



New Zealand Chambers of Commerce (Inc)

Submission on the Injury Prevention, Rehabilitation and Compensation Amendment Bill

November 2009

Introduction

The New Zealand Chambers of Commerce (Inc), NZCCI, is an umbrella organisation serving the interests of 30 Chambers of Commerce nationwide. These, in turn, represent over 24,000 businesses around the country. While many of our members are in the SME category our membership includes most of the largest corporations in New Zealand.

We welcome this opportunity to make a submission to the Transport and Industrial Relations Select Committee on the Injury Prevention, Rehabilitation, and Compensation Amendment Bill.

The NZ Chambers confirm their wish to be heard in support of this submission.

1. **Contact details for service:** Julie Cooke, PA to Michael Barnett, CEO of the Auckland Chamber of Commerce and Chair of the Management Committee of NZ Chambers of Commerce; Ph: (09) 302 9916, email: jcooke@chamber.co.nz or Fax: (09) 302 9919.

Background

2. The purpose of the Bill is to improve flexibility in the Accident Compensation Corporation (ACC) scheme including the extension of the date of full funding residual claims liabilities from 2014 to 2019, and to introduce a number of cost containment and monitoring measures.
3. ACC's 2008/09 Annual Report showed a loss of \$4.8 billion on top of a \$2.4 billion loss for the previous year. Over the past four years ACC's unfunded liabilities, i.e. the difference between its liabilities and assets, has grown from \$4 billion to \$13 billion.
4. The Chamber notes the different views on why taxpayers are being landed with massive ACC increases, but agrees with comments by ACC Minister Nick Smith when introducing the

Bill to Parliament that regardless of the reasons for this difference between ACC's liabilities and assets it is a significant and serious problem that cannot be ignored.

5. We concur that the underlying problem is that ACC has drifted from being a state insurer to a welfare provider and that changes are needed to address cost pressures resulting in annual levy increases well above the rate of inflation and to make the scheme more efficient – e.g. to encourage work accident victims to be able to return to work as rapidly as possible - sustainable and fair.
6. The changes in the Bill are part of a wider reform of ACC that includes a Stocktake announced in August with a terms of reference added in October to assess whether cost containment could be assisted by opening ACC to competition.
7. As submitted elsewhere,¹ in view of these initiatives – the Stocktake to look at options to give customers some choice over accident insurance, introduction of this Bill and ACC's proposed levy increases - the Chamber strongly recommends that the measures in the Bill be re-assessed when the findings of the Stocktake are reported to the Committee on whether and/or how the ACC scheme can be made more affordable and fair – and competitive.
8. The Corporation's drift from being a state insurer to a welfare provider reflects a soft management system over many years. A return is needed to a robust management system that fronts up and monitors annual core performance indicators demonstrating efficient case management, minimum time for clients to return to work, competitive and fair levies, efficient and transparent claims administration and accident rates reducing over time.
9. While we support the initiatives in the Bill to manage the payout system more efficiently and address a number of issues concerning fairness of entitlement, the Chamber believes that these are insufficient to address ACC's underlying problems. ACC needs to be returned to first principles that acknowledge market incentives and disciplines.
10. ACC's behavior in recent years is based around a culture of expectation it can increase levies to cover its costs. This is unacceptable. We need a change of behavior and culture within ACC to apply ongoing competitive pressure to its operation to constantly improve key indicators such as those identified above.
11. In our view a sheltered ACC monopoly cannot be expected to put anything like the energy and enterprise into finding ways to improving the value for money for its activities that it would have if the incentive of operating in a competitive environment was put in place.
12. The assessment of the Chamber of Commerce movement internationally over many years is that competitive insurance arrangements with minimal regulation best serve the interests of the public at large.

¹ Auckland Chamber of Commerce submission on ACC's proposed 20010/11 levy rates, 3 November 2009.

13. The only viable way to ensure that ACC delivers improved results year-by-year for reasonable prices is if it is opened to competition. Accordingly, the Chamber **recommends** that the Committee seriously investigate amending the Bill to provide for the opening up of ACC to competition.
14. The balance of our submission elaborates reasons why the Chamber believes that the introduction of competition to the ACC would benefit business and help address ACC's problems.

Benefits of Competition

15. Because ACC is a state monopoly insurer protected by a mandatory purchase requirement and therefore not subject to normal commercial disciplines that private sector insurers face in other areas, it cannot give credible assurances that it is providing value for money as there is no benchmarking with or test against market competition.
16. Instead, ACC's mandatory premiums make them effectively a tax, a perception reinforced by the administration of the scheme's premiums by Inland Revenue.
17. The benefits of competition are apparent from the last time competition was introduced when premiums declined by around 30 percent (and accident rates also reduced, as acknowledged by ACC).
18. For businesses, it is even more important to open ACC to competition. Currently, ACC sets a flat rate levy based on the risk in an industry. Those employers which have safe environments subsidise those who have unsafe environments, and there is little commercial incentive to create safer workplaces.
19. In contrast, in the private insurance market there is a system of no claims bonuses; that is, premiums are risk-based and reward 'best practice' aimed at accident prevention and mitigation. ACC, on the other hand, through its flat rate levy system forces the 'good' employers to subsidise the 'bad' ones.

Treasury support for opening Work Account to competition

20. The Chamber notes Treasury comment² that opening the work account to competition has a number of potential advantages including:
- Providing a benchmark for politicians when setting levies;
 - Economic gains through innovation and meeting actual needs;
 - Contestability obliging providers to share gains with purchasers;
 - Encouraging ACC to adopt consistent performance mechanisms (in contrast to the current inconsistent and unsuccessful mechanisms to control ACC's performance);
 - Success could enable similar gains in other accounts and/or other industries.

² Memorandum to Minister of Finance, 20 October 2009.

21. Because ACC's problems are predominantly in the earners and non-earners accounts rather than the work account, Treasury suggests that work account contestability would have little effect on ACC's cost pressures immediately, but adds that over time it may help to improve injury prevention and rehabilitation.
22. The Chamber notes that Treasury outlines two high-level options for designing a contestable work account:
- **Contestable claim management:** ACC retains the underwriter and investment functions. Employers appoint a claim manager from a list approved by the ACC as underwriter. Ministers would set levies; and,
 - **Full contestability:** Contestable underwriting, investment and claim management: employers would select an underwriter. The underwriter would manage in-house or appoint an investment manager and claims manager. The underwriter would set levies.
23. In order to retain the core no-fault objectives, under both options the Crown would need to set minimum entitlements and retain an element of risk. The Chamber urges the Committee to take particular note of Treasury's assessment that the net gains of **full contestability** are significantly positive in the critical service areas of: injury prevention, levy setting, claim acceptance, claim administration and optional top up, and neutral in all other key areas.
24. Accordingly, for the reasons set out above the NZ Chambers of Commerce **strongly encourage** the Committee to set an objective to investigate recommending the opening of ACC's work account to competition.
25. Clearly, continuing the status quo tradition of covering the scheme's rising costs by forcing all customers to pay substantial increases in levies regardless of their accident record has become unacceptable to many and therefore is a high risk strategy.

Some Points of Detail

Support for an independent claims mediator

26. The Chamber suggests that an independent claims review authority should be part of the package for opening the employers account to competition.
27. As noted above, in the short time ACC was subjected to competition in the 1990s, ACC's premium costs halved and there was a substantial reduction in claims. However, the scheme lacked transparency and a mechanism for claim review decisions to be independently reviewed, which was a factor that became an issue when complaints developed over claims being rejected.
28. Both the banking and insurance industries have an independent review mechanism, and which could be a useful template to develop a robust performance monitoring regime of private sector coverage of workplace accidents.

ACC's long-term success

29. Another area concerning ACC's performance the Chamber requests the Committee investigate relates to claims about the scheme's long-term success, and in particular the cause and effect between:
- New Zealand having one of the highest accident rates in the OECD group of countries, versus
 - New Zealand since 1974 being the only OECD country providing universal 24-hour no fault coverage for all physical injuries.
30. Our scheme may be 'unique' but it is patently not as efficient and effective as it should be. If it was truly a world-class scheme, by now you would think that other countries would have adopted it.

Building a long-term culture of accident prevention

31. The Chamber strongly believes that giving employers a simple choice on the insurer for workplace accidents – ACC or a private sector company – will maintain certainty for ensuring staff are fairly compensated and can get back to work as quickly as possible for the obvious reason that the terms and conditions of workplace coverage will still be covered by statute. We note that under the Treasury nothing will change on that count.
32. The Chamber also believes that opening the ACC to competition should help create better results from the ACC's preventative activities to reduce accident rates. This is for the obvious reason that when someone takes out insurance with a private sector company, the premium they pay is influenced by the level of risk in the activity and the number of claims. A good accident prevention regime will help reduce premiums and costs.
33. Arguably a big problem with our universal no-fault scheme is that there is no strong incentive to take committed action to prevent accidents – the ACC will pay regardless. Injecting some competition into ACC just might also help create an attitude change across the community to take greater responsibility to prevent accidents, and reduce our ranking for being accident-prone compared to other countries.

Concluding comments

34. In the Chamber's view, competition is critical to encouraging any insurer, including a government insurer, to serve the interests of the insured at least cost. If the insured can get cheaper rates elsewhere than ACC, they should be allowed to.

35. On the other hand, if establishment of a competitive work account model means that high risk workplaces start paying higher premiums and/or are required to improve workplace safety, then ultimately this should result in fewer accidents.
36. Finally, opening ACC to an element of competition would help address the ongoing concern that maintaining the ACC monopoly leaves the Government exposed to the charge of flying in the face of its own rhetoric that New Zealand is a modern competitive economy in virtually all other respects.

25 November 2009