

Submitter information

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New Zealand Council of Trade Unions

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Proposed changes to ACC's Accredited Employers Programme



Te Kauae Kaimahi

This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 300,000 members, the CTU is one of the largest democratic organisations in New Zealand.

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.

This submission

We have provided answers to the questions on the specific proposals below, using the template provided. However, given the need for significant changes to how the Accredited Employers Programme (AEP) operates, and in the absence of its abolition, we have also taken the opportunity to provide broader feedback regarding the AEP for the Minister and MBIE.

Although we consider that the proposals in the consultation document would be a slight improvement on the status quo, they will not overcome the shortcomings of the AEP and risk being a façade of addressing the issue that is the AEP.

We recommend that a more fundamental evaluation of the AEP is undertaken. Further work is necessary to:

- Address the underlying systemic barriers to worker engagement and union representation;
- Make improvements to workers' experience of the claims and/or rehabilitation processes; and
- Improve outcomes for injured workers.

A brief introduction to some of these issues is provided below. Recognising that this consultation is limited to the proposals outlined, we will prepare a fuller submission from the union movement outlining the systemic issues that need to be addressed should the AEP continue.¹

¹ ACC have also collated extensive union feedback on the specific issues with the AEP.

Proposed changes to ACC's Accredited Employers Programme

The fundamental issue at the heart of the Accredited Employers Programme

It is our view that the AEP continues to deliver worse outcomes for workers than ACC. The scheme itself states that the underlying premise of the AEP is that *“employers may be able to provide a better and more efficient experience for injured workers than ACC”*. The union perspective, based on the lived experience of our members, is that this is simply not what is happening.

The AEP too often fails the workers who are captured under the scheme. At the heart of the issue is putting businesses ‘into the shoes of ACC’ and allowing them to make decisions on cover and entitlement for workers. This dynamic puts businesses in a position where they receive both a significant levy discount and can effectively manage their financial liability for claims and entitlements by being the decision-maker.

Because of this, businesses fail to consider the broader social imperatives necessary in the management of workplace-injury cover and rehabilitation: the AEP is viewed as a significant cost-saving measure; looking after injured workers seems to be a secondary consideration.

The AEP also further entrenches workplace power imbalances. It is difficult for workers to challenge decisions on claims and injury management when the decision-maker is also their employer. Workers feel unable to push back on poor (and often legally incorrect) practices in the management of their injuries without fear of reprisal. This also applies to engaging in AEP assessment processes.

Without a union representative, these issues are compounded. Injured workers’ financial security should not be a factor in their rehabilitation, and while this is an issue in the wider ACC scheme, it is made worse in the AEP.

Although most of the proposals outlined in the consultation document suggest a good start, there are many fundamental issues with the AEP that need to be addressed. Input from our affiliated unions suggest that although the proposed changes seem positive, in practice they will not result in any substantive change from AEs.

We therefore recommend that a more fundamental evaluation of the AEP is undertaken. The AEP should only continue if there is compelling evidence that it is providing a better and more efficient experience for claimants. In the absence of this evidence, the AEP should be abolished.

As noted above, we will prepare a fuller policy submission to make MBIE aware of the broader systemic issues with the AEP.

Proposed changes to ACC's Accredited Employers Programme

Product Proposals we are seeking your views on

Questions on Proposal 1: Implement new health and safety assessment requirements

General feedback	<p>1. Do you support the proposed new health and safety requirements, or would you prefer one of the other options? Why/why not?</p> <p>We would generally support the use of Safeplus as a tool. We do not support the use of ISO 45001 as a tool.</p> <p>As an international standard, ISO 45001 fails to effectively capture the requirements of 'engagement' with workers required in the New Zealand H&S system, opting for a lower standard of 'consultation'. ISO 45001 is therefore a much lesser tool than Safeplus as regards requiring worker engagement.</p> <p>Under the Health and Safety at Work Act (HSWA), decisions regarding health and safety management systems require worker <i>engagement</i> not just 'involvement'. The engagement provisions outlined in the HSWA are specific and prescriptive, and there is a risk that a person conducting business or undertaking (PCBU) can obtain an ISO 45001 certification without meeting their legal obligations under the HSWA.</p> <p>Notwithstanding the choice of an external tool as a requirement, we note that this proposal will not address the underlying issue of barriers to effective worker engagement, participation, and representation (WEPR) in the workplace.</p> <p>We support the inclusion of injured workers in the focus group process. Strengthening provisions to ensure that focus group participants are not selected by the AE, and that unions have a right to join the focus groups, will help ensure that proper free and frank feedback is provided.</p> <p>Regarding focus groups being included in the external annual assessment in Proposal 2 – please see the comments about ensuring that assessors have 'fresh eyes' in the feedback on Proposal 2.</p> <p>2. What benefits and/or risks do you see if ACC adopts external health and safety management assessments? Why?</p> <p>Poor practices, particularly around WEPR, will continue to be glossed over on the basis that they may not appear in the self-auditing reports.</p> <p>As above, ISO 45001 can undermine proper worker engagement. There has been union experience where requests to PCBUs to engage on matters impacting the H&S of workers they represent are declined on the basis that "we don't need to, we are compliant with 45001".</p> <p>Unions suggest that practice will remain but will now have a standard tick.</p> <p>3. What impacts do you expect when an AE adopts one of the proposed tools?</p>
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Proposed changes to ACC's Accredited Employers Programme

	<p>In the absence of additional supporting requirements, we do not expect that there will be any changes to AE practices, even if required to adopt one of the proposed tools.</p> <p>4. How would these changes impact on your participation in the Programme?</p> <p>N/A</p> <p>5. If you don't support any of the options, what alternatives do you propose?</p> <p>Use of the Safepus tool in addition to measures to ensure workers and their unions are able to provide input.</p> <p>Evidence of system co-design between employers and workers and their unions.</p>
<p>Worker engagement feedback</p>	<p>1. Do you think the proposed changes will improve worker engagement in health and safety? Why/why not?</p> <p>No more than surface level improvements, as above. The AEP is currently 'owned' by ACC and Accredited Employers. These entities govern the scheme and determine how it functions. It is not a partnership with workers and workers are marginalised within the scheme.</p> <p>2. Do you think the proposed changes will improve worker outcomes? Why/why not?</p> <p>We are not confident that this change alone will improve outcomes for workers, because proposed business practices will remain the same with the addition of the standard tick.</p>

Questions on Proposal 2: Strengthen the assessment of Claims and Injury Management

<p>General feedback</p>	<p>1. Do you support the proposed changes to C&IM? Why/why not?</p> <p>We support the changes to improve greater anonymised data for assessing management. More detail on what this will include would be useful, as would ensuring that unions present are able to feed information into the holistic picture.</p> <p>Importantly, the potential efficacy of the proposed changes is reliant on the content of the questions used for data capture and those considered by assessors. Standardising inquiries to elicit a body of anonymised responses may suppress identification of issues with a particular AE/TPA whose eventual 'outcomes' may seem adequate but whose claims management process has caused avoidable physical, emotional, and financial stress to the claimant.</p> <p>For instance, some AEs who use TPAs fail to implement cover decisions and extend entitlements to claimants who ACC had accepted before handing the claim over to the AE. These workers are left in limbo while the AE 'investigates' if they will accept there was a workplace injury.</p>
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Proposed changes to ACC's Accredited Employers Programme

Similarly, some AEs and TPAs regularly delay decisions on simple sprain/strain-type injuries that ACC would automatically cover, adding financial and emotional stress for the injured worker. They also may appear to meet timeframe requirements by issuing 'provisional' decline decisions. These placeholder decisions effectively delay access to entitlements and extend the uncertainty for the claimant beyond the legislative timeframes for decision making. We see these delays occurring against the advice of the TPA at times.

Another example is an injured worker whose specialist requires a particular aid be provided post-operatively and whose AE takes three weeks to agree. The 'outcome' appears satisfactory, but the delay should not have occurred.

Finally, we regularly see claimant calls unanswered by case managers, requests for information not actioned in a timely manner, and correspondence that is uninformative. File assessments need to capture these kinds of behaviour by TPAs and AEs.

Injured worker and union input is vital to raise issues that do not show up in a claim file review. For example, some AEs direct injured workers through their H&S procedures rather than the injury claims process, resulting in delays in claim lodgement which can prevent or further delay access to weekly compensation, treatment, and other entitlements.

We agree that there needs to be better requirements around 'fresh eyes' for assessments; however, as outlined below, this needs to be strengthened significantly. Assessors are there to ensure good practice; they should not have a commercial incentive to provide AEs with good reviews.

We do not agree with less frequent oversight/monitoring by ACC based on performance. For continuous improvement, having AEs continue to be accountable and provide open and honest reporting to ACC needs to remain on a consistent basis. ACC needs to remain satisfied on a consistent and ongoing basis that an AE's performance is *"a better and more efficient experience for injured workers"*.

Overall, these proposed changes are positive but will not address fundamental issues in the AEP.

2. If you don't support these changes, what alternatives do you propose?

Union and other representative/worker involvement in the design of the questions used to capture data.

An ability for unions and claimants to nominate files for assessment and to articulate why the file requires scrutiny.

Provisions to allow union input and oversight of the processes and audits.

A programme of education for employees of AEs to ensure, prior to injury, that they understand the claims management pathway and their rights and avenues for complaint. This could perhaps be made more widely available in the form of an addendum to the H&S Rep section of the NZQA Framework. This should be co-designed to ensure relevance and quality. It would go some small way to alleviating the additional power imbalance faced by employees of AEs when they are injured.

Proposed changes to ACC's Accredited Employers Programme

	<p>The 'fresh eyes' requirement, meaning that AEs are provided an assessor randomly from the panel and that assessors cannot assess the same AE in consecutive years. Workers/unions should make the decision on assessors jointly with the AE.</p> <p>Stronger and more dynamic assessment of TPAs. TPAs must be audited and assessed independently from the AE that they work for. Assessment and compliance must remain at a high level regardless of an AE's scoring in assessments.</p>
Worker performance feedback	<p>1. Do you support the proposed changes to C&IM from a worker perspective? Why/why not?</p> <p>It is currently unclear how a move to a performance-based focus for assessments will result in continuous improvement of AEs, where better performance results in a more hands-off approach from ACC (and potentially for longer periods of time).</p> <p>Changing the assessment metrics to 'meeting/not meeting requirements' to remain an AE sounds like a positive approach; however, the proposal document is unclear about any improved mechanisms to exit AEs from the scheme who are in the 'not meeting' category.</p> <p>Given that workers receive no real benefit from being in the AEP or not, any AE performance that isn't better than what workers would receive if ACC was looking after their claim should lead to serious consideration about whether that AE should remain in the AEP.</p> <p>The proposal to enhance the focus groups conducted by the external assessor needs to be strengthened significantly to ensure that the exercise accurately captures worker perspectives. A serious barrier to proper worker engagement here is employer cherry picking of participation and the lack of union insights.</p> <p>Inherent power imbalances in workplaces also prohibit workers from being able to fully participate without fear of retribution from their employers, particularly if their claims are still open. Making provisions to enable (and require) direct feedback from workers and unions into the assessment would therefore help to achieve 'true' worker feedback.</p> <p>2. Do you think that the proposed changes will improve worker satisfaction with how claims and injuries are managed in the workplace? Yes/no; Why/why Not?</p> <p>In isolation from measures to make improvements to how workers can participate, it is likely that satisfaction levels will remain the same.</p> <p>Workers suffer enormously when left unfit to work and without weekly compensation for sometimes very lengthy investigation periods. We routinely see the stresses caused by delays in claim decisions; these delays also impede recovery for injured workers. Workers are often forced back to work too early because of employer or financial pressures. This is strongly counter to the intent of the Accident Compensation Act (ACA).</p> <p>We regularly see AEs and TPAs start to investigate a surgery request and then, after 2-3 months, realise the claim has reached the end of the claim management period and so should be transferred back to ACC. Inefficient transfer processes result in delays of many months from the time the surgery request is made to when ACC</p>

Proposed changes to ACC’s Accredited Employers Programme

	<p>starts the surgery investigation. Throughout this time, the injured worker receives limited or no communications, adding to the stress of their situation.</p> <p>The permissive provisions in the legislation for cover decisions to be made are part of this – but only because the timeframes under the ACA are used as a target for actions to be taken, rather than outer limits that should be reached on only rare occasions. Claims should be scrutinised for unnecessary delays.</p> <p>An AE may have access to sensitive personal information including previous medical history, and we question if sufficient restrictions are imposed for the sharing of that information with other employees. Medical information gathered for claims management purposes may also be applied in employment processes. TPAs seem wedded to a singular form of written authorisation to obtain information and, unlike ACC, are less accommodating of requests for case-by-case authorisation to be obtained. This is a disparity that disadvantages AE employees who are more vulnerable to misuse of their information. There needs to be continuous scrutiny of such abuses.</p> <p>Co-design of the assessment tools is essential to ensuring positive outcomes from the proposed changes.</p> <p>3. Do you think the proposed increased employee representation will improve C&IM?</p> <p>As above, given WEPR is an integral aspect of proper H&S, and that worker wellbeing and recovery must be central to any workplace injury management processes, increased employee representation should make improvements.</p> <p>However, this is contingent on employees being empowered to participate from a well-informed basis and without risk of employment consequences. Co-design, drawing on union members’ experience, will help address such concerns at the formative stage.</p> <p>Input from our affiliated unions who represent members in AE sites suggests that the proposals do not go far enough to make a difference to how AEs will continue to operate (see, e.g., the PSA submission). The proposal should therefore be strengthened significantly to ensure meaningful WEPR, union involvement, and the provision of necessary information to workers and their unions.</p>
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Questions on Proposal 3: Performance Monitoring

<p>General feedback</p>	<p>1. Do you agree with the proposed changes to performance monitoring of AEs, or would you prefer one of the other options? Why/why not?</p> <p>With the current performance of the AEP, we would question the decision to introduce even bigger AE incentives with bigger levy discounts for a longer period of time. The current model of providing significant levy discounts is not returning the improved performances envisaged; we fail to see how more of the same will create positive change.</p> <p>That said, we support up-to-date, tailored performance monitoring on the basis that the information is accessible to workers and unions. Giving workers and unions the ability to provide information, and verify information being provided, will</p>
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Proposed changes to ACC's Accredited Employers Programme

ensure that ACC will have a monitoring report that more accurately reflects an AE's performance.

The proposed changes will require a significant investment of resources if ACC is to have the capacity to support co-design, implementation, monitoring, and oversight. The proposal does not provide details about how and when such capacity will be funded. As set out above in our response to Proposal 2, ACC's oversight of performance needs to remain proactive regardless of how well an AE is performing.

We currently have a performance scale with Primary, Secondary, and Tertiary levels that AEs can slide between. The proposed shift to Leading, Good, Adequate, and Low is going to result in an additional haven for poor performing AEs, unless this performance scale is significantly strengthened.

It should not be acceptable for an AE to provide anything less than 'leading' or 'good' performance, and any revision to the performance scale should reflect this. The purpose of the AEP is to provide significant financial benefits to employers in return for giving their employees better case management experiences and outcomes than ACC delivers. The tolerance for 'adequate' and 'low' performance therefore has no place in an effective framework. Further, for low performance to have consequences only when it is 'continuous' erodes the foundation of the AEP.

There should be mechanisms to ensure that an AE who is providing less than 'good' performance in C&IM immediately forfeits some tangible benefit of the scheme for a specified timeframe during which they must either demonstrate adherence to 'good' performance or move to the exit process. To this last point, there should be readily available mechanisms to exit an AE from the programme on a permanent basis.

The listed performance scale definitions therefore need to be strengthened on the basis that AEs need to continually show better performance than ACC to justify remaining in the AEP scheme.

- Leading – should be the only category that allows for an 'as required' basis for ACC contact.
- Good – should still include 'directive' action on an at least moderate basis.
- Adequate – needs ACC contact to be on a frequent basis; AEs need to prove their performance to be better than, not equal to, ACC's own performance. AEs in this category need to show improvement to remain in the scheme.
- Low – if AEs are scoring 'low' they should be put onto a path of being exited from the scheme unless immediate and consequential improvement is shown and is verified by the workers and their union.

Key result areas:

- Worker experience should be a metric that sits on its own; low scoring in this metric is a key indicator for ACC-directed intervention and/or exiting the scheme. Regardless of scoring in other metrics, if worker experience is low, the AE's performance must score low.
- The proposal document has left us questioning whether the averaging of scores might 'hide' poor performance in some metrics, which would be obscured by better performance in other metrics.
- Being exited from the AEP should include a cool-down period, barring re-entry for a significant period of time.

Proposed changes to ACC's Accredited Employers Programme

	<p>We note that the involvement of unions and workers at the design stage is essential to fleshing out the outline that has been proposed in the consultation document into a form that will, in reality, deliver good or leading performance so that workers, as well as their employers, benefit from the scheme.</p> <p>2. How would these changes impact on your participation in the Programme?</p> <p>N/A – see union submissions for impact on participation.</p> <p>3. If you don't support these changes, what alternatives do you propose?</p> <p>As per our suggestions to question 1.</p> <p>In addition, avenues for workers and unions to trigger more in-depth reviews of performance. And workers' ability to push for exit from the AEP should worker dissatisfaction (outside of what is reported by the AE themselves) be shown.</p> <p>At a high level, there needs to be a re-alignment of the AEP with the objectives of the legislation to put injured workers back at the centre. The wellbeing and care of injured workers needs to be the focus of the programme.</p>
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Questions on Proposal 4: New pricing options for the Partnership Discount Plan

General feedback	<p>1. Do you support the proposed changes to the Partnership Discount Plan? Why/why not?</p> <p>All claim files should be provided to ACC at the end of the period.</p> <p>We have serious concerns about workers being locked into the AEP for even longer periods of time without other mechanisms for moving the business.</p> <p>2. If you don't support these changes, what alternatives do you propose?</p> <p>No new pricing options.</p>
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Questions on Preliminary Proposal 1: Require Full & Final Settlement for Full Self Cover

General feedback	<p>1. Do you support the preliminary proposal to change the FSC plan to require full and final settlement at the end of the CMP? Why/why not?</p> <p>We would like to consider this proposal further, if it goes ahead.</p> <p>2. Do you think that the proposed changes would reduce the administrative burden of claims invoicing? Yes/no; Why/why not?</p>
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Proposed changes to ACC's Accredited Employers Programme

3. Do you agree with the proposed principles for developing a methodology for calculating a full and final settlement? Yes/no; Why/why not?

4. If you don't support these changes, what alternatives do you propose?

5. Should sufficient support be received for the preliminary proposal, would you like to be involved in the next round of consultation?

Yes, we would like to be involved.