution. These issues include conflation of accidents

and claims; failure to consider the possibility of moral hazard and adverse selection by employers; and failure to distinguish between cost and quality of treatment. There is no evidence that the AEP is safer, and in fact standard employers showed faster improvement in claim rates and durations than Accredited Employers. By 2008/09, claim rates were lower for standard employers than Accredited Employers.

Accredited Employers also have “a higher propensity to test programme boundaries” with higher rates of declining claims. Standard employers had faster return to work, and better finalisation and re-open rates, all indicators of better rehabilitation. Standard employers had lower claim costs for all but weekly compensation, for which in some cases Accredited Employers spent hugely less. Questions are raised about quality of treatment and reporting of costs of claims. The conclusion is that a simplistic and inaccurate picture is being used to justify major change in expanding the AEP arrangement. [More \(slides\)](#)

13. Past experience in New Zealand. Rebates and penalties: are they effective, sensible or workable?

Susan St John, co-director of the RPRC

The concept of experience-rating follows from the insurance world-view of ACC. Our history is instructive. A theoretical examination of how rebates and penalties could work in the freezing industry highlights the arbitrary nature of such schemes. This is so even though this industry was potentially a very good one for experience rating as it is a high accident industry and had early 40 competing large firms of a similar nature. The timid rebate scheme of the 1980s that was actually implemented had little to do with safety.

Worryingly, in taking the insurance approach to accident prevention, ACC now funds injury prevention only if it is cost effective. Cost effectiveness for the narrowly defined ACC scheme is different to cost effectiveness for society. [More \(slides\)](#)

14. Occupational disease a mismatch with experience-rating

Karen Fletcher, NZCTU Health and Safety/ ACC Organiser

The workplace is a common source of occupational diseases.

The introduction of experience-rating this year is not a 'good fit' for allocating liability of occupational disease claims to any one employer. There are distinct issues that arise when managing occupational disease claims through experience-rating, and options for how occupational disease claims could be funded for the future. To make experience-rating operable, a narrow approach to what is covered is inevitable. All of these factors work against the best interests of the employee. [More \(slides\)](#)

15. Experience-rating and New Zealand's small and medium enterprises

Felicity Lamm, Co-Director of the Centre for Occupational Health and Safety Research, AUT

The proposed experience-rating framework has incorporated the No-Claims Discount Programme for small employers. This sector represents approximately 98% of the business population and about 65% of the workforce but suffers from a lack of business competencies and has a notoriously low level of compliance. The question is: why introduce experience-rating, given that there are inherent issues around small businesses?

There are also related issues, such as the rise of non-standard employment and increasingly diverse workforce as well as problems with inaccurate, unreliable injury data that will undermine the No-Claims Discount Programme for small employers. Moreover, the presentation argues that the application of experience-rating can provide the wrong incentive for employers and encourage the practice of hiding or redefining compensation claims. In Canada, it has had the effect of inciting employers to fight claims as the blame and costs are shifted primarily to the employer. Finally, it

undermines the advantages of the ‘no fault’ system in which the responsibility of the injury is borne primarily by the community. [More \(slides\)](#)

16. After the election: the Work Account, Motor Vehicle and Non-work Accounts

Kevin Hague, MP and the Green Party’s ACC spokesperson

National’s ‘reforms’ are not the result of some haphazard process or response to topical circumstances. They were planned well in advance of the 2008 election, in consultation with insurance companies. However, implementing the change agenda was probably slowed by Jan White (previous CEO of the ACC), and can be expected to accelerate under the new regime.

Should National lead a new government, its electoral fortunes will be represented as a mandate for sweeping change. ‘Competition’ should be expected in all accounts, not just the Work Account. However, the greatest brake on implementing the agenda may be cold feet on the part of insurance companies. The Greens oppose full funding and the privatisation objective.

17 The employers’ perspective: responding to preceding presentations

David Lowe, Manager Advisory Services for the EMA

There is a need for a link between the ACC and improving safety at work: why should safe employers subsidise unsafe employers? Also, the ACC is a monopoly provider and employers see a need for competition. To date, the ACC has been an ideological rollercoaster and that needs to change.

18. The ACC Concept

Sir Owen Woodhouse, principal architect of the ACC

The no-fault accident compensation scheme started on 1 April 1974 and was based on the findings of the 1967 Royal Commission on Compensation for Personal Injury in New Zealand chaired by Sir Owen Woodhouse. In his speech, Sir Owen reflected on the financial foundations of the ACC scheme as they were seen by the Royal Commission and what that might mean for today’s ACC.

The Royal Commission decided that the total of all premiums payable to ‘for profit’ insurers was probably enough to deliver full, no fault cover under a single, state-owned, welfare service. The obvious answer to the Commission’s ‘fifth principle’ of administrative efficiency is to collect each year what is needed to pay for benefits – that is ‘pay-as-you-go’. That avoids the complexity of calculations needed under a funded system. The ACC was intended to be ‘social-insurance’ but the first part of that description has been lost along the way. It needs to be restored and that would see a significant reduction in annual payments. [More \(speech notes\)](#)

Conclusion

This PensionBriefing draws together the work done by the Forum’s presenters. If we had to summarise the day, it would be that the very significant proposed changes to the ACC seem poorly founded and have been, to date, largely undebated.

The danger here is that New Zealand loses its way as a world leader in this field and that the primacy of prevention is lost in insurance techniques that purport to increase incentives to safety, but in practice are unproven in both New Zealand and other countries.

A further danger is that the ‘no fault’ system will be lost in the change process.

While there may be bridges built between the two paradigms for ACC, reflecting the best of each, many participants in this conference expressed the view that the process had shifted too far in favour of the private market insurance model.

The loss of multiparty support for the direction that ACC is taking does not bode well for a stable policy environment in the future. The risks to future stability spread beyond the narrower issues of prevention and rehabilitation of accident and injury. A participant at the conference, Professor

Jane Kelsey has warned that privatisation involving overseas insurance companies may be very costly if not impossible to reverse under recent and pending trade agreements.

Reading resources:

ACC Accounts Stocktake: [here](#).

Cabinet Documents: Next Steps on ACC [here](#).

Nick Smith, Choice in ACC to improve safety, rehabilitation & efficiency [media release](#) and [speech](#)

Increasing choice in workplace accident compensation [here](#)

Maori Experience of ACC: [here](#).

Annual reports, statement of Intent 2011-14, The financial conditions report, Other legislative requirements see [Reports and Strategy](#)

Levy Consultation 2012/13: (consultation closed) see [Levy Consultation](#)

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