NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

SUBMISSION

of the

New Zealand Council of Trade Unions

Te Kauae Kaimahi

on the

ACC Levy Consultation 2013/14

23 October 2012

Contents

1. Introduction

1.1. The New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) is the internationally recognised trade union body in New Zealand. The CTU represents 37 affiliated trade unions with a membership of over 350,000 workers.

1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Runanga o Nga Kaimahi Māori o Aotearoa (Te Runanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.

1.3. We have argued that the history of levy reductions demonstrates that extreme caution should be taken in setting levies and that a generous prudential margin should be allowed.

1.4. We have also noted previously that the cost of restoring fairness (both in terms of entitlements and the administration of them) should be factored into the projected ACC costs, in particular in relation to: the requirement in ILO Convention 17 that all necessary treatment should be provided for people who are injured in accidents at no cost to the injured person; and the requirement in ILO Convention 42 to provide the same compensation to workers incapacitated by occupational disease as is provided to workers incapacitated by industrial accidents.

1.5. The CTU has supported enhancements to the scheme such as: cover for a mental injury caused by exposure to a sudden traumatic event in the course of employment; changes to the provisions for work-related gradual process, disease, and infection, to provide more clarity around whether cover is available and how it is determined, and to remove some existing barriers to cover; changes that allow greater flexibility to amend the list of occupational diseases provided in schedule 2; removal of the age-limits for eligibility for vocational rehabilitation; and better compensation for seasonal workers. These changes are fully justified. For instance, we believe that the greater support for occupational disease treatment indicates that there have been and still are significant costs for workers who suffer from occupational disease. We are concerned at the loss of entitlements in the last three years.

1.6. While we support a generous prudential margin we do not support full funding to cover the lifetime costs of treatment and rehabilitation and have repeatedly expressed our concerns that its requirements had led to much higher levies than would otherwise be required. The scheme now appears suddenly to be in the position that full funding has almost been reached. Our concern is now that this is a result of the reduction in entitlements, more “black letter” administration of entitlements to the detriment of claimants and confidence in the scheme, and unduly rushed rehabilitation.

1.7. The CTU takes an interest in all of the ACC Accounts but in particular the Work, Residual and Earner Accounts.

1.8. Workplace health and safety is a core issue for unions and workers. In the context of ACC levies, reducing workplace injuries and occupational disease is not only a matter of safe workplaces and prevention of injury or death, but also a way to contain costs and hence levy increases. The tragedy of Pike River and the current Strategic Review of the Workplace Health and Safety System have highlighted the appalling state of health and safety in New Zealand workplaces, with injury rates twice that of Australia and over six times those in the U.K.

1.9. The CTU with the support of ACC is a major provider of workplace health and safety training. The primary motivation of this training is to reduce the numbers of deaths and injuries of workers. But effective training that can reduce the incidence of injury also contributes towards minimising the costs of accident compensation. Due to funding cuts, training has had to be reduced whereas in fact the need is for increased provision to reduce injuries.

2. Summary

2.1. We are very concerned at the continual reduction in spending on injury prevention. It should be substantially increased in the light of New Zealand's poor injury, and particularly workplace injury, record. If the reduction in the levy is justified, there is room for a generous increase in the provision for injury prevention. We recommend that it be returned to at least the 2005/06 level in real terms. Applied to the work account, this would increase the work account levy by only 1 cent.

2.2. While welcoming reductions in the levy, we have always taken the position that levies should be set at a level that ensures the scheme meets real costs of treatment, rehabilitation, and prevention, or to improve coverage or entitlements. We support levies being set at a level adequate to ensure the continuation of a strong accident compensation scheme. We are concerned that some of the lowered claim numbers, costs and rehabilitation rates being reported are at the cost of reduced entitlements, more legalistic and narrow interpretations of ACC's responsibilities, and additional pressures on claimants to return to work, sometimes to jobs that are unsuitable or lead to ongoing loss of income. We therefore do not support the reductions to the extent proposed.

2.3. Our opposition to full funding has in part been because it has increased levies unnecessarily and this would be exacerbated by the proposal to raise reserves to 115.5 to 117.5 percent of funding requirements (depending on the Account), and then operate within a band of between 100 and 135 or 140 percent of requirements. We do not consider that this additional margin is necessary given the substantial reserves which will be held under full funding and the government guarantee and oppose this change in funding policy.

3. Injury Prevention

3.1. We have stated our concern for several years now that given New Zealand's poor work injury record, the Corporation's spending on injury prevention is small and is steadily reducing.

3.2. The corporation appears to be taking a far too literal and short term interpretation of one of its "primary functions", to "promote measures to reduce the incidence and severity of personal injury" (s.263(1) of the Accident Compensation Act 2001). The requirement under s.263(3)(a) that "the Corporation must undertake or fund such measures only if (a) satisfied that such measures are likely to result in a cost-effective reduction in actual or projected levy rates…" clearly does not require a narrow approach, as is indicated by the fact that under s.263(2) it can undertake a wide variety of preventative activities such as research, campaigns, exhibitions, and the promotion of safety management practices which are unlikely to have identifiable effects on levy rates in any limited time period, but are likely to over a longer time. There are many such activities that need to be undertaken.

3.3. In 2005/06 spending on injury prevention was $41.4 million, and had fallen to $30.6 million by 2009/10. For at least the last two years its funding has been significantly underspent despite a miserly and falling budget. It was only $27.9 million in 2010/11 against a forecast of $29.2 million, and $23.0 million in 2011/12 against a forecast of $26.7 million. For 2012/13 it is forecast to be even lower: $20.0 million (p.5 of the Introduction to the Levy Consultation). That is a fall of more than half over seven years – and of approximately 58 percent in real terms (after inflation).

3.4. While noting that a nominal increase is proposed in spending on Injury Prevention in the Work Account for 2013/14, the increase is only 2 percent or zero in real terms (using Reserve Bank CPI forecasts).

3.5. Spending on Injury Prevention in the Partnership Programme is proposed to increase by 166 percent from $114,000 in 2012/13 to $303,000 in 2013/14, but this from a base which was less than half of its 2011/12 value of $232,000.

3.6. While we acknowledge that ACC does not have full responsibility for injury prevention in New Zealand, it has a vital part to play and is in a position to make a real difference in safety culture and behaviour. A significant increase in this expenditure is necessary to address New Zealand's poor safety record, particularly in the workplace.

3.7. Given the general decrease in levies proposed, there is ample room for an increase in injury prevention spending. We recommend that it be returned to at least the 2005/06 level in real terms. Applied to the work account, this would increase the work account levy by only 1 cent.

4. Work Levies

4.1. A significant reduction in the employers' levy for the Work Account is proposed. Average levies would fall from $1.15 per $100 liable earnings in 2012/13 to $1.00, or 13.0 percent in 2013/14 (excluding GST).

4.2. The part of the levy used to fund current year claims would fall by $0.25 from $0.84 per $100 liable earnings to $0.69 and that for the residual claims portion of the Work Account stay at $0.31.

4.3. Regarding the levy to fund the current year (2013/14) claims, $0.14 of the $0.25 fall to $0.84 is due to the "funding adjustment" being reduced to negative $0.11. This is the amount required to raise ACC's investment funds to the level required for full funding of all current claims. It is negative because of claims experience.

4.4. The part of the levy for funding the cost of actual new claims will increase by just 1.9 percent (from $0.54 in 2012/13 to $0.55 in

2013/14) though the original forecast for 2012/13 was for $0.59. The part used to fund “scheme costs” (including administration and injury prevention) will remain static at $0.19 and that for “incentive programme funding” (experience rating etc) will fall by 25 percent – a $0.02 reduction.

4.5. As already mentioned we are concerned that the reduction in levy is a result of increased rejection of claims and pressure put on claimants to return to work too quickly and/or to unsatisfactory jobs. Last year we documented our concerns extensively. They have been validated by our continuing experience and cases that have reached the news media and Parliament. This is a situation that may suit employers as levy-payers, but brings the ACC system into disrepute among its primary clients – claimants and potential claimants, many of whom we represent.

4.6. It is a situation that undermines trust in the system and is not socially or politically sustainable.

4.7. We therefore do not support the reductions to the extent proposed.

4.8. Last year we expressed our opposition to the proposal to build up reserves beyond what is strictly needed for full funding. In the case of the Work Account, it is now policy for reserves to rise to 117.5 percent of funding requirements, and then operate within a band of 100 to 140 percent of requirements. This is in order to ensure that there is a low probability of calls on funding, or unexpectedly low costs, taking reserves outside the band in any one year.

4.9. While we understand the risk considerations that have led to this policy, the additional 17.5 percent is in practical terms yet another unnecessary loading on levies. Running the large reserves that will be built up (and indeed are almost there) for full funding at between 82.5 percent and 120 percent of actuarial requirements would entail a tiny to vanishing risk of the Corporation running out of money (which is in any case guaranteed by the government).

4.10. The policy is in effect not far from having a reserve for pay-as-you-go funding on top of the reserve for full funding. It is excessive and we do not support it.

5. Extending the Workplace Safety Discount (WSD) programme

5.1. While we do not have objections in principle to this kind of programme which encourages improved management knowledge of safety, we suggest that given the review of workplace health and safety it would be better to thoroughly review this and the Workplace Safety Management Practices programme to ensure that they are

- as effective and ambitious as possible in encouraging improvements in workplace practices leading to reduced harm;
- of appropriate design and have strong enough requirements to be extended to all industries (in the case of WSD);
- optimally coordinated with the Health and Safety activities and priorities of the Labour Group in MBIE.

6. Earner Levies

6.1. The proposal is for the Earners' Levy to fall by 12.5 percent from \$1.44 in 2012/13 to \$1.26 in 2013/14 (excluding GST) for every \$100 of liable earnings. Again, the \$0.18 fall is due to a large fall in the funding adjustment, by \$0.20 – from \$0.26 (compared to \$0.18 forecast last year) to \$0.06. The part of the levy to fund new claims actually increases from \$0.90 to \$0.92 (though this is a reduction from last year's forecasts).

6.2. Reserves in this Account are proposed to rise to 115.5 percent of funding requirements, and then operate within a band of 100 to 135 percent of requirements (though the forecast is for them to peak at 114 percent).

6.3. We have similar concerns about the funding policies to those we hold regarding the Work Account.

7. Motor Vehicle Levies

7.1. The proposal is for the Motor Vehicle Levy to remain at $334.52. The portion to fund the cost of claims during the current year rises by 3.4 percent and that to fund scheme costs rises 3.8 percent but these are offset by a fall of 3.6 percent in the funding adjustment which is needed to build up the full funding reserve, and which costs as much as the funding of current year new claims ($120 each). The funding adjustment increased by 20 percent last year, showing the volatility in the calculation of this element. The motorcycle safety levy introduced in 2010 is unchanged at $30 and the petrol levy remains at 9.90 cents per litre.

7.2. Reserves in this Account are much further behind full funding than the other accounts, and are proposed to rise to 116 percent of funding requirements, and then operate within a band of 100 to 140 percent of requirements.

7.3. We again have similar concerns about the funding policies to those we hold regarding the Work Account.

8. Conclusion

8.1. We are strong supporters of the no fault ACC scheme and its principles of prevention, rehabilitation and compensation, and of it being one of the community responsibility mechanisms that government can provide and do so more efficiently than the private sector. We are concerned however at a number of the developments that are eroding these strengths and unnecessarily increasing both the level and potential volatility of levies.

8.2. We are particularly concerned at the aggressive approach being taken to claims entitlements and to rehabilitation.

8.3. We have also expressed concern at the reduction of funding for injury prevention.

8.4. We have noted that we believe the changes in funding policies proposed are unnecessary and costly.

8.5. We support reductions in levies, but not to the extent proposed given the concerns we have presented about rushed rehabilitation, denial of claims and underfunded injury prevention.