NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi

to the

Transport and Industrial Relations
Select Committee

on the

Accident Compensation (Financial Responsibility and Transparency) Amendment Bill

P O Box 6645
Wellington
2 July 2015

1. Introduction

1.1. This submission is made on behalf of the 36 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 325,000 members, the CTU is one of the largest democratic organisations in New Zealand.

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

1.3. The CTU strongly supports the no-fault Accident Compensation system. Until 2014 we made substantial submissions on the annual levy consultation (among other developments). In 2014 we decided not to do so for a number of reasons, but a significant factor was that the consultation process was a disrespectful waste of submitters' time. That was not in general a reflection on the Accident Compensation Corporation (ACC) itself which provided options and information as would be expected. The waste came at the end of the process: the Government was able to, and regularly did, override the Corporation's recommendation. Submitters' views counted for nothing.

1.4. We therefore guardedly welcome the change in consultation process proposed in this bill. However we still have some reservations.

2. Principles of financial responsibility and funding policy statement

2.1. We have opposed full funding because of the big increase in levies it generated as funds were built up, the volatility it introduced into the annual financial position (providing the cover of false crises which could be used to make unwarranted changes in entitlements and levies), and the fact that it could be used to ease the way to privatisation.

2.2. Now that full funding has been almost or completely reached and is a fact of life, we are concerned that it is over-funded in an unnecessarily cautious approach by the Board which builds up funds well past the level necessary.

The timespan the reserves need to cover and the ultimate backing of the Crown mean that the risks for this publicly owned Corporation maintaining reserves close to the 100% funded level are very low. We have commented on this in annual levy submissions to the Corporation. We therefore appear to share that concern with the Government.

2.3. The approach to levy setting proposed in Part 1 of the Bill is for the Government to set the rules for such matters before the Corporation recommends annual levies. The Government will do so in a Funding Policy Statement (cl 5, new s 166B). The Corporation, under amended s 331 (cl 6) must consult annually on new levies which give effect to the Funding Policy Statement and any other policy direction given under s 103 of the Crown Entities Act 2004. The consultation process otherwise remains similar to the status quo.

2.4. We submit that the Funding Policy Statement should be subject to consultation with the public just as is the actual levy setting.

2.5. However the Minister can still ignore the Corporation's recommendations. Section 331(5) of the Act still stands: "Nothing in this section obliges the Minister to accept the Corporation's recommendation or prevents the Minister recommending that the regulations prescribe rates of levies different from the rates recommended by the Corporation."

2.6. It is therefore not clear that submitters on proposals for levy changes are any further forward. At best it will narrow the choices that the Corporation has in making its recommendations. If the Government respects its own policy statement then it will also narrow the range of changes to the Corporation's recommendations that the Government may make. However a further problem with the proposed regime is that the Minister does not appear to be bound by his or her own Funding Policy Statement.

2.7. We therefore recommend that:

2.7.1. the Minister should also be bound by the Funding Policy Statement in making a recommendation;

2.7.2. that if the Minister's recommendation differs from that of the Corporation it should be accompanied by an explanation of the reasons for the differences and how it is consistent with the Funding Policy Statement; and

2.7.3. that this explanation should be made public at the time the levy rates are made public.

2.8. It is unclear how proposed cl 166A(2)(a) ("the levies derived for each Account must meet the lifetime cost of claims in relation to injuries that occur in a particular year") reconciles with cl 166A(2)(b). The latter requires levies to deviate from the principle stated in (a) if the reserves are in deficit or surplus. Clause 166A(2)(b) implies that in some years, the levies derived for an Account may fall short of the lifetime cost of claims in relation to injuries that occur in a particular year, contradicting (a). The Funding Policy Statement must also be consistent with these principles (cl 166B(3)).

2.9. We are at a loss to understand why cl 166A(5), which exempts a Funding Policy Statement from the requirements of sections 113 and 114 of the Crown Entities Act 2004, is required.

2.10. S.113 of the Crown Entities Act states:

> **113 Safeguarding independence of Crown entities**
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> (1) This Act does not authorise a Minister to direct a Crown entity, or a member, employee, or office holder of a Crown entity,—
>
> (a) in relation to a statutorily independent function; or
>
> (b) requiring the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons.

2.11. If the exemption is to allow the Minister to issue a Funding Policy Statement, then this exemption is far too broad. It allows favouritism towards a particular person or persons. If an exemption is required, it should be much more tightly specified.

2.12. A new s 331(5B) is inserted by cl 166C which specifies minimum information requirements to be provided in a report in relation to the rates of levies

prescribed. We welcome this report. We recommend that that information should include –

2.12.1. An assessment of the effect of any experience rating, including unwanted side-effects such as suppression of reporting of injuries or claiming injuries on the wrong account. We have long-held concerns about the effects of experience rating but there is little systematic evidence in New Zealand showing their effect, positive or negative. This would be an ideal opportunity to encourage the collection and publication of such evidence, and would inform future levy setting.

2.12.2. The degree to which the levies in each individual industry sector covers the cost of claims. Industries could be appropriately clustered for practicality but at a more detailed level for high risk and high hazard industries. We are concerned that accounting practices are being used to minimise levies (along with income taxes) in some sectors. In addition this would inform future levy setting for sectors.

3. Repeal of provisions relating to residual levies

3.1. While we understand the need for some flexibility in phasing out the residual levies for injuries that occurred prior to 1999, it raises an important underlying issue that will be aggravated if not addressed at the same time.

3.2. The residual levies fund a significant number of claims resulting from occupational disease. It is our longstanding view that the scheme is not currently adequately addressing the needs of New Zealanders suffering from occupational disease and the removal of the residual levies will further expose the problem.

3.3. From 1 April 2011 experience rating was introduced. This means the employer levy is adjusted according to the claims costs of the employer.

3.4. The experience rating model does not align with occupational disease because more often than not it is difficult (if not impossible) to attribute the claims costs to one particular employer. The long latency period and

cumulative effects of exposure which may have occurred at one or more workplaces make it very difficult to attribute an occupational disease claim to any one employer. Experience rating is therefore unlikely to provide employers with an incentive to improve their performance with regard to preventing occupational disease because a claim is unlikely to be able to be attributed to them.

3.5. It may also lead to employers resisting claims and undertaking costly litigation while doing little to improve their performance.

3.6. The CTU has as a result previously submitted that occupational disease claims should be funded by a separate levy imposed on all employers. The levy should be at a flat rate and immune from risk rating due to the difficulties in attributing occupational disease to a particular employer. All employers, including employers in the accredited employers programme, should be required to pay the levy.

3.7. The residual levy has in practice taken this shape for pre-1999 occupational disease claims. With all of the occupational disease claims being funded from the work levy when the residual levy goes, the probability of problems described above will rise.

3.8. We therefore submit that before the residual levy is finally discontinued, a special account for occupational disease claims be established, funded by a flat rate levy on all employers including those in the accredited employers programme. This is not intended to raise additional funds (though a case could be made for additional funding): it would be fiscally neutral.