ACC Futures Coalition

P.O. Box 5173 , Wellington

www.accfutures.org.nz info@accfutures.org.nz

Submission To the Stocktake of ACC Accounts

November 2009

ACC Group Acclaim Otago (Inc) Aviation & Marine Engineers Association DPA (NZ) Inc. College of Nurses Aotearoa Equity Support Group Engineering, Printing and Manufacturing Union Finsec Flight Attendant and Related Services Assn Maritime Union of NZ National Distribution Union NZ Association of Occupational Therapists NZ Assn of Pscyhotherapists NZ Audiological Society NZ Council of Trade Unions NZ Dairy Workers NZ Dental Therapists' Association NZ Meatworkers & related Trades Union NZ Nurses Organisation NZ Register of Acupuncturists Osteopathic Society of NZ Podiatry NZ Public Service Association Rail and Maritime Transport Union Recreation NZ Service and Food Workers Union Nga Ringa Tota Inc

STOCKTAKE OF ACC ACCOUNTS

SUBMISSION OF THE ACC FUTURES COALITION

1.0 INTRODUCTION

1.1 ACC Futures Coalition was established earlier this year with the aim of building cross-party support for retaining the status of ACC as a publicly-owned single provider committed to the 'Woodhouse Principles'. We seek to maintain and improve the provision of injury prevention, treatment, rehabilitation and 'no fault' compensation social insurance system for all New Zealanders. Participating organisations in the coalition include unions, health professional associations, academics, recreation providers, and claimant representatives.

1.2 We have already met with David Caygill and Craig Armitage and also presented the stocktake with a summary of our views. This submission affords us the opportunity to make more in depth comments on the challenges facing ACC.

1.3 It is often overlooked that our accident compensation scheme came about as the result of a social contract made between the people of New Zealand, and the government in the late 1960s. In exchange for a no-fault, comprehensive statutory scheme, the people agreed to abandon their right to sue for personal injury which was covered by the scheme. The introduction of the scheme – and the social contract that it entailed – received bipartisan support in Parliament, and was ultimately enacted by the National Party.

1.4 The significance of the social contract cannot be overstated. In giving up the right to sue for covered injuries, the public necessarily gave up all the Court-ordered remedies which flow from civil suits. These included: complete compensation for lost earnings (both past and future), compensation for pain, suffering and loss of amenity, compensation for loss of congenial employment, compensation for handicap in the labour market, compensation for loss of pension, as well as compensation for the cost of treatment and/or rehabilitation.

1.5 The opportunity to access such remedies was forgone in favour of a scheme that was founded on the following 'five guiding principles', which have become known as the 'Woodhouse principles'. Members of the stocktake are probably very familiar with the principles, but it is worth summarising them here:

1. Community responsibility. The Royal Commission of Inquiry (chaired by Sir Owen Woodhouse) pointed out that, as a society, we all benefit from the productive work of each member of the workforce. Therefore, our society ought to accept responsibility for those who are prevented from working through injury. Similarly, as we all enjoy community activities which inevitably result in injury to some, we should all share in the costs sustained by those unlucky few – 'the inherent cost of these community purposes should be borne on a basis of equity by the community'. This is true regardless of whose fault the injury was – if indeed it was anybody's fault at all.
2. Comprehensive entitlement. Entitlements should extend to all victims of injury by accident, regardless of fault, or where the accident occurred. The Commission regarded

it as anomalous that entitlements under the Workers' Compensation Scheme had been limited to victims of workplace accidents, whilst victims of non-work accidents were left to fend for themselves. Regardless of where the accident occurred, it remains in the interests of the entire community to ensure that the victim is rehabilitated as soon as practicable.

3. Complete Rehabilitation. Because the costs of injuries are eventually (and inevitably) borne by the whole of the community, the overriding goal of the community should be 'to encourage every injured worker to recover the maximum degree of bodily health and vocational utility in a minimum of time'.
4. Real Compensation. The Commission observed that modern households have several financial commitments, 'which do not disappear conveniently if one of the hazards of modern life suddenly produces physical misfortune'. As such, the Commission recommended that a social compensation system should 'rest upon assessment of actual loss, both physical and economic, followed by a shifting of that loss on a suitably generous basis'. The figure of 80% for earnings-related compensation was designed to offer real compensation, whilst leaving a proportion of loss with the injured person, in order to encourage personal initiative.
5. Administrative Efficiency. The Commission stressed the importance of funds being collected, and then distributed as benefits, in a manner which is speedy, consistent, and without contention.

1.6 It is our strong view that any review of any aspect of the scheme should be judged against those principles, including the no-fault principle. At our meeting with Mr. Caygill we were advised that the stocktake did not see the terms of reference as challenging those principles. Since that time the Minister has announced extended terms of reference to include consideration of the privatisation of the work account. We include comments on that issue here without having seen any revised terms of reference.

2.0 SUBSIDISATION

2.1 The terms of reference call for an analysis of each active account covering, among other things "any subsidisation occurring within the Account or across other Accounts". This sounds apparently neutral on the question of subsidisation, however the context within which the Stocktake is conducting its business is not neutral. National Party policy prior to the last election strongly implied that subsidisation was a problem[1].

2.2 It is our view that subsidisation is integral to the scheme, given the principle of Community Responsibility. Efforts to strictly allocate costs on the basis of assessed risk would not only undermine this principle but are also likely to prove to be elusive. Behind the principle of Community Responsibility is the concept of economic interdependence – that we do not live in isolation and that our comfort is based upon the risks of others.

2.3 This has been neatly summarised by St. John:

[1] National Party ACC Policy Background, July 2008, http://www.national.org.nz/files/.___0_0_ACC_paper.pdf

> In a social insurance scheme based on Community responsibility, cross subsidisation of premiums not only should occur but that this is in fact deemed desirable. It is not just that cross-subsidisation cannot be eliminated without excessive compliance costs, but that one person's job depends on other people's jobs. A fish broker who sits in front of the safe computer depends on the risky business of fishing for his survival. Cross subsidisation can also recognise the social value in each person being protected on the same basis regardless of previous accidents, other part-time jobs, or disability or ethnicity[2].

2.4 Thus this issue is both practical and values based. Attempts to sheet home responsibility for accidents by eliminating subsidisation will drive compliance costs. Treasury in its Regulatory Impact Statement to the Injury Prevention Rehabilitation and Compensation Amendment Bill 2009[3] advised that experience rating and risk sharing (two tools that would assist in the elimination of subsidisation) would increase compliance costs for both business and ACC, but that these costs had not been investigated.

3.0 OPTIONS FOR FUNDING POLICY

3.1 The Coalition believes that if this particular term of reference is to mean anything, it must encompass full consideration of a return to pay-as-you-go. The Government has argued that that there is a 'blow-out' in ACC's finances. It is our view that ACC is in a fundamentally sound situation and the pressure to increase levies and cut entitlements is largely driven by the commitment to fully fund the scheme.

3.2 In the 2008/9 year the Corporation collected $4.2 billion in levies and paid out $3.1 billion in claims, including the benefits arising from historical or residual claims. It currently has over $10 billion in investments and has achieved a 3.2% return over the last financial year when many private sector investors were making significant losses. ACC is therefore currently in sound financial shape.

3.3 The commitment to fully fund the cost of current claims by 2019 is the problem. Full funding was introduced in 1998 as an adjunct to the privatisation of the work account. It is a model designed for private insurers who are obliged to maintain sufficient funds to cover their liabilities in the event that they might disappear. A social insurer, owned by the government, does not need to provide for the potential disappearance of the scheme provider – the government will never disappear.

3.4 The full funding model requires a set of actuarial assumptions, many (if not most) of which are likely to be proven wrong over time. The long-term nature of many of these liabilities means that the likelihood of the assumptions and estimates being wrong is very high. The overriding assumption appears to be that the actuarial unders and overs will balance each other out over time. It may be that over time adjustments will be made but the problem is that in the interim levies will be substantially increased and cover and entitlements reduced,

[2] St. John, Susan *Community Responsibility: Paper to the CTU conference – rebuilding ACC beyond 2000,* Wellington 23 July 1999 p. 5

[3] Injury Prevention, Rehabilitation and Compensation Amendment Bill 2009, Wellington, 2009, p. 21

possibly unnecessarily. An ACC spokesperson was quoted recently in the Listener as saying "…if it does turn out that they are over-estimating the cost, there's no harm done" and that "in a sense that's fine, we can lower the levies.[4]" That is not good enough.

3.5 The current board has adopted a new set of assumptions that have contributed to the paper loss of $4.5 billion that has been publicised by the Minister. These assumptions include $1.3 billion for revised economic assumptions, $500 million for increasing the risk margin, $1.3 billion for claims experience and monitoring changes and $1.3 billion in "future cabinet and regulated rate increases" (which appears to be particularly speculative). It is these changes in assumptions that are driving the levy increases.

3.6 ACC was initially established on a pay-as-you-go-basis and there is sound reason for returning to that approach. We have already noted some of the issues with fully funding but it is important to reflect on the social insurance nature of the scheme and its interconnection with the governments health and welfare programme. As Sir Owen Woodhouse advised the ACC Futures Seminar last year, the scheme was always "social welfare in its intent and purpose"[5]. There is no fundamental difference between ACC and any other aspect of Government social expenditure except that it looks like an insurance scheme. We do not fully fund education, health or New Zealand Superannuation and there is no need to fully fund ACC.

3.7 We note the recent paper[6] by Michael Littlewood which argued that a PAYG approach was more appropriate for ACC than the fully funded model. He concludes that a PAYG approach to levy-setting should be "simpler, more transparent and less risky financially."

3.8 However we also note that that the history of ACC levy setting has been fraught with political difficulties[7] and submit that the time has come for a multi-party agreement that endures in order to protect this important scheme. There is much work to be done on this but as a starting point we would suggest a PAYG model supported by reserves sufficient to cover somewhere between 6 months to 2 years expenditure, as may be agreed. Levies would be set annually to maintain reserves at that level. We note that the draft legislation in the Law Commission report on ACC in 1988 had this to say about reserves:

> 1. In estimating its income needs for any financial year, the Corporation shall set aside a sum amounting to not less than half its estimated expenditure for that financial year as a reserve fund.
>
> 2. The Corporation may draw on that reserve fund as a source of working capital and to meet any unforeseen contingency.[8]

---

[4] 'Future Shock: what's the real reason taxpayers are being landed with massive ACC increases?' *NZ Listener,* Vol. 22 No. 3624, 24 October 2009, p. 5

[5] http://www.accfutures.org.nz/assets/downloads/Sir-Owen-Woodhouse_speech.pdf#view=fit

[6] *PensionCommentary 2009-1*, 19 August 2009, http://www.business.auckland.ac.nz/Portals/4/Research/ResearchCentresGroups/RPRC%20commentary/PC2009-1-WhyShouldTheACCbePre-funded12.10.09.pdf

[7] For a summary history see Susan St. John, *Pension Commentary 2009-2,* 15 November 2009

[8] Personal Injury : Prevention and Recovery : Report on the Accident Compensation Scheme - NZLC R 4**,** Published 9 May 1988

4.0 CONSTRAINTS ON ACHIEVING VALUE FOR MONEY

4.1 There is scope for achieving better value for money within ACC. We believe that the constraints are largely administrative in nature and that there are possibilities for significant savings through genuine partnerships between ACC and: the Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) on behalf of ACC employees; consumer advocate groups and unions; employers; and treatment providers. These can be quantified but only after the work has been done.

4.2 In recent years ACC has begun to take a more open approach to these stakeholder groups and genuine progress has been made. PSA members, along with other staff, have been consulted for ideas in the recent value-for-money exercises; consumer representatives are involved in the Consumers' Outlook Group (COG); and there are examples of ACC engaging with treatment providers, the one we are most familiar with being the Hearing Industry Accord. This last is a good example of what we are suggesting as a way forward – a partnership model in which mutual expertise is recognised, rather than just consultation.

4.2 The PSA has been committed to a partnership for quality strategy for many years. Partnership is about the union working with employers on areas of shared interest to improve the quality of management and jobs in the workplace and the quality of services provided to the public. In more recent years the union has developed its thinking into a strategic agenda known as 'Democracy at Work'[9]. The thinking behind this strategy is that by providing better jobs for PSA members and empowering workers, we can contribute to the development of high performing workplaces and quality services that are valued by the public.

4.3 The PSA is currently developing its model of 'sustainable work systems' based on the thinking behind the 'lean' movement. The lean movement is about engaging workers in the elimination of waste from the work systems in their workplaces. These processes originated in manufacturing (most notably Toyota) but the PSA approach will be more appropriate to public services and will recognise the benefits of collectivity. We appreciate that the Stocktake is looking for suggestions such as these to be quantified. This is not possible in the time available to prepare this submission, but anecdotal reports from other sectors suggest that lean approaches can lead to significant elimination of waste.

4.4 The Coalition is also very supportive of partnerships between treatment providers and ACC. The best example is the Hearing Industry Accord between the NZ Audiological Society and the Hearing Instrument Manufacturers and Distributors Association (HIMADA), which have been working with ACC since 2007[10]. This generated savings of $6.7 million in the 2008/2009 year alone. Whilst claim numbers increased, the ACCORD held the rate of increase down to 3% per annum. The total cost for expenditure of products and services for the approximately 50,000 claimants with noise induced hearing loss for the 2008/2009 year was almost $59

[9] See http://www.psa.org.nz/Campaigns/Democracy_At_Work.aspx

[10] The source for this information is the NZ Audiological Society, through individual communication and the NZAS *Submission to the Transport and Industrial Relations Select Committee On the Injury Prevention, Rehabilitation and Compensation Amendment Bill 2009*, http://www.audiology.org.nz/public/pdfs/NZAS%20Submission.pdf

million. When ACC entered the ACCORD they had projected hearing loss claims to rise to $85m by 2010, with the main driver being the increasing number of clients that ACC assists. [11] Without the actions of the ACC–HIMADA-NZAS "Accord", HIMADA estimates the costs would have been $66 Million. These are savings of over 10%, with no loss of cover or entitlement.

4.5 The Accord has also brought about a shift away from prescribing higher-cost hearing aids. The result has been a drop in cost from $2192 per aid in 2007 to $1710 by May 2009 (these are average prices: some aids cost $500, while people with high needs can have hearing aids valued at $2500). The industry partners have effectively brought prices down by 22 percent. Further, audiologists have not had a fee increase for 8 years. The ACCORD has saved ACC $10m in the last 18 months.

4.6 There is also scope for working with other health professionals in eliminating waste. For example, many of ACC's processes are also aimed at regulating clinical pathways, often in direct contravention of best practice and the Health Practitioners' Competence Assurance Act (HPCA Act). This is an unnecessary duplication which wastes resources and impedes optimal care. In some instances, as for example with the recent decision to exclude regulated psychotherapists from providing ACC assessments for subsidised treatment for victims of sexual abuse and/or sex crimes, ACC's approach cuts across the purpose of the HPCA Act of protecting the public. Similar inconsistencies, where one area of legislation contravenes another, continue to prevent Nurse Practitioners utilising the full extent of their scopes of practice, another frustrating waste of resources.

4.7 The Coalition is also aware that ACC is consulting with claimant organisations through the COG process and that various suggestions for savings and improved processes have been made. We support this and recommend starting a conversation within COG about ways in which claimant and community organisations can be provided with more in depth engagement with the Corporation that has the potential to reach out beyond COG.

4.8 The ACC Coalition has a concern about the indiscriminate cutting of entitlements and reduction of cover as a means to delivering a 'steady state' financial position. We accept that a process that judges entitlements against the first principles of the scheme, that is based on evidence and involves full consultation with affected groups, may produce savings. We do not accept that the Bill currently before the House, for example, meets this standard. The proposal to reduce coverage for work induced hearing loss to exclude those with less than 6% impairment was introduced with no apparent recognition of the achievements of the Hearing Industry Accord and without consultation with the partners to that Accord.

4.9 There is also a significant risk that tightening up the scheme will merely shift from citizens as levy payers, on to citizens as taxpayers. This is should be considered by the Stocktake, even though it may be strictly beyond the terms of reference. For example, the proposal to

[11] ACC Hearing Services Accord 2007-8

introduce a 6% threshold for cover for hearing loss is likely to cost the Ministry of Health $5m[12] a year, which will put greater pressure on an already overstretched health budget.

5.0 EXPERIENCE RATING AND RISK SHARING

5.1 We have concerns about experience rating and risk sharing. There is evidence from New Zealand during the 1990s and from overseas that indicates that experience rating in particular is a crude tool that cannot accurately reflect the safety performance of employers or improve their performance, and can lead to pressure being applied to workers to not report their injuries. There are real questions about whether financial incentives work in improving worker safety.

5.2 We would draw the attention of the Stocktake to a current consultation being conducted by Work Cover South Australia, who are reviewing their penalty/bonus system[13]. The authors of their discussion document worked with PriceWaterhouseCoopers (PWC) to gain a better understanding of their system and found that:

> Only very weak links were found between the Bonus/Penalty rate and claim outcomes. No evidence was found to suggest that the Bonus/Penalty Scheme has delivered better health and safety outcomes for workers in South Australia[14].

5.3 They also conducted a literature search and concluded that:

> The majority of findings in the literature review were negative towards experience rating systems. Also, studies supporting experience rating tended to be less robust than those against, and those against often had detailed rebuttals of the arguments in favour[15].

5.4 The literature they considered threw up the following problems with experience rating in its various forms:

- There is no clear consensus that they have reduced injury rates or made workplaces safer;
- They have created perverse motivations, for example to suppress claims, dispute the coding of claims, or only focus on reducing claims within the 'experience window';
- They may reduce claim numbers but *not* average claim costs, and average claim severity tends to increase – this is further evidence that the reporting of small claims is sometimes 'suppressed';
- There is no obvious link between experience rating bonuses/penalties and an employer's commitment to safety and return to work;
- They are not suited to smaller employers, who lack the resources to 'respond' to penalties;

[12] MOH email to Hazel Armstrong 15 November 2009. The Ministry of Health anticipates additional costs of $3m in the first year progressing to $5m in out years if the IPRC Bill proposal is introduced a 0-6% threshold and changes in cover related to the percentage of age related hearing loss are implemented by ACC.
[13] See http://main.workcover.com/site/workcover/news/latest_news.aspx#div*more13
[14] Ibid. p.5
[15] Ibid. p.7

- The large lag time between injury and a financial penalty means that the employer probably doesn't 'heed the message' of the penalty; and
- They are better suited to simple and short-term claims rather than longer-term claims involving income support and complex personal issues.

5.5 We would also note that notwithstanding the clear evidence the reviewers discovered, and while they asked the question about whether experience rating was appropriate at all, their working *assumption* was that it was beneficial. We trust that the Stocktake will look past the superficial logic to the clear evidence against this approach.

5.7 Evidence from New Zealand during the period of privatisation which incorporated the principle of experience rating is consistent with the literature considered by the South Australians. The research conducted by Blue Lotus[16] for the Department of Labour on the experience of treatment providers, reported that respondents were concerned that employers pressured their employees not to lodge claims for workplace accidents. Unions reported anecdotal evidence from their members to the same effect during this period.

5.8 The ACC Futures Coalition has also unearthed evidence from other sources. A Canadian research study of 450 firms in Quebec, supports the argument that experience rating will result in undue pressure on workers to return to work before they are ready. It was found that experience-rating was associated with aggressive case management procedures, 'that is, practices for reducing compensation costs by means other than disease and injury prevention, such as hastening the injured workers' rehabilitation and challenging claims'.[17] Research has also found that experience-rated employers are significantly more likely to appeal claims, and that the likelihood of appeals increases along with increases in the financial incentives to the employer.[18]

5.9 Furthermore, the results of a study into the impact of experience rating on discriminatory hiring practices (based on New Zealand data), showed:[19]

> ... a direct relationship between experience-rating and hiring discrimination. This indicates that employers are proactive, rather than simply reactive, in the management of compensation claims: they try to prevent future claims by discriminating rather than merely limiting the impact of such claims, subsequent to an injury occurring. Second, they show that employer attempts to limit such claims are not restricted to just morally questionable activities, but potentially extend to the unlawful as well. Third they identify a hitherto unrecognised group of potential victims of experience rating, the disabled, whereas past research has focused only on the negative consequences of claims management for the newly injured.

The authors of this study concluded that '[l]ike earlier studies, the results of this one should heighten concerns about the appropriateness of using experience-rating as an approach to injury prevention'.

---

[16] Blue Lotus Research*, Evaluation of the impact of competition on health providers and Review of treatment costs*, Department of Labour, March 2000

[17] Thomason, Terry, and Silvanna Pozzebon. "Determinants of Firm Workplace Health and Safety and Claims Management Practices", Industrial Labour Review 55, 2 (2002): 286-307

[18] Hyatt, Douglas, and Boris Kralj. "The Impact of Workers' Compensation Experience Rating on Employer Appeals Activity". Industrial Relations, 34, 1 (1995): 95-106

[19] Harcourt, Mark, Helen Lam, and Sondra Harcourt. "The Impact of Workers' Compensation Experience-Rating on Discriminatory Hiring Practices". Journal of Economic Issues XLI, 3 (2007): 681-699

5.10 Finally, experience rating cannot address employer behaviour in relation to occupational illness. The latency period, which can run to 20-30 years in many cases, means that it is usually impossible to identify the employer who caused the illness.

> The real life realities of workforce dynamics and the complexities of exposures mean that the administrative task of attempting retrospectively to reconstruct the nature of employment and exposure, in order to determine which employer/s should be debited with the claims costs arising from the disease, is a fanciful prospect and an impossible – and indeed pointless - undertaking[20].

5.11 Experience rating is not the answer to improving safety in our workplaces. We would instead point to improvements made already in the work account where new claims reported have declined from 215,553 in 2004/5 to 190,495 in 2008/9. This roughly coincides with the introduction of health and safety representatives and committees under the Health and Safety in Employment Amendment Act 2002. More research needs to be done before we can be clear about the link but the coincidence suggests that these approaches have worked more effectively than the carrot and stick of the financial incentives of experience rating.

5.12 Risk sharing is also to be considered under this term of reference. We understand that this may mean that some cost is placed on claimants by way of an excess, presumably to act as a financial incentive for safer behaviours by citizens. This will create an undue financial barrier to medical treatment for some claimants and, given that most accidents are beyond the control of the person injured, it is quite inappropriate. Determination of responsibility will often be difficult and is likely to lead to disputes.

5.13 Another possible form of risk sharing is an extension of the Partnership Programme to allow medium sized businesses to take on some of the risk of an employee becoming injured at work, and to provide a proportion of the compensation payment due to that employee. The primary problem with the risk sharing arrangements in the Partnership Programme is that a clear conflict of interest exists. When an employer is responsible for decisions over their employees' claims, there is a strong incentive for employers to decline cover as doing so will protect their bottom line and their safety record.

6.0 PERFORMANCE INDICATORS

6.1 Current performance indicators have a heavy bias towards financial issues and full funding. The Minister was able to announce in House earlier this year that ACC failed to meet 6 out of its 7 key financial indicators largely because of this commitment to full funding. An obligation to maintain enough reserves to cover claims costs for an agreed period (see paragraph 3.8) would modify these unrealistic targets.

---

[20] Clayton, Alan The *Prevention of Occupational Injuries and Illness: The Role of Economic Incentives,* Australian National University, August 2002 p.22 http://ohs.anu.edu.au/publications/pdf/wp%205%20-%20Clayton.pdf

6.2 We have a concern that ACC has been a largely numbers driven service and a more flexible approach to performance indicators might be useful. Much depends upon how these KPIs get reflected down into the organisation. There is a real risk of perverse incentives leading to ACC pushing people off compensation too early and not enough emphasis on such issues as the quality of care. An evaluation of Vocational Rehabilitation under the IPRC Act in 2007[21] noted weaknesses in ACC's performance in this area, due in part to the nature and effect of Key Performance Indicators (particularly those which drive behaviour that is not focused on rehabilitation and/or compromises claimant centred rehabilitation for RTW and independence). Several stakeholders commented negatively on the impact of KPIs, for example one case manager who was quoted as saying:

> …there are KPIs about exits, I can get exits, they might not be right, but I could get them you know they might not be the best for the person so it's not creating an environment then to say you know like your KPI isn't indicating you have provided the best rehabilitation[22].

6.3 Most people interviewed in the report that some KPIs are perhaps a necessary tool in directing behaviour but the authors concluded that the comments highlighted a number of potential ways forward if vocational rehabilitation is to be provided in ways that meet the goals and intent of the Act including[23]:

- a shift in the focus of KPIs
- good leadership within the corporation and branches
- reconsideration of case managers' skill set and education requirements; and
- an emphasis on outcome (not exit).

6.4 Another 2007 study on vocational independence demonstrates the problems with inflexible KPIs. It followed up 160 claimants who had been deemed to have achieved vocational independence.[24] Among other things it found that 46% of the claimants were not working – 23% having ended up on benefits. This was obviously a poor outcome for the people concerned but also an example of ACC's costs being shifted onto another part of government.

6.5 The Coalition also questions the measures of access set out in the ACC Business Plan for 2008/9. There is an appropriate emphasis on disparity but no apparent attempt to measure performance on claimants actual access to the scheme. The number of applications to Dispute Resolution Services Ltd (DRSL) is one indicator of claimants who feel that they have been denied access to the scheme. The2009 DRSL Annual report[25] identified an upsurge in complaints to the service in March, and by September 2009 the number of applications had reached nearly 1000 per month (nearly double the number received six months previously). Numbers turned down for surgery could also be another indicator as could an analysis of costs of injuries being passed on to the health and social welfare systems.

---

[21] McPherson, Katherine *Evaluation of Vocational Rehabilitation under the IPRC Act 2001*, AUT, February 2007
[22] Ibid. p. 64
[23] Ibid. p. 66
[24] Hazel Armstrong and Rob Laurs, Wellington, February 2007
[25] Dispute Resolution Services Ltd. Annual Report 2009 p. 17
http://www.drsl.co.nz/files/DRSL%20Annual%20Report%202009.pdf

7.0 CURRENT EMPLOYER PROGRAMMES

7.1 This particular term of reference is a different angle on the use of financial incentives to encourage employers to focus on health and safety. For the reasons outlined in section 5 above, we have significant concerns about this.

7.2 However, this term of reference also encompasses the Partnership Programme and the experience of both employers and claimants in working under this programme. There is much to be learned from their experience. While there is evidence of heightened awareness about health safety among accredited employers, the experience of injured workers managed by third party administrators, does not compare well to ACC.

7.3 The Partnership Programme devolves the Accident Compensation Corporation's quasi-judicial role, arising from the loss of claimants' right to sue, to accredited employers who act as the Corporation's agent. Many accredited employers in turn devolve this role to third party administrators (TPAs) who manage the claims process on their behalf. The extent of this devolution raises the risk of claimants being treated unfairly. The claimant's injury is the starting point of the process but the original relationship she/he may have had with ACC (a neutral agent) is now with the employer or the TPA as the employer's agent.

7.4 The employer has a vested financial interest in minimising costs associated with administration, payment of compensation and rehabilitation. As we have seen in section 5 this can lead to under reporting or pressure to report work accidents as non-work accidents. This situation is exacerbated in the case of TPAs, who have a direct contractual relationship with the accredited employer and are therefore under a real or perceived obligation to act in the employer's interests.

7.5 In 2008, Research NZ[26] compared return to work outcomes and claimant satisfaction between claims managed by the third parties and those managed directly by ACC. The research found: "ACC would appear to have a better performing service delivery model than the Accredited Employer Programme based on claimant satisfaction feedback."

7.6 The same research found that whilst administrators return people to work faster they were subsequently injured again, indicating people were returned to work before they were ready. Injured workers have experienced a series of problems with administrators under the Accredited Employer Programme. Anecdotal evidence from members of unions who are participating in the ACC Futures Coalition shows that they regularly provide lower entitlements than ACC. Some administrator case managers behave in an unacceptably adversarial manner.

7.7 The Partnership Programme, and the use of TPAs, creates problems for claimant support services as well. Claimant support services can engage with ACC without difficulty. It is a single publicly owned organisation operating nationally, and areas of responsibility are

[26] "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.

delineated and publicised. Generally, ACC welcomes the involvement of claimant support groups and may initiate the involvement of organisations to assist the claimant. By contrast, TPAs and employers are less likely to initiate engagement with support services at the individual claimant level or more broadly. There is a general lack of information in the community regarding the Partnership Programme as well and this is a further barrier to claimant centred teamwork necessary to support the rehabilitation process.

8.0 EMPLOYERS MANAGING NON-WORK INJURIES

8.1 The ACC Coalition supports an integrated approach to injury management that encourages and supports injured workers during their return to work, regardless of where that injury was incurred. Employers have a very important role to play here. However, the Coalition will be concerned if this particular term of reference means employers will take over the management of the injury, rather than working together with ACC. As described in section 7 above, the incentives for the employer may not align with the interests of the injured worker.

8.2 To have employers managing the injury instead of ACC also raises human rights issues regarding the access of employers to employees' private and medical histories. This information is private and could be used inappropriately.

9.0 WHO IS BEST PLACED TO PROVIDE EFFECTIVE REHABILITATION SERVICES

9.1 There are many private treatment providers providing effective rehabilitation services at the moment. However, we assume that this term of reference is about increasing the use of third party administrators. The evidence outlined in section 7 above indicates that TPAs are not well placed to provide effective rehabilitation services because of their conflict of interest, their distance from the claimant and their adversarial approach to claimants. We believe that ACC is best placed to manage claims and liaise effectively with rehabilitation providers.

9.2 The Coalition notes that in a recent report[27] the northern branch of the Employers and Manufacturers Association (EMA) proposed that NZ adopt the workers' compensation system of Victoria, Australia. In Victoria, the management of claims is handled by TPAs (private sector) while the levy setting and collection is performed by the government.

9.3 A similar system was introduced in South Australia in 1995. Proponents hoped private providers would compete for market share through efficient service delivery and claims management. Instead they found that providers competed for market share in ways that created unhealthy competition. Agents were compelled to impress employers with 'tough' claims management and suppression of costs. According to Robin Shaw, Chair of the

[27] Employer & Manufacturers Association (Northern) Inc *ACC: The need for urgent reform – discussion document* February 2009

National Council of Self Insurers (Australia), "no identifiable improvement in scheme funding could be attributed to outsourcing"[28].

10. IMPACT OF LEGISLATIVE CHANGE OVER TIME

10.1 It is important that this term of reference encompass legislative changes that have led to cuts as well as growth in entitlements. The Accident Rehabilitation and Compensation Insurance Act 1992 severely damaged the scheme, cut entitlements and ignored the Woodhouse principles of community responsibility, real compensation and complete rehabilitation. While the 2001 legislation went some considerable way in restoring these entitlements many of the negative aspects were left in place. In addition the Injury Prevention and Rehabilitation Amendment Bill currently before Parliament represents a further attack on entitlements.

10.2 We have attached a summary of the broad entitlements contained within each of the major pieces of legislation affecting the scheme since its inception with the Accident Compensation Act 1972 as a schedule to this submission. In our view this summary presents a clear erosion of the initial social contract over time, to the detriment of claimants. This is particularly true from 1992 and likely to be exacerbated by the passage of the IPRC Amendment Bill 2009.

11.0 REVIEW OF ACC's INVESTMENT PROGRAMME

11.1 The Coalition has no in depth comment to make about the investment portfolio. However it is worth noting that the Corporations investment managers appear to have done a better job than most of their private sector counterparts in generating good returns for ACC. We would also note that an investment fund is much less important in a pay as you go scheme with a prudent level of reserves, and may expose the government to unnecessary financial risk in the long term.

12.0 PRIVATISATION OF THE WORK ACCOUNT

12.1 As we have not seen this particular term of reference we can only be guided by the media statements of the Minister who spoke about the Stocktake advising on the feasibility of 'opening up the work account to competition'. Given that the use of third party administrators is raised under a separate term of reference we assume that this new term of reference addresses the introduction of private competitive underwriting. In this section we will also focus our comments on the work and self-employed accounts, even though there

[28] Shaw, Robin "Examining the Australian workers' compensation experience –what we know, and what we only think we know", presentation to *Reviewing NZ's Accident Compensation System Summit,* Wellington NZ, 29 June 2009

has been talk from the government that they are interested in opening up other accounts to privatisation.

12.2 Putting aside the question of whether the addition of this new term of reference to the list of the responsibilities for the Stocktake amounts to the full investigation into competition that was promised prior to the election last year (and referred to again in the original terms of reference) the Coalition believes that there are very many practical reasons why this proposal is not 'feasible'. These relate to the experiences of injured workers, smaller employers and treatment providers last time this experiment was tried and the likely costs involved. It is our belief that those costs will lead to entitlements and cover being further reduced over time.

12.3 The Coalition also believes that the private insurance model is incompatible with the original Woodhouse principles and will operate to the detriment of those who the scheme is supposed to serve.

12.4 It needs to be remembered that privatising the work is a means to an end, and the end is improved administrative efficiency and innovation, and quality service provision. The emphasis on the 'feasibility' of privatisation means that it has already been assumed that it will deliver these outcomes without consideration of the evidence. The Coalition has already been advised that the Stocktake considers that it has a wide brief and that it will interpret its terms of reference broadly. While we think there are real questions about whether privatisation is feasible, the government was elected with a mandate to investigate this approach and the Stocktake represents the only opportunity for reflection on the merits of privatisation beyond its feasibility.

12.5 Private sector underwriting would create additional complexity and organisational requirements for ACC. Under such a system the liability for the compensable costs of occupational injury and disease rests with the employer in whose employment the worker was injured or sustained his or her illness. Apart from employers whose size and/or financial strength has allowed them the dispensation under the Partnership Programme to act as self-insurers, employers would be statutorily required to take out and keep in force a policy of insurance in order to indemnify them against this liability.

12.6 Such a liability regime brings with it a number of problems, particularly concerning the ability of an injured or ill worker to receive compensation in a number of situations. In order to cater for these problems, special arrangements have to be made or new institutions created. The first area of difficulty concerns those situations where, contrary to any statutory requirement, the employer is not insured against its liabilities or the employer in whose service the injury or illness was sustained is no longer in existence. Accordingly, systems based on employer liability have had to create a special fund which is set up to cover for exigencies stemming from the choice of underwriting form. In 1998 there was a non-compliers fund established.

12.7. There are a range of other costs arising out of the added complexities of private underwriting model. These include:

- Competition among private insurers necessitates marketing and distribution efforts and commissions/salaries to agents, compared with the limited requirements in this area for ACC;
- Claims involving multiple employers and gradual process/ long latency claims are usually highly complex and carry a high risk of litigation, compared with ACC where administration is relatively straightforward;
- Duplication of financial, information technology and administrative systems.

12.8 The Cooney Committee in Victoria, in reviewing the operation of the private insurance market in that State prior to the establishment of the WorkCare scheme, found that the administrative costs, as a percentage of premium income, for the private insurance underwriters in that market ranged from 9 percent to an incredible 59.6 percent for one small insurer[29]. Over the entire scheme, insurer administration costs accounted for 15 percent of premium income.

12.9 The Committee also found that brokers added a serious cost, amounting to 4 percent of premium income across the entire Victorian scheme. A privatised work account is likely to see a growth in brokers who bring with them additional problems. Brokers play a central guiding role in the placement of cover and this choice is likely to be crucially influenced by the existence and size of commission.

12.10 The comprehensive PriceWaterhouseCoopers review of ACC in March 2008 had this to say about administration costs under a private sector model after reviewing the literature:

> Both reasoning from first principles (private insurers need extra spending on marketing and profit margins which are not required for public schemes) and empirical evidence point to higher levels of administrative cost under private underwriting delivery, by perhaps around 10%[30].

12.11 The PWC researchers pointed out that worldwide, schemes which feature high levels of periodic payments and provide a wide spectrum of defined vocational rehabilitation entitlements, like ACC, are all delivered through government monopolies[31]. They also went on to suggest that long-term cost increases under private underwriting for the ACC employers account might be larger than the differences seen in Australian and US jurisdictions because of the "stricter adherence of the ACC to periodic benefits[32]".This is likely to lead ultimately either to proportionally higher required profit margins or to cuts in entitlements (or aggressive claims management to reduce the number of workers in the 'tail').

12.12 The question still remains about whether, notwithstanding the likely extra administrative costs of private sector underwriting, a privatised model would still be cheaper for

[29] Cooney, B. C. (chair) *Report of the Committee of Inquiry into the Victorian Workers Compensation System*, Melbourne: Government Printer, 1984 para 6.5
[30] PriceWaterhouseCoopers, *Accident Compensation Corporation: Scheme review* March 2008 p. 383
[31] Ibid. p.xxvi
[32] Ibid. p. 384

employers. The difficulty lies in controlling for the various elements (such as benefit structures, industry demographics etc) which differ between the schemes which are being compared and which influence scheme costs. However, in the late 1990s two leading North American scholars, Terry Thomason and John Burton, put together a sophisticated comparison of the Ontario and British Columbia provincial state funds with the 45 private insurance underwritten jurisdictions in the United States. The study used a number of models in attempting to reach a standardised basis for comparison by controlling for the differences among the schemes that would influence costs. The results showed that, comparing the Ontario state fund and the average United States jurisdiction, the costs for this Canadian scheme (depending upon the model adopted) ranged from 26 percent to 43 percent less than those in the United States. The results for British Columbia were even more dramatic with the cost difference ranging from 47 percent to 64 percent less than in the United States. As Thomason and Burton conclude in the final sentence of their study:

> While it is not a result that we expected, it suggests that cost reductions may not occur – indeed costs may increase – by shifting from monopoly provision to a US model of private insurance.[33]

12.13 Premium instability is also a feature of privately underwritten schemes. Should the work account be privatised we can expect that initially premiums for employers, and especially larger employers, will fall as the new insurers fight to gain market share. During the brief experiment of the late 1990s this was certainly the New Zealand experience. After two or possibly three years of this phenomenon, insurers will probably find that they are significantly under-reserved in respect to their provisioning for outstanding claims and premium rates are likely will be sharply adjusted upwards. In this process of readjustment smaller employers will be the most sharply affected.

12.14 This was a feature in the largest competitive underwriting markets in Australia (NSW, Victoria and South Australia) from the mid 1970s to the mid 1980s when the private insurers were removed from workers' compensation underwriting and were replaced with government monopoly funds which still exist today.[34] Cooney reported that the Victorian Small Business Development Corporation reported that premium increases for small business in the previous two years had ranged from 80 per cent to 400 per cent with individual cases of more than 700 per cent.[35]

12.15 The volatility of premiums in the Western Australian market in the 1990s is another example. Insurers competing for market share cut premiums to the point that they couldn't cover the costs of claims for the same year. The review of workers' compensation in the state in 2000 stated:

> It is clear that until the 1999 financial year, Western [sic] Australian employers were, in general, satisfied with the cost of workers' compensation. Employers enjoyed the benefits of

[33] Thomason, Terry and Burton, John F. Jr. *The Cost of Workers' Compensation in Ontario and British Columbia,*. Mimeo, 1997. p. 23
[34] PWC, p. 377
[35] Cooney, Ch. 1

> decreasing recommended premium rates and significant discounts by approved insurers, peaking at 30% below the recommended premium rates during 1995 and 1996…
>
> The combined effect of discounting recommended premium rates together with the increasing cost of claims…over an extended period…resulted in insurers not collecting sufficient premium to cover the cost of claims for the same year.[36]

Massive premium increases followed.

12.16 One of the added complications of moving to private underwriting is that provision must be made for the eventuality of insurer insolvency. In particular, payments of compensation to injured workers with an ongoing entitlement need to be dealt with. In 2001 HIH, one of the companies offering underwriting services in New Zealand under the privatisation experiment was put into receivership. HIH was also active in the workers compensation market in Australia. While another insurance company entered into negotiations to pick up the renewal rights in HIH's workers' compensation business, nonetheless, workers' compensation policies written in Victoria, Western Australia, Tasmania and the ACT were the subject of government–funded rescue packages[37]. In other words the governments were forced to come to the rescue to protect vulnerable beneficiaries through the failure of the market model.

12.17 One of the great strengths of a single publicly owned fund is its unfragmented data capture. This says nothing, necessarily, about the quality of the data collected but even here the problems of maintaining quality and consistency are far greater for the regulator of a privately underwritten system who has to collate such information from a very large number of sources, many with particular idiosyncrasies of data input, which enormously increase the possibilities of error than is the case in a single fund. ACC, with three and a half decades of claims and other data is ideally suited for a co-ordinated approach to the use of injury data for the purposes of informing injury prevention.

12.18 Ultimately a privatised ACC scheme can only rely on price signals to improve safety in workplaces and as we have seen already, financial incentives have major inherent flaws. Injury protection programmes based on good quality information and elected health and safety representatives are far more likely to reduce injury rates than the tools available to private insurers.

12.19 Many of the issues raised above were reflected in the evaluation conducted by Blue Lotus Research of the experience of treatment providers during the privatisation experiment in New Zealand, on behalf of the Labour Market Policy Group of the Department of Labour. They found that:

- It created additional administrative burdens for all treatment provider types;

---

[36] Ansell, Mettam & Michell, *Report to the Minister for Labour Relations on the Review of Workers Compensation Insurance Arrangements in Western Australia,* June 2000 p.(i) & p.59. cit. Shaw

[37] Kehl, David *HIH Insurance Group Collapse: E-Brief*, 29 November 2001 http://www.aph.gov.au/library/intguide/econ/hih_insurance.htm

- Private insurers were reluctant to approve claims and were often late in honouring invoices;
- Providers considered that claimants knew very little about their entitlements, including the identity of the workplace insurer;
- Providers expressed concern that employers were placing pressure on their employees not to lodge claims for workplace accidents;
- Providers were concerned that successful application for coverage depended on approval by their patients' employers. If not forthcoming providers frequently absorbed the costs of treatment;
- Physiotherapists reported a drop in business in some areas of as much as 40%[38].

12.20 These arguments against privatization raise serious questions about both the 'feasibility' and the desirability of opening up the work account to privatisation. They demonstrate also that the Woodhouse principles, particularly those of community responsibility and administrative efficiency, would be breached by a return to privatisation. A nice summary of the issues can be found in the statement by Alan Stockdale, Treasurer in a conservative government in Victoria in 1998. In the second reading of the Accident Compensation (Amendment) Bill, on 8 October, he stated:

> The Government has … considered whether the privatisation of the scheme would be the best way of giving effect to the national competition policy. The government's conclusion was that, for social and economic reasons, Workcover should not be privatised.
>
> It is the government's view that the current model, which combines public risk bearing, centralised price setting, a centralised data base, and the regulatory oversight of occupational health and safety and rehabilitation, is the best way to deliver the government's broader social and economic objectives set out in the legislation. The government believes that the benefits of any restrictions on competition outweigh the costs, and that the objectives of the scheme can be achieved most effectively by leaving the core responsibility for compensation of workplace injury and disease with the Victorian Workcover Authority[39].

12.21 The ACC Futures Coalition believes that this neatly sums up our view of the suggested merits of a privatised ACC scheme. It should not go ahead.

[38] Blue Lotus Research

[39] Stockdale, Alan Second Reading Speech to the Accident Compensation (Amendment) Bill 1998 (Vic), *Legislative Assembly Hansard, Daily Proof Copy* (8 October 1998). pp 2-3

Schedule

Changes in ACC Entitlements as a Result of Legislative Change

Accident Compensation Act 1972

Under this first piece of governing legislation, claimants had access to:

- Earnings related compensation (aka weekly compensation) paid at 80% (100% for the first week), up until the age of 65.
- Treatment and rehabilitation costs (as well as related transport costs).
- Lump sums for permanent loss or impairment of bodily function.
- Lump sums for other non-economic loss, e.g. loss of amenity and/or capacity for enjoying life, and for general pain and suffering.
- Compensation for pecuniary loss not related to earnings, e.g. 'actual and reasonable expenses and proved losses necessarily and directly resulting from the injury'.
- Funeral expenses.
- *Ex gratia* payments, if there are as 'special circumstances as to make it reasonable and proper that *ex gratia* provision should be made additional to any compensation or rehabilitation assistance that would otherwise be available'.
- Separate lump sums available for surviving dependants of deceased claimants.
- Access to permanent pension recognising permanent impairment, (in addition to lump sum, however claimants could not receive both weekly compensation and a permanent pension).

Also, and very importantly, the definition of 'personal injury by accident' in the 1972 Act included both the physical *and* mental consequences of any such injury *or* of the accident. Furthermore, this definition only ruled out cover for physical injury due *exclusively* to (non-work related) disease, infection or the ageing process.

Accident Compensation Act 1982

The 1982 Act followed on the heels of a cabinet review which criticised the way the scheme was being run. Accordingly, most of the changes to the legislation concerned administration. However, in relation to entitlements, the following changes were made:

- The rate of compensation for the first week of incapacity was lowered to 80%.
- The Corporation was allowed to decline claims caused during the commission of a crime.
- The cap on lump sums for permanent loss or impairment of bodily function was increased from $7,000 to $17,000 (the cap on lump sum for of loss of enjoyment of life etc remained at $10,000).

Accident Rehabilitation and Compensation Insurance Act 1992

The 1992 Act was introduced by a National government, in response to pressure from business interests, and under claims of a costs blow-out. The major changes included:

- The introduction of the 'work capacity assessment' procedure. Under this procedure, a claimant would lose his or her entitlement to weekly compensation and vocational rehabilitation if he/she was deemed by the Corporation to be able to work for 30 hours per week, in a job (even 1 suggested job option would suffice) that was deemed to be 'suitable' for the claimant. This was a very significant inclusion into the scheme, as it allowed compensation to be ceased despite the fact that a claimant remained 'incapacitated' – i.e. unable to undertake his or her pre-injury employment.
- The abolition of lump sum compensation. Lump sums for permanent physical impairment were replaced by the independence allowance – a small but continuing payment (maximum of $60; paid quarterly), which would only cease at the claimant's death. No form of payments were available for loss of amenity, general pain and suffering, etc.
- The definition of 'personal injury' was reduced to physical injuries, or mental injuries suffered because of those physical injuries. Mental injury was also defined as 'a clinically significant behavioural, psychological, or cognitive dysfunction'. As a consequence of these changes:
    - Mental injury unrelated to a physical injury was no longer coverable.
    - Mental injury had to be caused by the physical injury itself – rather than the traumatic accident which caused the physical injury. This rules out most claims for PTSD, etc.
    - Transient mental trauma, which did not constitute a clinically recognised dysfunction, was not coverable.
- The definition of 'personal injury' was also amended to state that cover/entitlements would now be ruled out for physical damage which was *wholly or substantially* by non-work related disease, or the ageing process. This made it a lot easier for cover to be denied, and for ACC to suspend entitlements on the basis that a claimant's ongoing condition is now 'substantially' due to the ageing process.
- The introduction of the '3-stage test' for work-related gradual process injuries. As opposed to the simple question of causation, the 3-stage test required a claimant with an industrial disease to prove:
    - That the work tasks/environment had a property which caused the condition;
    - That the particular causative property was not present in the claimant's non-work environment; and
    - That a person undertaking the claimant's job, in that particular workplace environment, would be at a significantly greater risk of suffering from the claimant's condition.
- The provision of vocational rehabilitation was limited to a period of 3 years.
- *Ex gratia* payments were abolished.
- Rehabilitation was prescribed by regulation, although several were repealed in or around 1996.
- The permanent pension was abolished.

Accident Insurance Act 1998

The main driver behind this piece of legislation was the introduction of privatisation of the work account. As such, it introduced the requirement for full funding by 2014. Insofar as entitlements were concerned, however, the provisions of the legislation remained largely the same. The separate accounts were established.

Injury Prevention, Rehabilitation and Compensation Act 2001

In addition to the removal of competition from workplace insurance, the current legislation did enhance entitlements in the following ways:

- Re-introduction of lump sum compensation.
- Re-introduction of cover for mental trauma in the workplace (2008 amendment).
- A more comprehensive/robust 'work capacity assessment' scheme – now know as 'vocational independence assessment' procedure – was introduced. The former figure of 30 hours per week was raised to 35, and (by way of the 2008 amendment) when considering jobs which may be suitable, the ACC was required to take into account the claimant's level of pre-injury earnings.
- A more flexible method of calculating weekly earnings, which alleviated some injustices which had occurred under the legislation in force during the 90s.
- The inclusion of a new rehabilitation principle, whereby rehabilitation ought to be provided 'to restore the claimant's health, independence and participation to the maximum extent practicable'.

However, under the 2001 Act:

- The vocational independence scheme remains in force. The increase from 30 to 35 hours per week seems to have had little practical impact. Claimants are still losing their entitlement to weekly compensation and vocational rehab on the basis of a notional ability to undertake work as 'car park attendants', 'gate-keepers' or 'parliamentary messengers' – despite the fact that they remain incapacitated as a result of their covered injuries. This seriously undermines the founding principles of real compensation, and comprehensive rehabilitation.
- The definition of 'personal injury' has not been restored to the pre-1992 definition. Therefore, the majority of people with mental trauma remain outside the scheme, and it remains easier for ACC to deny entitlements to those claimants whose conditions might be contributed to by non-injury factors.
- Compensation for loss of amenity/enjoyment of life, and pain/suffering was not reinstated.
- The 3-stage gradual process test remained (although the 2008 amendment did reverse the onus for the last stage of that test).

- Despite the stated focus of rehabilitation to the maximum extent practicable, vocational rehabilitation remains limited to 3 years. Anecdotally, we are hearing that there are extremely few instances where the ACC has funded meaningful levels of retraining.

Injury Prevention, Rehabilitation and Compensation Amendment Bill 2009

Proposed changes:

- The vocational independence definition is to be reduced back to 30 hours from 35.
- Removal of cover for claimants whose (otherwise coverable) level of hearing loss is less than 6%.
- Reinstatement of the 3-part test for causation of gradual process claims ('the 3-part test').
- People who intentionally cause injury to themselves or commit suicide are to be covered under the scheme but automatically disentitled (except for treatment costs).
- Weekly compensation for non-permanent employees to be reduced.
- Decrease in weekly compensation for potential earners.
- Abatement of holiday pay on termination of employment.
- Low income employees (those whose compensation falls beneath the minimum wage) who are incapacitated for 5 weeks or less will not be entitled to the minimum amount of compensation.