



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

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

to the

Accident Compensation Corporation

on the

ACC Levy Consultation 2016/17

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Summary of recommendations

1. That with the removal of the residual levy, the poor fit of the current levy regime to covering occupational disease becomes especially urgent and should be reviewed. 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. If necessary the removal of residual levies should be delayed in order to put this into place.
2. Rather than cuts in work account levies, the available funding should be used to restore and enhance entitlements under the scheme.
3. We support the decision not to use age to calculate the Earners' levy rate.
4. In welcoming a proposed increase in Injury Prevention funding in the Work Account in 2016/17, we urge the Corporation to take a broad view of its duties in funding injury prevention and not take a narrow interpretation of the criteria for funding. As by far the best-endowed funder of injury prevention, the Corporation has a crucial role and should review its policies to this end.
5. We strongly recommend that as soon as possible the Corporation evaluates experience rating for its effects on incidence rates of injury and harm, and its adverse effects for workers.

6. A different approach to levying the Labour Supply Services classifications should be considered. Levies should match the actual work done by each employee and include a loading for the increased risk in this kind of relationship. A convenient way to manage it may be for the cost of the labour hire to be regarded as liable earnings paid by the receiving employer and levied according to its classification.
7. We cautiously support the proposed funding policy as stated but have asked for greater clarity and public consultation once the full policy has been drafted.

1. Introduction

- 1.1. This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 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. We have longstanding concerns about experience rating, employer self-cover (the AEP scheme) and the need to restore fairness in terms of both entitlements and the administration of them in projected ACC costs. This is 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.
- 1.4. Previous 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 were fully justified. We remain concerned at the loss of entitlements in the last six years and consider that they should be restored and the scheme further enhanced.

- 1.5. We are also very aware of how volatile the Corporation's apparent financial position can appear. Changes in investment valuations and returns and changes in discount rates all have the ability to create major variations in its paper position from year to year and even over shorter periods. In the recent past that has been used to justify higher levies, increased pressure on claimants and reduced entitlements. We welcome a better defined funding policy if it addresses these issues.
- 1.6. The CTU takes an interest in all of the ACC Accounts but in particular the Work, Residual and Earner Accounts.
- 1.7. 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. Both the tragedy of Pike River and the Independent Taskforce on Workplace Health and Safety have highlighted the appalling state of health and safety in New Zealand workplaces. ACC is intimately involved in the implementation of the recommendations that the Government has accepted. We urge the Corporation to ensure its actions go beyond the current predominant focus in injury prevention of reducing the costs of claims, although of course any reduction in injury and occupational disease will lead to savings to ACC and the health and welfare system more generally.
- 1.8. 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. We have concerns as to the future funding of the training of health and safety representatives which is even more important under the new legislation.

2. Residual levies

- 2.1. We have no comment on the changes proposed to discontinue residual levies given that it is mandated under statute, but we repeat the concerns we expressed when submitting on the Accident Compensation (Financial Responsibility and Transparency) Amendment Bill with regard to this matter. The removal of these

levies for injuries that occurred prior to 1999 raises an important underlying issue that will be aggravated and requires addressing.

- 2.2. 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.
- 2.3. From 1 April 2011 experience rating was introduced. This means the employer levy is adjusted according to the claims costs of the employer. 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. It may also lead to employers resisting claims and undertaking costly litigation while doing little to improve their performance.
- 2.4. 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.
- 2.5. 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.
- 2.6. While we acknowledge that the present consultation process does not ask for comment on this matter, we urge the Corporation and Government to address this matter and if necessary delay the removal of residual levies. Our recommendation is to do so by establishing a special account for occupational disease claims, 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.

3. Proposed Work and Earners' levies

- 3.1. We have no substantial comment to make on the Work and Earners' levies proposed as the Government is still operating under rules that allows it to over-ride Corporation recommendations. It has already announced cuts¹, prejudicing this consultation.
- 3.2. Rather than cuts in levies, the available funding should be used to restore and enhance entitlements under the scheme.
- 3.3. We support the decision not to use age to calculate the Earners' levy rate. We strongly believe that as far as possible the ACC system should be a universal entitlement which is due to all New Zealand residents on the basis of social solidarity. The more levies and conditions are differentiated, the further the scheme moves from this important principle.

4. Injury Prevention

- 4.1. We have been provided with additional information on funding for Injury Prevention which was partial and confusing in the consultation documents. We are pleased to see a proposed increase in Injury Prevention funding from \$17.2 million in 2015/16 to \$20.4 million in 2016/17 for the Work account, and indeed increases for all accounts with the total going from a forecast \$50.6 million to \$60.0 million for 2016/17. However, according to the Corporation's 2014 Annual Report in 2013/14 the total \$40 million budget was severely underspent at \$34.0 million. While the underspending was all in the Motor Vehicle account, some could have been reallocated to programmes in the Work account. The 2015 Annual Report again shows spending substantially under budget with the Work Account spending \$12.4 million compared to \$16.4 million budgeted, and a total of \$30.0 million spent against a budget of \$50.4 million. We also note that a total of \$50.6 million is planned for 2015/16 which is less than planned for that year as notified in the 2014 consultation.
- 4.2. This does not leave us with confidence that the forecast injury prevention spending will actually come about. Consulting on amounts that bear little relationship to actual results is misleading.

¹ E.g. "ACC starts consultation on proposed \$450m levy reductions for 2016/17", by Sam Sachdeva, 1 October 2015, available at <http://www.stuff.co.nz/business/72594097/acc-starts-consultation-on-proposed-450m-levy-reductions-for-201617>

- 4.3. We urge the Corporation to continue to increase the injury prevention spending to ensure it is fully used, and to take a longer term view of the benefits from this spending. We are unconvinced that the returns on investment calculated for various interventions in work-related injury prevention are always robust, nor that they are always able to be robust. Therefore expert judgement is needed to make choices of interventions. A broader range should be allowed. They have an important place in reducing New Zealand's totally unacceptable toll of work-related harm, injury and death.
- 4.4. In the past, the Corporation has taken 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).
- 4.5. We urge the Corporation to take a much broader view.
- 4.6. The requirement under s.263(3) 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.
- 4.7. As by far the best-endowed funder of injury prevention, the Corporation has a crucial role and should review its policies to this end.

5. Experience rating

- 5.1. We have no comment on the proposed changes to loadings etc for experience rating.
- 5.2. We have frequently expressed our concern that experience rating and self-funding have side effects which adversely affect health and safety in workplaces due to pressure not to report harm, and can lead to workers being pressured into not claiming, not receiving their full entitlements, transferring the claim to another account, or returning to work earlier than is good for their health. See for example our 2013 submission to the levy consultation. Experience rating has now been in place for four years (since 2011).

- 5.3. We therefore strongly recommend that as soon as possible the Corporation evaluates experience rating for its effects on incidence rates of injury and harm, and its adverse effects for workers.
- 5.4. We note from the Corporation's 2014 Annual Report (p.40) that the Experience Rating programme appears to be underperforming in reducing claims (though no distinction is made between injuries and claims to enable understanding of whether injury rates are falling at the same rate as claim rates):

During 2013/14 ACC achieved a 0.6% per annum greater claim reduction amongst employers who had participated in injury prevention programmes compared with employer peer groups not engaged in these programmes. This was against a target of 5%. The measure was not achieved, despite more employers participating in the Experience Rating claims-reduction programme than we expected. Further investigation is needed to identify the drivers of claims performance in the Work Account.

6. Levy classification and levy risk groups

- 6.1. We have no comment on the changes proposed to names of the *Catering services*, and *Labour supply services (on-hired staff, non-office work, including up to 30% office work)* classifications. Nor do we have comment on the changes to the placement of the *Potato crisps and corn crisps manufacturing*, the *Cured meat and small goods manufacturing* and the *Sport and physical recreation - squash or badminton* classifications.
- 6.2. However we suggest that it is time that a different approach to levying the Labour Supply Services classifications is considered. Workers employed by "temp" labour hire agencies can be working in a wide range of industries with very different risks. The risk is increased by the facts that temp agency employees will frequently be new to the workplace, which is known to increase the risk of accidents and harm, and that the lines of control and responsibility can be blurred in this triangular relationship where the legal employer is the temp agency (which has little knowledge of the workplace) but control and de facto management is by the firm receiving the worker (which has little incentive to carry out proper orientation). Neither have incentive to provide sufficient training. Levies should match the actual work done by each employee and include a loading for the increased risk in this kind of relationship. A convenient way to manage it may be for the cost of the labour hire to

be regarded as liable earnings paid by the receiving employer and levied according to its classification.

- 6.3. This would go some way towards addressing the recommendation of the Independent Taskforce on Workplace Health and Safety that levies should be redesigned to align with PCBU duties as expressed in the new Health and Safety At Work Act.

7. Proposed funding policy

- 7.1. The proposed funding policy as described is:

- Accounts will have a funding solvency midpoint target of 105%
- levies will be based on new year costs with an adjustment to return or collect any surplus or deficit in the Accounts over the next ten years
- the annual average levy increase for any Account will not exceed 15%.

- 7.2. We have been informed by the Corporation that this not the full policy, which will be drafted after consultation. We object to this process: consultation should be on the full wording of the proposed policy so its full implications can be understood as well as possible. A full consultation should be undertaken once the policy has been drafted.

- 7.3. We support a lower target than those in earlier years of 110-120% (and bands as high as 140%), which we strongly opposed, so regard 105% as heading in the right direction. However we submit that the target should be 100%. There is little risk in this, given the size of the various funds and the fact that the Crown stands behind the funds. If the concern is that it would go below 100% from time to time, that is also true of a 105% target. The 100% line is to a degree an artificial one as long as the Corporation remains well within solvency needs.

- 7.4. The policy as stated does not provide a band around the 105% target. On inquiry, we have been informed by the Corporation that there will be a funding range of 100% to 110% which on the face of it seems feasible. We understand that any shocks to a fund, such as a major disaster or a significant change to entitlement policies, are unlikely to have a material impact on ACC and will not in general be funded in advance. Instead they will be left to be worked out over the next ten years, though the Government could still override levy rates recommended under the

funding policy, or change the funding policy. While sometimes that may be appropriate, at other times it may not. If the intention is to review the policy each time such an event occurs, then the objective of stability in levies would be less credible.

- 7.5. We do not have a strong view on the precise period of adjustment (10 years) but consider that in general longer is better. We would support a lower cap on annual increases in levies of 5% compared to the 15% proposed. We believe that stability in levies is important to depoliticise levy-setting by the Corporation and to maintain public support for the scheme. A lower cap also makes it less tempting to misuse levy setting for fiscal and political purposes.
- 7.6. In making these comments however we would strongly oppose any funding policy that in practice got in the way of funding greater entitlements should a Government in future decide to make them available.
- 7.7. We are also concerned that the Government will still have the ability to override this policy in making final levy decisions.

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 changes by the Government and the Corporation that have eroded these strengths and unnecessarily affecting both the level and potential volatility of levies.
- 8.2. We cautiously support the funding policy as described but have asked for greater clarity and further consultation on the full policy.
- 8.3. We urge the Corporation to address the poor fit of the current levy regime to covering occupational disease which has been made especially urgent with the abolition of the residual levy.
- 8.4. We also urge the Corporation to take a much broader and more generous view of its role in work-related injury prevention.
- 8.5. We have also asked for reconsideration of the way that labour hire classifications are levied.