NEW ZEALAND COUNCIL OF TRADE UNIONS

Te Kauae Kaimahi

Submission

By

New Zealand Council of Trade Unions

Te Kauae Kaimahi

on the

Options for Extending the Accredited Employers Programme and Introducing Choice in the ACC Work Account

PO Box 6645

Wellington

15 July 2011

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 39 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. The CTU played a leading role in achieving the repeal of the privatisation measures in the Accident Insurance Act 1998, and the re-establishment of a national comprehensive publicly funded accident compensation scheme under the auspices of the Accident Compensation Corporation.

1.4. The CTU are strong supporters of the publically owned low cost, no fault ACC scheme and its principles of prevention, rehabilitation and compensation..

2. Summary

2.1. This submission is in response to the Department of Labour's (DOL) discussion document called '*Increasing choice in workplace accident insurance'*. The CTU is concerned with the Government 's proposals to expand risk sharing initiatives in the delivery of ACC by:

- extending the Accredited Employer Programme (AEP) to medium sized employers from 1 April 2012, and
- introducing private competition into workers compensation from 1 October 2012.

2.2. The CTU opposes both of the above Government proposals for three reasons:

- The introduction of competition into the Work Account is a form of privatisation of ACC which will add to overall administration costs (through

duplication) and by the pursuit of insurance companies profits. It will in our view reduce the potential outcomes for claimants, increase costs to employers, increase litigation and see technicalities being used by insurers to reduce and deny benefits to injured workers. It undermines the principles of the current highly valued and world recognised scheme: comprehensive entitlement, real compensation, complete rehabilitation, community responsibility and administrative efficiency.

- Expanding the Accredited Employers Programme (AEP) to an increased number of employers including smaller companies expands a scheme that the CTU already views as having flaws. The proposal for expanding the AEP also includes weakening some of the safeguards that are fundamental to the concept of the current scheme such as reducing audit standards and financial security requirements for those employers that choose to participate. This will in our view further diminish the AEP.

- The current ACC scheme is a world leader. The proposals threaten to undermine many of its best features and expose both workers and the Government to additional risk.

2.3. While we make recommendations in this submission as to options if the proposals do proceed, it is without prejudice to our strong opposition to them. The recommendations will mitigate only some of the dangers of the proposals. By making these recommendations we are not implying that the disadvantages can be overcome.

2.4. The CTU highlights the following recommendations throughout the body of the submission and within Appendix 1.

3. Principal recommendations

3.1. **The CTU recommends** the retention of the current model of comprehensive ACC as the simplest, fairest and most efficient model for delivery of accident compensation and rehabilitation.

3.2. **The CTU recommends** that there be no extension to the AEP.

3.3. **The CTU recommends** that the following mitigation measures be imposed if decisions to proceed with the proposals are made**.** Further recommendations and mitigations are included within Appendix 1.

3.3.1. There be a system for robust audit and monitoring of private insurers, AEP participants and ACC against the Woodhouse Principles.

3.3.2. That any changes are explicit on the involvement of health and safety representatives, workers and unions in rehabilitation and return to work processes.

3.3.3. That a regulator be established to provide oversight for and on behalf of claimants to ensure the administration of claims is fair, timely and efficient and do not impose an undue cost on the claimant.

3.3.4. That levies include a levy on all schemes across all employers to cover occupational disease and gradual process injuries.

3.3.5. That there be amendments to the legislation to enhance claimants rights (see Appendix 1,Q 19).

3.3.6. That regulatory standards are imposed on private insurers to share claims data to assist with industry and sector injury prevention.

3.3.7. That an independent review system be developed, which applies to both publicly and privately delivered claims, following a separate consultation process with relevant Ministries, legal and dispute resolution practitioners, Consumer Outlook Groups, unions and advocates. This would include the review and strengthening of the Code of Claimants' Rights.

3.3.8. That a review be undertaken into TPA performance to develop a mandatory central accreditation process for TPAs including a requirement for rigorous injury management standards.

3.3.9. That the development of a centralised, fair and accessible complaints system such as the ACC's customer complaints line which enables advocates and claimants to deal with issues in an appropriate and supportive way.

3.3.10. That the Department of Labour increases its enforcement, fines and penalties for workplace accidents and engages in proactive activity towards poorer performing workplaces and high risk priority sectors.

3.4. In this submission we address:

- Extending the AEP
- Introducing competition to the ACC Work Account
- Department of Labour Discussion Questions (Appendix 1)

3.5. The following submission covers evidence to support the current scheme and analyses the evidence provided by the stock take to justify the proposal to privatise the ACC work account and to extend the AEP. We address the claimant experience of the AEP and the importance of employee participation in the current scheme and how that will be eroded under a privatisation model or by extending the AEP. Answers to specific discussion questions are outlined in Appendix 1.

3.6. The CTU endorses Hazel Armstrong and the ACC Futures Coalition submissions. We also endorse Peter Harris's report Choice in the Work Account.

4. The evidence for change

4.1. In 2007 The Price Waterhouse Coopers report provided a comprehensive review of ACC which demonstrated its considerable value to New Zealand society and the economy and showed that it performs well in international comparisons with comparable schemes.

4.2. Its conclusions were unambiguous: "…we concluded that the current ACC scheme is consistent with the Woodhouse principles, adds considerable value to New Zealand society and economy and performs well in comparison to alternative schemes in operation internationally."

4.3. The report found that:

- internationally, ACC is a low cost, efficient and equitable way to deal with accident prevention, rehabilitation and compensation, and

- within ACC, the work account is the best performing component of a cost effective system.

4.4. Evidence of ACC's Work Account performance was evident in October last year when the NZ Treasury stated in a Cabinet paper[1] that "of all ACC accounts, the Work Account is in the best shape and is performing better than it was when competition was introduced in 1999". [2]

4.5. Following that statement the ACC Minister announced in May this year that levy reductions were possible because ACC was forecasting a $2.5 billion surplus for the 2010-2011 financial years, $1.5b better than previously estimated. There was a $2.5b surplus the previous financial year, which followed a $4.8b deficit in 2008-2009.[3]

4.6. The CTU endorses Peter Harris's paper, "*Choice in the Work Account"*[4]. In it he outlines the problems with the proposed changes. He says, "that there is no evidence to support the introduction of the proposed options and it cannot be justified on its analytical merit".

4.7. "This proposal is fraught with uncertainty: over its costs, and what risks it will create and for whom. It cannot be effectively evaluated because too much critical detail about how it will operate has not been determined. The benefits it is supposed to generate cannot be quantified, and there is even uncertainty about whether they will be positive or negative. The market niche that this solution is designed to fill probably does not exist, at least if it is to be filled profitably. Where officials compare the option with the counter-factual - self insurance and/or experience rating – they find it to be inferior."

5. Extending the Accredited Employer Programme: the evidence

5.1. The CTU is concerned that reliance for the proposal to extend the current AEP scheme is based heavily on the Melville Jessup Weaver and Martin Jenkins

---

[2] Cabinet paper, 29 October 2010, released under the Official Information Act. Para 64.

[3] National Business Review, 4 July 2011

"Review of Employer-managed Workplace Injury Claims" (4 June 2010)[5]. The Government assertion that this report found that Accredited Employers "delivered safer workplaces with 12 percent fewer claims and more effective rehabilitation with 15 percent lower costs"[6] is not in accord with the evidence in the report.

5.2. The Review has significant methodological problems that mean its evidence must be treated with caution. Firstly, it analyses claims, not accidents. Not all accidents lead to claims, and there are incentives for AEP employers (and for experience-rated employers in general) to avoid accidents from becoming claims, including by putting pressure on employees not to claim, or through shifting claims to other ACC accounts. This is acknowledged by the Department of Labour which notes "There is a risk that some employers may seek to minimise claims for work-related injuries in order to lower their costs. They could seek to make their claims records look better by discouraging workers from lodging claims for workplace injuries, encouraging workers to say injuries were not work-related, or pressuring workers to return to work before they are fully rehabilitated."[7] It is a common finding in the research literature[8]. Accredited Employers (AEs) are able to absorb the cost of injuries without a claim being made and avoid a formal claim by paying for the time off (perhaps requiring the employee to use their annual or sick leave) and medical treatment in house. This does not mean accident levels have decreased.

5.3. Secondly, there is a likelihood of what is known as "adverse selection" as to which employers choose to enter into the AEP and which decide to stay in the standard ACC scheme. Those which consider they have lower accident rates than the average for their industry are more likely to believe that their costs will be lowered by entering the AEP (and those perceiving themselves more likely to have higher

---

[5] Review of employer-managed claims, Melville Jessup Weaver and Martin Jenkins, 4 June 2010

[6] Minister's Foreword to "Increasing choice in workplace accident compensation – discussion document on options for extending the accredited employers programme and introducing choice in the ACC work account", p.3,

[7] "Increasing Choice Wokrplace Accident Compensation", discussion document, Department of Labour, June 2011, p.37.

[8] For example the meta-study, Tompa, Trevithick and McLeod (2007) *'A Systematic Review of the Prevention Incentives of Insurance and Regulatory Mechanism for Occupational Health and Safety' Scandinavian Journal of Work, Environment and Health (www.sjweh.fi) 2007, 33(2): 85-95.*

accident rates are more likely to want to stay in the standard scheme, raising the costs of the scheme – hence "adverse selection"). The Discussion Document (p.36) confirms this in discussing expansion of the AEP scheme, saying "those who join the AEP generally have good claims records", and so the levies for those who stay in the standard scheme will rise. The strict entry requirements of the AEP (which the proposals are trying to reduce) would also tend to encourage only those employers which consider they have low accident rates to join the programme.

5.4. Adverse selection is a common problem in insurance. For example, people who choose to pay for private medical insurance are more likely to expect health problems than those who don't insure. That's why people choose to insure. That does not mean that medical insurance causes health problems.

5.5. Similarly, lower accident rates in the AEP may be due not to the incentives of the scheme itself but to the characteristics of the employers which choose to join it. The Review does not acknowledge either of these problems, investigate to what extent they apply, nor attempt to control for them.

5.6. The authors of the Review have subsequently noted in defence[9] that they control for the level of the Workplace Safety Management Practices (WSMP) programme that employers are in. The WSMP gives three levels of discount (10 percent, 15 percent or 20 percent) on the basis of audited injury prevention practice in the employer's workplace. There is a requirement that AEP participants achieve at least the primary level of the WSMP programme, while standard employers (SEs) may enter the programme voluntarily. However in the Review, the WSMP level is controlled for only in the case of weekly compensation, and not for other claims. More importantly, to detect adverse selection, accident records of employers at the same WSMP level would need to be compared prior to employers entering the AEP. Otherwise there would be conflation of self selection and the requirements of the AEP which are designed to encourage better safety practice (many of which could be applied to SEs). The evidence from controlling for WSMP after employers enter the AEP is consistent with adverse selection: AEs had lower claims and claim duration records than standard employers earlier in the programme (in the early 2000s). However SEs reduced claim rates and durations faster than AEs so that by the end of the decade they were in general at least as good as or better than AEs, as is demonstrated below.

[9] Discussion with Mark Weaver, 11 July 2011.

5.7. In a subsequent written response, the authors of the Review, although denying there is a problem with adverse selection, in fact acknowledge it is likely to occur, saying "SEs who have poor claims management outcomes will choose the cheaper insurance option of insuring with ACC"[10].

5.8. Some indications of the relative safety record can be deduced from the Review's findings. Changes in claim durations and claim rates are likely to be less affected by the problems outlined above. The Review concludes that claim durations and claim rates fell faster over the years studied (2001-2010) for SEs than AEs.

5.9. On claim durations, the findings are that "Overall the standard employers have a lower duration than the accredited employer claims."[11] While AEs had shorter duration claims in the early years of the decade, by mid way through the decade, the SEs were better than the AEs and continued to improve.[12]

5.10. On claim rates, it states: "There is no evidence to support the hypothesis that accredited employers show greater improvements in rates of claims over time,"[13] and that "holding all else constant, the [weekly compensation] claim rate decreases by 6 percent per annum for SEs but remains constant for AEs"[14.] While some AEs had better claim rates than SEs at the start of the decade, AEs in general failed to improve during the decade with the result that in many categories, SEs had lower claim rates than AEs by the end of the decade[15]. This may have been affected by tightening of criteria by ACC in 2009 (the claims studied only go to 31 December 2009), but the trend is for the whole decade.[16]

5.11. Given the decline in claim rates over the decade, using an average claim rate for the decade is misleading. What is most notable is the improvement in claim rates for SEs (but not for AEs). In terms of claim rate levels, what is most relevant is the

---

[10] File note from Mark Weaver, Melville Jessup Weaver, 12 July 2011.

[11] P.48 of appendices. Review of employer-managed claims, Melville Jessup Weaver and Martin Jenkins, 4 June 2010

[12] See pages 51-54 of the appendices.

[13] P.35, Review of employer-managed claims, Melville Jessup Weaver and Martin Jenkins, 4 June 2010

[14] P.57 of the appendices to the Review.

[15] See for example, Figure 8 on p.36 of the body of the Review, and figures 7 and 8 on page 58 of the appendices.

[16] P.33

most recent data, and the Review does not provide clear conclusions on the data that controls for all factors, though it reports that claim rates for weekly compensation were virtually the same when corrected for industry risk – 0.30 and 0.29 per $1 million of liable earnings for SEs and AEs respectively.

5.12. The related assertion that AEs had "12 percent fewer claims" ignores the falling rate of claims for SEs. Based on the raw data, by 2008/09 the SE rates were lower than the AE rates – 1.54 to 1.60 per $1 million of earnings – having fallen more quickly than the AE rates, and also performing better than AEs in 2007. They were worse than AEs in 2010, but that only covered six months of the year[17]. The Review also failed to analyse claims other than weekly compensation using multivariate techniques that would control for the main factors that drive claim rates, apparently due to lack of time. The "12 percent fewer" figure controls for the employer's industry but not for other factors.

5.13. The "12 percent fewer claims" assertion as evidence of better safety also ignores the real problem that not all accidents lead to claims, and the international evidence that employers avoid making claims on accidents under experience-rating regimes such as AEP. Evidence of such "claims management" by AEs is given strength by the question asked in the review "Do accredited employers have a higher propensity to test programme boundaries?"[18] Its finding is that accredited employers have lower acceptance rates for all three claim types. They declined 39 percent compared to 6 percent for SEs. While the Review "suspects" this could partly be due to data problems including that some may have been wrongly filed with ACC and counted as declines, it does not investigate to what degree this explains the very large discrepancy.

5.14. Another indication of safety in these workplaces is whether the discount status employers are given for higher levels of audited workplace injury prevention practice results in lower accident rates. The Workplace Safety Management Practices (WSMP) programme gives three levels of discount (10 percent, 15 percent and 20 percent) on this basis. It would be expected that higher levels would lead to lower accident rates. In fact the Review finds that for weekly compensation claims, "holding all else equal, the claim rates increase with WSMP discount for

[17] Table 14, p.35

[18] P.42

AEs but decrease with WSMP discount for SEs"[19]. Including other claim types (but not controlling fully for other factors), "while the claim rate results do vary; there is no clear correlation of claims rates with WSMP discount". Stronger safety practices appear to be ineffective for AEs if claim rates are the criterion. The Review acknowledges this, saying that "The impact though of this is felt more in terms of injury rehabilitation than injury prevention", but does not present evidence as to rehabilitation (though see below). The authors of the Review suggest the reason for the increase in weekly compensation claim rates with increased WSMP level for AEs may be due to them being increasingly rigorous in reporting accidents[20]. If there is evidence for this being the case, it further reinforces the need for care in treating claims as representative of accident reports, and casts doubt on AE claim reporting for other WSMP categories.

5.15. It is therefore not valid to conclude from the Review that the AEP "delivered safer workplaces" and indeed on many indicators, it clearly performed worse. Where the AEP apparently performed better in the Review, the evidence is thrown into doubt when adverse selection and the problems around accident reporting are taken into account. It is unsafe to expand the AEP on the basis of this evidence, and indeed it is a reason to review whether the AEP is actually producing safer workplaces.

5.16. The Government also asserts that AEPs have "more effective rehabilitation". If faster return to work is an indication, then SEs are better. The Review concludes that "for weekly compensation claims accredited employers have shorter average claim durations than standard employers for early cover years with the reverse being true for cover years since 2006/07"[21]. Once again, the improving performance of SEs during the decade needs to be taken into account. The latest data indicates that SEs have a better performance. There is a similar picture from finalisation rates (i.e., the time at which the claimant is no longer receiving ACC benefits): for weekly compensation, standard employers are better up to 12 months duration, and virtually the same as AEs for durations above that. For other claim types, SEs are better at all durations, and that is also true when all claim types are combined.[22] A concern often expressed is that rapid return to work can be too soon, evidenced by a need for unanticipated further treatment, prolonging rather

[19] P.44.

[20] Discussion with Mark Weaver, 11 July 2011.

[21] P.38.

[22] P. 40.

than shortening the effects of the accident. Claim reopen rates are an indication of this. They are higher for AEs than SEs. The Review attributes this to different classification approaches used by AEs and ACC but again fails to investigate further as to whether this sufficiently explains the difference. Research on Third Party Administrators in 2008 by Research New Zealand[23] found that while third party administrators return people to work faster they were subsequently injured again, indicating people were returned to work before they were ready.

5.17. The evidence is therefore that the standard scheme has better rehabilitation performance. The ACC Commission and the Government have recently claimed that it has improved even further and markedly so since the end of the Review's coverage period.

5.18. Finally, the Government asserts that AEs have "15 percent lower costs". The evidence presented bears this out, but it glosses over underlying issues.

5.19. "Medical only" claims cost 34 percent higher for AEs than SEs.[24] The Review comments that this is "consistent with" AE claimants "not having to pay the surcharge on certain treatment costs" – but again provides no evidence that fully explains the additional cost. The costs of claims for "other entitlements" are also higher for AEs than SEs (by 6 percent).

5.20. The entire difference is therefore due to costs of weekly compensation claims. For some employer and claim categories, the differences are huge with SE claims costs more than double that of AE claims. This seems difficult to explain simply in terms of better cost management.

5.21. The Review gives the explanation that "Standard employers spend a considerably higher total amount on social rehabilitation than accredited employers. In contrast accredited employers spend a very small sum on vocational rehabilitation compared to standard employers. This is probably to be expected as the vocational rehabilitation by the accredited employers will be time spent at the workplace."

---

[23] "Service delivery under the Partnership Programme and the ACC Scheme: A comparison based on the perceptions of AE employees and ACC-managed clients injured at work", Research New Zealand, November 2008.

[24] Table 9, p.27.

5.22. This raises a number of unanswered questions. Are some AEs recording vocational rehabilitation costs when the employee is back at work (perhaps temporarily in a different role) as normal payroll costs rather than reporting them as costs of the claim? Are there issues about the quality of rehabilitation if substantially less is spent on these claims? Why are many employers leaving the scheme if there are such large cost savings to be made?

5.23. A further problem is that in comparing weekly compensation costs, no account taken of relative average incomes of AE and SE employees. Since weekly compensation costs are directly related to employee incomes, this is a material factor that is not controlled for.

5.24. In addition to the lack of evidence to support the Governments claim that Accredited Employers are achieving lower costs and fewer injuries[25] there .are other significant flaws within the AEP which are likely to be compounded by extending its coverage and reducing the requirements on employers participating in it.

5.25. CTU concerns with the current AEP schemeThe CTU supported the introduction of the AEP in 2000. We did so with considerable scepticism. We have regularly raised affiliate concerns with the programme and initiated the Ministerial Operational Review of the AEP in 2007. Our concerns have not been addressed and would be magnified by an extension of AEP to smaller workplaces.

5.26. The central underlying problem with the Accredited Employer Programme is the inherent conflict of interest that exists.

5.27. The conflict exists where employers are charged with delivering the entitlements to injured people under the ACC Act but are also aiming to reduce claims costs, which is a key objective of the AEP. The incentive to minimize costs can affect an injured person's access to medical treatment, social rehabilitation and safe return to work.

5.28. Under the AEP, workers who are injured have no choice about who manages their claim. The choice is made by their employer to either do it themselves or contract it out to a third party administrator.

---

[25] Jessup Weaver and Martin Jenkins (June 2010) *Review of Employer-managed Workplace Injury Claims.*

5.29. The injured person has limited access to information; in contrast the employer has dedicated ACC advisors, technical support, and access to training and employer only resources. Currently there is no dedicated training available for employees in the AEP.

6. Employee participation and the AEP

6.1. Despite the CTU's reservations regarding the introduction of the AEP, it was supported with the knowledge that there is international and New Zealand evidence that a joint employer union programme can be very effective in achieving good injury prevention and rehabilitation practice.

6.2. The Rail Maritime and Transport Unions work and KiwiRail are an example of a successful joint employer/union approach to injury prevention and injury management.

6.3. Nick Smith recently cited KiwiRail as an example of an employer who has had success reducing injuries within the AEP[26].

6.4. However it is important to clarify KiwiRail's turnaround in performance was not due to becoming an accredited employer but a response to the findings of a 2000 ministerial inquiry into rail accidents. The inquiry recommendations led to the implementation of an employee involvement model to turn around the company's safety record.

6.5. Wayne Butson, Secretary of the Rail and Maritime Union, recently commented: "It was employee involvement in establishing a safety culture which delivered the major turnaround in injury levels within the company [KiwiRail – then Tranz Rail], and significant change in work practices with many established but unsafe ways of working being outlawed by mutual consent." [27]

6.6. The Government's discussion document is silent on the principle of employee and union participation in an 'extended AEP', with the exception of a mention under "Lower Compliance Costs" that "Ongoing consultation with workers and their

---

[26] Increasing Choice Workplace Accident Compensation, Nick Smith, 1 June 2011, http://beehive.govt.nz/speech/increasing-choice-workplace-accident-compensation

[27] ACC reforms: tell the real story behind Kiwi Rail's safety record improvement, Wayne Butson, 1 June 2011, http://www.rmtunion.org.nz/documents/MR162011.pdf,

representatives is also necessary, as part of effective safety and claims management and workplace relations". This omission is a major concern to the CTU because there is overwhelming international evidence which shows "joint participative arrangements work better than unilateral ones in terms of improved health and safety outcomes".[28]

6.7. Employees, individually and collectively have a direct interest, and a right to be engaged at all levels of that system whether it be designing, implementing or monitoring. This would be true if it were solely about their safety at work. It is doubly true because of the nature of ACC as a social contract in which employees have given away established legal rights in exchange for a reliable, fair and effective injury prevention, compensation and rehabilitation scheme.

6.8. The Minister in his forward talks about wanting ACC to be "customer-focused". The primary "customer" of an accident compensation scheme is the person who is injured or at risk of being injured. That is the person whose suffers the pain, the disruption to life, possibly lifelong suffering from disability or loss of livelihood, or even death. In the work situation, that person is the worker. Yet both of the proposals presented – expansion of the AEP and private competition to ACC in the work account – are focussed on reducing compliance costs and financial costs to the employer. It is postulated that this will improve safety for employees along the way. The primary "customer" has been relegated to someone who might benefit if all goes to theory. As we have explained here and elsewhere, backed by experience and evidence, we do not believe that these safety improvements will follow. At the very least, it is essential that employees and their union representatives be regarded as full partners in designing, implementing and monitoring safety standards in the workplace – not just another party to be consulted.

6.9. The mechanism for employee participation in the AEP is verified through the audit process. The CTU discusses the audit process in: *Appendix 1; Question 11*

7. The claimant experience under the AEP

7.1. Each year ACC contracts Research NZ to conduct a comparative analysis of claimant satisfaction for employees who have had their claim managed by either ACC, an Accredited Employer or a Third Party Administrator (working on behalf of an Accredited Employer)..

7.2. In 2010 the Research NZ study found 41 percent of claimants expressed issues or concerns with the overall service they received when their claim was handled by a Third Party Provider.[29] The research revealed employee concerns included incidents of bullying, fear of losing job, communication and process issues.

7.3. The research investigated how well employee concerns were dealt with by the third party provider and found that the majority of people were dissatisfied with the way their concern was handled.[30] Employees who had their claim managed by ACC reported higher levels of overall satisfaction with the service they received compared to TPAs.

7.4. Affiliates report a lack of process regarding dispute resolution when dealing with a TPA. In comparison to ACC, TPAs do not have satisfactory internal accountability structures. For example should a claimant have difficulty accessing their claims file from a TPA case manager they are likely to be referred to a TPA lawyer which is can be an adversarial experience.

7.5. By comparison an employee whose claim is managed by ACC has the option of speaking to a team leader or branch manager or to lodge a complaint with the ACC customer support team. There is no usable process for resolving issues at the TPA/workplace level; this can lead to the escalation of an issue.

7.6. The CTU is concerned that extending the AEP to medium sized businesses will increase the likelihood of TPA claims management, to the detriment of claimant satisfaction. Currently 84 percent of accredited employers contract out claims management. It is reasonable to assume that if most large businesses lack the

---

[29] Partnership Programme Injured Employees satisfaction with the service they received (Feb-June2010) Research NZ pg 26

[30] Partnership Programme Injured Employees satisfaction with the service they received (Feb-June2010) Research NZ pg 29

capacity to manage claims in-house then virtually all medium sized businesses entering the programme will also contract out the injury management role to TPAs.

7.7. TPAs are not subject to the same accreditation as employers under the AEP, nor are their injury management audited.

7.8. The CTU opposes extending the AEP but if that went ahead recommended mitigations would include a mandatory central accreditation process to be developed for TPAs and that accreditation of TPAs should be subject to rigorous injury management standards designed, implemented and monitored in active partnership with unions. This could help address many claimant concerns about TPA performance.

7.9. In addition the CTU recommends that a Government review be undertaken into TPA performance to examine why claimant satisfaction is consistently lower for TPAs compared to ACC.

8. Introducing private competition into the work account

8.1. In 2007 The Price Waterhouse Coopers report provided a comprehensive review of ACC which showed that it out-performed comparable international private schemes.

8.2. The CTU and its affiliates are united with many other organisations and individuals in the community in opposing opening the Work Account to competition and therefore to private insurance providers.

8.3. The costs of opening the scheme to private providers in 1998 and 1999 were lost services and lost quality. Had ACC not been re-nationalised in 2000, a national crisis would have been on our hands when one of the private insurance providers, a subsidiary of the Australian owned HIH Insurance which had 40 percent of workplace cover, collapsed with losses of around $1 billion involving fraud on the part of some of its most senior executives (for which they have been convicted). The State would have been forced to take on the consequences of the collapse.

8.4. The CTU believes that ACC is the best way to deliver high quality, easily accessible, equitable and flexible forms of injury management and claims processes. A single public scheme such as ACC is accountable to the nation,

efficient and most likely to be fair. The current model allows spreading of costs and risk between parts of the scheme.

8.5. Moving to private provision will lead to reduced entitlements and difficulty for workers to access rehabilitation. If a private provider fails or walks out on its contract, the state will still be expected to make good any harm. If a private provider disappoints in its service (e.g. the Auckland Med Lab issue) the responsibility still falls back on the Government.

8.6. Competition will encourage providers to offer partial services covering the simplest and most profitable areas to employer clients with the lowest cost and risk. The result is the loading of higher costs onto the remaining public operations, at the same time making it appear that the public operation is more expensive.

8.7. Private insurance options in effect create an incentive for insurance companies and employers to collaborate to deny workers proper access to rehabilitation and compensation funding by skimping on costs, taking legalistic approaches to claims, and reducing service that benefits claimants. Workers have no say about who the employer chooses as the insurer yet the worker carries the injury risk.

8.8. Risk prevention at an industry level is also at risk from privatisation. What can be achieved by a single state co-ordinated campaign cannot easily be organised when an industry is insured by multiple insurers.

8.9. The CTU supports a scheme that is cost effective i.e. financially strong and represents value for money for levy payers, but emphasises the primary requirement is to maintain a strong scheme that provides for the needs of injured people.

8.10. The post Canterbury earthquake environment and volatile insurance markets leaves the question of whether private insurers will find high risk and low margin niche markets such as the accident insurance market attractive. The environment increases the risk of private insurance provider failure, in turn increasing the risks of treatment delay to claimants, financial risks to ACC, and confusion and financial loss for employers. ACC proved its value to Christchurch workers following the earthquake when the Government as owner was able to offer quick coverage of workplace injuries. This would not happen under a privatised model.

9. Conclusion

9.1. The NZCTU is available to answer further questions.

Appendix 1: Department of Labour Discussion Document Proposal Questions

The CTU endorses Hazel Armstrong's and the ACC Futures Coalition submissions. We also endorse Peter Harris's report *Choice in the Work Account*.

10. Question 1: Do you agree that there should be a greater range of claims management periods? Why? Why not?

10.1. The CTU does not support a greater range of claims management periods.

10.2. Experience from some CTU affiliates has been that the shorter the claims management period, the better the outcome for the employee. Accredited employers are most successful when they can organise an early return to work. There is no evidence to show that AEP employers perform better than ACC. There is no evidence to show that longer claims management periods would benefit claimants.

10.3. The longer the claims management period, the higher the likelihood that there is a takeover or change of management of the accredited employer. The incoming management may see an injured worker as a liability or feel no direct responsibility for managing a claimant who was injured prior to the takeover or change of management. It could also be difficult for a claimant who sustained a gradual process injury or a recurrence of an injury to return to new management.

10.4. If the policy is to extend the claims management period, protections must be put in place for claimants. It is submitted that extension of claims management must be accompanied by robust auditing, employee participation and monitoring of outcomes.

10.5. There should not be a greater range of claims management periods. However if a decision is made to extend them, it must be accompanied by robust auditing, employee participation and monitoring of outcomes.

11. Question 2: Do you agree that the claims management period should be measured from the date of injury, rather than from the end of the current levy year?

11.1. The CTU does not see this as a significant matter, although it is likely that administration costs will increase by requiring individual records to track claims management expiry periods.

11.2. The burden of this administrative cost should be carried by the employers in the AEP scheme, not levy payers or the ACC.

12. Question 3 – Do you agree that there should be more flexibility in the purchase of high cost claims cover and stop loss cover?

12.1. We are answering the question on the assumption that this cover would only be provided by ACC rather than a private source. If not, see our answer to Question 4. Any further flexibility in the purchase of high cost claims cover, must be accompanied by good auditing systems underpinning it to ensure the accredited employer is financially stable. Also rehabilitation must be provided to the maximum extent practicable and health and safety representatives and union involvement should be maintained.

13. Question 4 – do you agree that employers should be able to purchase high cost claims cover and stop loss cover from an approved third party? If not why not?

13.1. The CTU does not agree that employers should be able to purchase high cost claims cover and stop loss cover from an approved third party.

13.2. This proposal amounts to privatisation within the AEP scheme. Our objections to privatisation earlier in this submission apply to this proposal.

13.3. In addition:

13.4. A claimant who faces the transition from the AEP scheme to a private insurer will have, by definition, high needs (because they are a high cost claim). Therefore,

they are likely to be seriously incapacitated. It would be grossly unfair to impose transitional arrangements upon such vulnerable claimants.

13.5. The claimant has no choice of who the insurer is, and in fact may not be aware of who the insurer is.

13.6. Noting our objection to this proposal – if it is to go ahead then the CTU recommends that the following mitigations are put in place:

- Additional compliance costs will be incurred with having another 'player' in the market the market regulator will need to monitor and enforce compliance to audit standards to ensure that the claimant receives the appropriate treatment and rehabilitation.

- The regulator will have to ensure that the third party has adequate reserves to meet these high cost claims. The nature of this prudential regime is not clearly set out in the discussion document. Therefore, the CTU has concerns about the lack of protections claimants may have about insurers that might enter the market.

13.7. It is likely with more TPA's entering the market that employers and levy payers will have to meet the costs of the chance of insurance failure.

13.8. If an insurer does fail, the cost of the failure will also be met by the levy payers. Will this constitute a double payment by levy payers? This can be contrasted to ACC, which is too big to fail.

13.9. It is likely that TPA's will "cherry pick" the low risk and favourable employers and leave the high risk employers for ACC to manage. The cost of this will also fall on the levy payers.

14. Question 5 – Do you agree that an employer's claims history should be taken into account when setting PDP levies?

14.1. The CTU does not support an employer's claims history being taken into account when setting PDP levies. This would add another element of experience rating to a programme that is already highly susceptible to problems of claim suppression and denial of entitlements.

14.2. As described in detail above there is evidence that AEP employers (particularly when TPAs are involved) reduce claims cost by failing to offer employee's all of their legal entitlements or inform them of their entitlements. We oppose increasing incentives to do so. Our analysis of the Melville Jessup Weaver and Martin Jenkins "Review of Employer-managed Workplace Injury Claims" makes clear that any benefits from this kind of incentive are illusory.

14.3. The CTU recommends that an employer's claims history should *not* be taken into account when setting PDP levies

15. Question 6 – Do you agree that ACC should be required to take over management of any claim at the employer's request and cost? Why or why not?

15.1. The CTU would agree if the full cost of taking over the claim was met. However there will be a problem that employers will know more about the case than ACC and there will be a temptation by employers to force ACC to take back claims that they believe will be more expensive. ACC may find itself carrying the risk of the most difficult and expensive claims without being able to cost them accurately. This question underpins the flaws of the proposals for privatisation and extending the AEP e.g. the risk that all market failures transfer to the crown.

16. Question 7 – Do you agree that in the full self cover option, there should be a choice of a full and final settlement?

16.1. The CTU agrees that in the Full Self Cover option there should be a choice of a full and final settlement. However this must be for all claims handed back to ACC, not just those the employer chooses, or ACC may be left carrying the risk of the most difficult ones.

16.2. This is of course subject to ACC ensuring that they accurately price the risk of reactivated claims into the hand back charge including all services for the remaining life of the claim.

17. Question 8 – Do you think that co-operatives, franchises, or other groups should be able to enter the AEP?

17.1. The CTU does not agree that co-operatives, franchises, or other groups should be able to enter the AEP. Allowing co-operatives, franchises or groups to enter the AEP may compromise the ACC scheme generally. There is likely to be too much variability in the capacity and commitment of individual franchisees etc to ensure quality of safety, management and rehabilitation services, and it is most unlikely that a central cooperative body, franchiser or other group coordinator can, or has the incentive to, exercise sufficient control over members to ensure these essentials.

17.2. A co-operative, franchise, or group, would inevitably have to rely on a TPA to manage claims. As we have stated above, there are major concerns about TPA performance.

17.3. Clearly, if this extension of the AEP is allowed, it must be accompanied by good auditing systems in each constituent co-operative etc; each co-operative etc must be financially stable; rehabilitation must be provided to the maximum extent practicable; health and safety representatives and union involvement must be maintained. We do not believe however that this is practical to carry out rigorously and would sufficiently mitigate the problems we have outlined.

18. Question 9 – Do you agree with the proposal to allow employers to use financial instruments or other forms of security as a means of meeting the AEP financial requirements?

18.1. The CTU does not agree with the proposal to allow employers to use financial instruments or other forms of security as a means of meeting the AEP financial requirements.

18.2. Loosening the requirements and controls over entry into the AEP scheme increases the potential of ACC having to fund the cost of employers or third party insurers going bankrupt.

19. Question 10 – Do you agree with the proposal to streamline injury management practice audits?

19.1. The CTU does not agree with the proposal to streamline auditing which effectively is a proposal to reduce auditing requirements.

19.2. The CTU acknowledges the current audit tool is compliance driven and focussed on systems rather than outcomes. We raised this concern during the 2007 review of the AEP.

19.3. The injury management audit process does not disclose qualitative concerns about case management and rehabilitation. Also, the external audit only applies to selected sites, so a union is unable to bring concerns regarding an injury management case to the auditors' attention if the injury occurred outside of the targeted audit area. By focusing on process it may be masking shortcomings in other areas.

19.4. The CTU does not accept the current auditing requirements are excessively burdensome. Indeed, the CTU has concerns regarding the effectiveness of the current audit system, and we continue to support the requirement for Accredited Employers to demonstrate robust injury prevention and injury management standards.

20. Question 11 – Should health and safety audits be voluntary?

20.1. The CTU does not agree that health and safety audits should be voluntary.

20.2. They should be strengthened. We do not accept the argument that accredited employers have "stronger reasons than standard employers to have good workplace safety practices because they directly bear the cost of any injuries" as the Discussion Document suggests. They can reduce costs either by reducing claims and the cost of claims, or by reducing injuries, and as has been documented above, the two are not necessarily the same. Voluntary approaches to health and safety have been found wanting, and disastrously so at Pike River.

20.3. One of the objectives of the AEP framework is to 'promote injury prevention and rehabilitation'[31] Health and safety standards that are verified through an audit process are a fundamental part of the programme without which there will be a decline in workplace safety and injury management standards. The audit process is an important mechanism for ensuring safety and injury management practices are present, well understood by staff and fit for purpose.

[31] NZ Gazette-Framework for the Accredited Employers Programme

20.4. Union observations of the meat industry for example report that there is often a tendency to blame workers for the accident rather than look to the contribution being made by the work itself, there is often no real investigation into the incident and therefore nothing is done to prevent similar injuries to others or the same worker upon return to work. Re-injury is usually a clear case of a worker not having completely recovered from the initial injury. Health and safety standards help to address these types of issues and ensure workplaces have clear rules to form a basis for workers to have problems addressed.

20.5. The DOL inspectorate has insufficient numbers of inspectors to adequately enforce the HSE Act. The audit requirement under the AEP provides one of the few remaining potential means of enforcement and so should not be made 'voluntary'. The AEP audit tool is also useful for assisting employers to comply with the provisions of the HSE Act.

20.6. The AEP audit process also provides an important mechanism for employee participation. During the self assessment phase of the audit, employee representatives and their Union representatives are required to verify a joint approach has been taken to managing health and safety in the workplace. Employee-only focus groups enable employees to meet with the auditor to verify systems are 'fit for purpose' as opposed to a tick the box exercise.

20.7. The union representative also has the opportunity to meet with the auditor prior to the audit's completion. However this requirement of the framework is often overlooked by an employer during the audit process.

20.8. While the CTU opposes this proposal we suggest the following mitigations:

20.9. That injury prevention and injury management standards required as a condition for gaining and renewing accreditation under the AEP be strengthened..

20.10. That a mandatory audit framework which verifies injury prevention and injury management standards amongst Accredited Employers be maintained and strengthened. The audit tool should continue to require verification from employee representatives and their union that a joint approach is taken to managing safety and that systems are fit for purpose

20.11. That the importance of retaining a mandatory audit framework which verifies injury prevention and injury management standards amongst Accredited Employers. In

addition the audit tool should continue to require verification from employee representatives and their union that a joint approach is taken to managing safety and that systems are fit for purpose as opposed to 'tick the box'.

20.12. That any injury prevention and injury management audit tools should incorporate:

- mechanisms for the participation of trained health and safety representatives and their unions to provide feedback on how Injury Prevention and Injury Management processes work in practice
- both qualitative and quantitative feedback with respect to outcomes and claimant experience

21. Question 12 – Do you agree with offering a range of claims excess options outside the AEP?

21.1. The CTU does not agree with this proposal as it increases incentives on an employer or TPA to decline the claim and increase the chance of litigation.

22. Question 13 – Do you agree that self-employed people should be able to choose to purchase cover for both work-related and for non-work injuries from a private insurer?

22.1. We strongly oppose this proposal which amounts to privatising the Earners' Account for the self-employed. We oppose it for similar reasons to those stated for the Work Account. Many people earn income from both employment and self-employment, leading to positions where two people working side by side could be covered by different non-work schemes, and individuals being covered by two or more different providers depending on whether they are working as an employee or self-employed. This means that privatising the Earners' Account for the self-employed will inevitably impact more broadly on all non-work accident compensation provision. There are major implications of this that are not considered in the document.

22.2. Many wage and salary workers are being forced into self-employment by contracting out of services and legislative changes (e.g. the Hobbit law). They are in a vulnerable position economically and will be tempted to take short cuts in both

safety and insurance cover. This can lead to the burden falling back onto state health and welfare costs.

22.3. Self-employed workers should remain covered by ACC, not a private insurer.

23. Question 14 – Do you agree that transparency and flexibility are necessary to facilitate a competitive environment? Are these proposals adequate?

23.1. The Regulatory Framework that is needed to support a competitive environment is outlined to some extent in the discussion document but it is not costed. It appears that for the limited value, if any, that a competitive environment could bring to a limited group of employers, that the regulatory framework will be complex and not transparent.

23.2. The discussion document advises that:

- A central claims handling facility will be required,
- There will need to be a list of employers alongside the insurer,
- A market regulator to monitor and enforce compliance is required,
- A central data pool to gather information on historical claims is required,
- There will need to be a default regime in the event of insurer insolvency, and
- Prudential regulation of potential insurers is required.

23.3. Levies will have to pay for this entire regulatory framework.

23.4. With the information the discussion document provides, it is impossible to say that the proposals will create a transparent and flexible system.

24. Question 15 – For what purposes would you require claims data? What type of and level of data access would be necessary and why?

24.1. The CTU, along with affiliates and other interested parties, would like to have the opportunity to analyse claims data in order to contribute to the debate about injury prevention and effective rehabilitation. Effective injury prevention is best done at an

industry level based on good data. This would require access to statistically aggregated data by industry, size of employer, claimant salary, exposure, activity, duration of claim, claim cost, claim acceptance/decline rate, insurance provider, scheme (such as AEP and the standard scheme), type of scheme (such as full cost, experience rated or standard ACC), region, gender, age, ethnicity etc.

24.2. However we also have pointed out that claims data is not the same as accident or injury data. There should be an effort to regularly collect workplace accident and injury statistics independently of claim data in order to check whether claim data is providing a reliable picture of workplace safety, both for the system as a whole and for groupings as proposed in the previous paragraph.

24.3. Claims and injury data in a private scheme would also be important to compare performance including poor performance.

25. Question 16 – Do you see any other issues with the proposals to collect and share data? If so, how might they be addressed?

25.1. If ACC is privatised there would have to be standards imposed on the private insurers to share claims data to enable industry/sector injury prevention effort. The private sector will be reluctant to share the data unless they are compelled to do so. Without data at an industry level effective injury prevention will not occur at an industry level. It is noted they will not be covered by the Official Information Act.

25.2. There is concern that the sharing of claims data could affect employment opportunities as insurers could put terms on employers to not employ injured workers.

26. Question 17 – Is continuous cover assured by the proposals to have ACC cover all workers unless private insurance is in place, and a register of private insurance cover? Why or why not?

26.1. It is difficult to answer this question because of the many eventualities that could occur. For example, a private insurer in financial trouble could delay or fail to pay claims for some time before it fails – or it might do so and recover without failing, avoiding any intervention. There could be delays in employer notifications of terminating a contract with a private insurer especially when the employer is in financial difficulties. Any amount of regulation is unlikely to cover all such

possibilities, and in any case is likely to be overlooked or ignored by insurers or employers in financial trouble or with other priorities preoccupying them. The losers will be the claimants. It highlights the clumsiness, complexity and high transaction costs of the proposed system.

27. Question 18 – Do you agree that the risks and consequences of insurer insolvency are adequately managed by the proposed approach?

27.1. See our answer to Question 17.

27.2. Further, the risks of insurer insolvency cannot be managed other than through prudential standards and financial monitoring, but there is no specification of what those standards are likely to be, and hence there is, within the proposal, no explicit approach to managing insolvency risk.

27.3. The consequences of insolvency are covered by levying remaining insurers to cover the costs left by the insolvent insurer. This creates, in the first instance, a perverse incentive for each individual insurer to under-price risk and increases the prospect of insolvency. It also has the effect of incentivising insurers collectively to under-price risk and to offload that onto the ACC as the residual underwriter of risk. In addition, if ACC remains the largest provider, it will bear the largest risk. That set of arrangements does not manage the consequences adequately.

28. Question 19 – Do you agree that the establishment of a market regulator would adequately protect workers' rights and entitlements? If not, what additional practical steps could be taken?

28.1. The CTU does not agree that the market regulator will adequately protect workers' rights and entitlements.

28.2. It appears from the discussion document that the market regulator will not be responsible for individual claimant complaints but will simply monitor the market.

28.3. There will be an increase in disputed claims under the proposed competitive model. Problems are exacerbated by the multiplicity of insurers and TPAs with claims potentially falling between them. Problems can potentially occur whenever a claimant changes employer to one with a different insurer or has multiple jobs. When a claim relates to a gradual process injury or other injury whose symptoms

take time to reveal themselves the position will be particularly difficult and could easily become contentious with multiple employers and insurers disputing connection with the injury. The effect will be to delay or deny claimants their rights and treatment.

28.4. There may also be problems as claims and other information are passed between the multiple parties and regulators. The multiplicity of regulators adds to the potential for claimants to experience delays in claims being satisfied, with a high risk of failure.

28.5. A market regulator will be a blunt instrument to safeguard against workplace pressure to under-report and ill designed to 'pick up' incidents where employees are forced to return to work before they are medically fit. Unions are frequently required to advocate for members who have suffered an exacerbation of an injury after an Accredited Employer has prioritised a worker's early return to work ahead of ensuring a safe return to work.

28.6. Such a regulator must however be available to workers and their representatives to make complaints to.

29. Question 20 – do you agree with the proposal to provide for independent dispute resolution in alignment with existing frameworks?

29.1. The Government should undertake a separate consultation process with relevant Ministries, legal and dispute resolution practitioners, Consumer Outlook Group, unions and advocates to develop an independent review system.

29.2. We have concerns for claimants when the party that the claimant has a dispute with goes out of business, changes its name or merges with other businesses. A time period could be introduced for cover and a handover instigated at the end of that time or payment of bonds to cover settlement of disputes.

29.3. There will be an increase in disputed claims under the proposed competitive model. Problems are exacerbated by the multiplicity of insurers and TPAs with claims potentially falling between them. Problems can potentially occur whenever a claimant changes employer to one with a different insurer or has multiple jobs. When a claim relates to a gradual process injury or other injury whose symptoms take time to reveal themselves the position will be particularly difficult and could

easily become contentious with multiple employers and insurers disputing connection with the injury. The effect will be to delay or deny claimants their rights and treatment.

29.4. There must be a thorough review of the Code of Claimants' Rights with a view to strengthening it. The current Code only provides a review for ACC service. A future Code must set high standards for the industry and cover a wider range of rights including a right to services of an appropriate standard and a right to an advocate, a right to fair and timely resolution and for claimants to be fully informed.

29.5. The potential fragmentation of the disputes resolution arena is of concern. Maintaining insurers' right to select their dispute resolution scheme raises a spectre of claimants being placed in unequal positions depending on that insurer's choice. The proviso to the choice of dispute resolution scheme in this proposal is "so long as the chosen scheme is approved to resolve work-related personal injury insurance disputes". There need to be strong criteria for that approval to be given, criteria should be drawn up in a tripartite process and criteria should reflect a claimant-centred approach and a requirement for consistency across schemes.

29.6. Having multiple dispute resolution schemes adds to the complexity of the proposed system from the point of view of claimants and makes it less likely they will make use of them, making it more likely they lose out on their entitlements. Claimants must find out which dispute resolution scheme applies and build up enough confidence in the resolution service to use it. Such confidence grows from widespread experience and use of such a service. With multiple services, that confidence will take much longer to build.

29.7. It is likely that the insurance-based commercial approach being proposed will increase the litigation and number of disputes. It is analogous to the medical insurance situation in the US where insurers employ armies of claim checkers and lawyers to check the fine print in order to deny claims wherever possible.

29.8. It is doubtful that the current review process will be suitable for such an environment. Disputes are likely to be more complex, more legally based, multiple parties (such as insurers disputing cover) may be involved, and costs will become even more significant than at present. Appeals are likely to become much more common.

29.9. If the proposals proceed, legal aid should be made available to claimants. This should be at higher rates than is currently provided to reflect the increased complexity of the cases.

29.10. The informality and lack of legal training by the reviewers is not suitable. Some reviewers do not comply with standard civil procedures, yet the Courts rely on the reviewer to bring out all the factual evidence. This can be hindered by their lack of legal training and litigation experience.

29.11. Matters of law can only be heard at the High Court. It is submitted that both fact and law should be able to heard at the High Court, and that the ACC jurisdiction should be extended to the Supreme Court.

30. Question 21 – Do you agree that a single, central claims lodgement process would be effective?

30.1. We cannot tell from the information provided but agree that, a single central claims lodgement process will be required if the proposals proceed. It must be staffed by skilled, experienced people, as its decisions may be a source of litigation. Allocating a claim to either ACC, an AEP or a third party insurer is not straight forward particularly if it is a recurrence, gradual process, or occupational disease claim.

31. Question 22 – What else might be done to streamline claims administration processes and reduce the risk of increased transaction costs for providers?

31.1. No comment

32. Question 23 – do you have any comment on how the cost of the public health acute services could be fairly allocated?

32.1. The retention of the current model of ACC provision is the simplest, most effective way of providing funding to public health acute services. Should private insurers enter the market public health acute services cost and the cost of emergency transport services should be spread across all providers through a levy.

33. Question 24 - Do you agree that private insurers should be able to contract with treatment providers for alternatives to the minimum prices and conditions? Why or why not?

33.1. We do not agree that private insurers should be able to contract with treatment providers for alternatives to the minimum prices and conditions.

33.2. There is a risk that rehabilitation and treatment will be compromised if insurers enter into low cost contracts with treatment/rehabilitation providers. The injured worker will be forced to attend the treatment or rehabilitation provider offered by the employer/insurer. If the treatment/rehabilitation provider has been selected solely on the basis of price, the injured worker may not receive the quality of care that they need to be effectively treated or rehabilitated. This will in turn lead to lower productivity, higher health care costs and welfare payments. It will also progressively undermine the public health system.

34. Question 25 – do you agree with the proposed approach to managing gradual process claims? Why or why not?

34.1. We agree the injured worker should not have to argue between insurers and ACC as to who is responsible for the ultimate costs. However, we do see that there is a high likelihood that any insurer will simply decline the claim and the injured worker will end up having to pay the costs of litigation. In addition, developments of such an injury during its progress may well lead to disputes between insurers as to responsibility and as to whether it is a new injury. We do not think this proposal will work in practice.

34.2. Should the proposal go ahead, gradual process claims should be funded by a levy across all employers and managed by the ACC separately. Once again this highlights the clumsy, high cost nature of the proposal.

35. Question 26 – Do you have any comment on the impacts of the proposed changes?

35.1. We oppose the proposed changes. We will have a more complex, costly and less effective system which will come at the expense of workers who should be the primary focus of any changes to the ACC scheme but are not in these proposals.

Instead employers are the primary focus and intended beneficiaries of the changes proposed.

35.2. All the proposals under consultation will disadvantage New Zealand workers. They will introduce choice, but it is choice for employers only. The injured worker will not be the client any more and the focus is likely to be on denying claims or forcing workers back to work before they are ready.

35.3. There is no evidence base to introduce such radical change.

36. Question 27 – do you think the proposed risk mitigation and management measures would adequately address the risks? If not, do you have any suggestions for alternative ways to manage these risks?

36.1. We do not believe the mitigations suggested will compensate for the risks and disadvantages of the proposal. Instead they add complexity, cost, regulatory and financial risk to an existing successful scheme, and make it more difficult to use by its primary clients: workers. The role of workers, unions, and health and safety representatives in designing, implementing and monitoring workplace health and safety is all but ignored.

36.2. The best way to mitigate the risk is to stay with the current system. Government could consult on improvements in it that maintain rather than emasculate its many advantages.

Appendix 2: Feedback Form

This discussion document seeks feedback and comments on proposals to:

- extend the Accredited Employers Programme and offer other risk-sharing options
- introduce choice in the ACC Work Account.

These proposals are described in the discussion document at www.dol.govt.nz/consultation/increasing-choice/increasing-choice.pdf

You can also download this form from the Department of Labour's website at www.dol.govt.nz/consultation.

Please post your completed form to:
Department of Labour (Attention: ACC discussion)
PO Box 3075
Wellington 6140
or email your completed form to ACCdiscussion@dol.govt.nz

Please make your submission *by 5pm on 15 July, 2011*

Details of respondent:
Name: Helen Kelly **Position: President**

Address: PO Box 6645, Wellington 6141

Email: **Helenk@nzctu.org.nz**, **Daytime Phone:04 385 1334**

karenf@nzctu.org.nz

I am responding:
☐ as an individual
☐ **on behalf of an organisation**
Organisation/business name (if applicable):

NZ Council of Trade Unions (CTU)

Please tick which description best suits you or your organisation:

☐ Employee
☐ Self-employed
☐ Employer (please tick number of employees)
☐ up to 10 ☐ 10-50 ☐ 50-250 ☐ 250-1000 ☐ over 1000
☐ Insurance company
☐ Business representative organisation/industry group
☐ **Trade Union**
☐ Treatment provider
☐ Other (please describe)

----------**Treatment providers only:**

Please tick the types of treatments that you, or your organisation, provide:

- ☐ Acupuncturist
- ☐ Audiologist
- ☐ Chiropractor
- ☐ Counsellor
- ☐ Dentist
- ☐ Medical laboratory technologist
- ☐ Medical practitioner
- ☐ Nurse
- ☐ Occupational therapist
- ☐ Optometrist
- ☐ Osteopath
- ☐ Physiotherapist
- ☐ Podiatrist
- ☐ Radiologist/X-ray provider
- ☐ Speech therapist
- ☐ other type of treatment provider

Is your organisation:

- ☐ a general practice organisation?
- ☐ a District Health Board?
- ☐ another type of treatment provider (please describe)

Official Information Act requirements

Please note that submission contents and your individual or organisational details may be released publicly if a request is made for this information under the Official Information Act 1982.

Please let us know if you do not want your submission contents and/or your individual or organisational details to be made available to requesters and we will take this into account when responding to request