



**SUBMISSION TO THE TRANSPORT & INDUSTRIAL RELATIONS SELECT COMMITTEE ON  
THE INJURY PREVENTION, REHABILITATION, & COMPENSATION  
AMENDMENT BILL  
November 2009**

*New Zealand's implementation of the Woodhouse principles via the ACC scheme has afforded New Zealand's society and economy four decades of added economic and social value"*

(Pricewaterhouse Coopers ACC Scheme Review March 2008)

**1.0 Introduction**

- 1.1 The New Zealand Council of Christian Social Services (NZCCSS) works for a just and compassionate society in Aotearoa/New Zealand. This work involves developing and critiquing policy with a view to promoting a just and compassionate society. It also involves advocating for the development and maintenance of appropriate services for the relief of the vulnerable and poor members of our society.
- 1.2 NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support New Zealand Inc and the Methodist and Salvation Army Churches. Through their networks and approximately 639 social service organisations NZCCSS members make a significant contribution to New Zealand's social wellbeing through the delivery of services such as foodbanks, budget advice, emergency housing, employment assistance, addictions treatments etc. Some of our members have ACC accredited counsellors; others provide home based care services via ACC referrals. (Further general information on NZCCSS can be found in Appendix 1.)
- 1.3 NZCCSS is opposed to the Injury Prevention, Rehabilitation and Compensation Amendment Bill. We do not believe it is necessary to introduce a full funding model as opposed to 'a pay as you go approach.' The validity of the argument for a full funding model is critical as it creates much of the financial deficit that is then used to justify both increasing the various levies to ACC and cutting back on the services and supports provided under the scheme. Some of the changes will specifically hurt low income claimants and their families.
- 1.4 A money saving imperative (of arguable merit) should not be used to weaken the ability of the scheme to provide adequate supports for injured people or undermine the social contract with New Zealanders who gave up the right to sue based on an expectation that they would have universal access to a comprehensive no fault accident compensation scheme. Our specific objections are outlined more fully below.

1.5 Contact details for this submission are: Trevor McGlinchey, NZCCSS Executive Officer and Anne Kelly, Policy Advisor, PO Box 12-090, Thorndon, Wellington, ph 04 473 2627, [eo@nzccss.org.nz](mailto:eo@nzccss.org.nz) or [anne.kelly@nzccss.org.nz](mailto:anne.kelly@nzccss.org.nz).

1.6 We request an opportunity to appear before the Select Committee to make further comment on the proposed ACC legislative reforms.

## **2.0 Woodhouse Principles**

2.1 NZCCSS, as an organisation that promotes social justice and supports the maintenance of the 'Woodhouse Principles.' These are the five principles articulated by Sir Owen Woodhouse, head of the 1967 Royal Commission into Workers Compensation, which lead to the implementation of the scheme in 1974. Briefly the principles include:

- Community responsibility to protect everybody
- Comprehensive entitlement regardless of cause
- Complete rehabilitation
- Real compensation for the whole period of incapacitation, and
- Administrative efficiency

2.2 The scheme was developed with a social welfare ethos in mind and not as a private insurance model– the first two principles reflect this premise. It was never designed to be a fully funded insurance scheme that required sufficient current reserves now to cover the future costs of this year's accidents. This point was made as recently as 1 September 2009 by Sir Woodhouse at an ACC Futures seminar.

2.3 We would like to bring to the attention of the Select Committee the independent Review of ACC undertaken by PriceWaterhouse Coopers Australia in 2008. They were asked by the ACC Board to assess how well the scheme performed in terms of implementing the Woodhouse Principles, what value ACC adds to New Zealand and how well it compares to other schemes. The review team concluded that "in general ACC implements the Woodhouse Principles well", that the ACC scheme "has afforded New Zealand's society and economy four decades of added economic and social value" and "performs well compared with other schemes".<sup>1</sup>

2.4 During the First Reading of the Bill Minister for ACC, Hon Nick Smith, said that deteriorating rehabilitation rates were one of three reasons why the scheme is unsustainable. However in ACC's annual report the goal of having 88.5% rehabilitation rate after nine months was underachieved by only 1%. Additionally, the Pricewaterhouse Coopers Review found that the ACC no fault system performed better than fault based systems because more people received compensation, they receive it faster, had better health outcomes and better return-

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<sup>1</sup> Executive Summary

to-work rates. They also estimated “that total increased workforce participation from effective injury management under ACC may be worth approximately \$315 million per annum to the New Zealand economy”.

- 2.5 The other two reasons why ACC is not sustainable according to the Minister, is because of the costs arising from a greater number of claims and unfunded extensions to the scheme. NZCCSS maintains that the move to a full funding model is at the heart of ACC’s perceived financial woes, and that the Scheme is capable of meeting the claims that people are currently entitled to. Given the findings of the recent Pricewaterhouse Coopers Review, NZCCSS questions the necessity of the proposed ‘trimming’ of services.
- 2.6 The Woodhouse Principles are in keeping with the mission of NZCCSS and with the Christian imperative to “do unto others as you would have them do unto you” (Luke 6:31). As a Christian organisation we uphold the Woodhouse Principle of ‘community responsibility’ and on that basis are opposed to the amendments to the Act that weaken the ability of the scheme to provide adequate protection for all New Zealanders made vulnerable through injury.

### **3.0 Amendments to improve flexibility**

- 3.1 According to the Bill’s Explanatory Notes, one of the primary purposes of this Bill is to ‘improve flexibility in the Scheme’. Four amendments are proposed to improve flexibility:

- Full funding of residual claims liabilities
- Enable experience rating and risk sharing in the Work Account
- Enable risk rating in Motor Vehicle Account for both vehicles and their owners, and
- Technical amendments to improve access Cover-Plus for shareholder employees

NZCCSS would like to comment on the first three proposals:

#### **3.2 Full Funding of Residual Liabilities – Clause 15**

The government has argued that accident compensation has become financial unsustainable and that these reforms are required to ‘ensure its future for all New Zealanders’. However this conclusion is premised on the need for full funding of residual liabilities, that is, ACC having sufficient reserves to cover “the ongoing cost of rehabilitation for the life of a claim”.<sup>2</sup> This is a prerequisite for a private insurance model and is not appropriate for a government owned scheme which has more of a ‘social insurance’ approach such as ACC.

- 3.3 A look at the history of accident compensation in New Zealand shows that its current form was a result of dissatisfaction with private insurance approaches. As Susan St John points out “the whole point of having social insurance is to enable society to escape from the strictures

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<sup>2</sup> ACC website glossary

of private insurance. The benefits under social insurance can be more redistributive and comprehensive”.<sup>3</sup>

3.4 A social insurance model, according to St John, allows for inflation and wage growth adjustment of weekly compensation for long term accidents (not likely under a private insurance model) and “more importantly the scheme does not have to meet the funding standards of private insurance”.<sup>4</sup>

3.5 The Scheme is not on the verge of financial ruin. In the last year it took in approximately \$1b more in levies than it paid out in claims. It presently has reserves equivalent to about 3.5 years of claims – the highest level of reserves in its history. It is estimated that a full funding model would require reserves in excess of 8.3 years of claims.<sup>5</sup> Littlewood points out that private providers need such levels of reserves to ensure they can meet their contractual requirements – however as ACC is government owned it “will never disappear”, and is therefore in a different position than a private insurance provider. This removes one of the imperatives for full funding. Private providers also need sufficient money to pay for the full costs of liabilities in the unlikely case that the liabilities “crystallised tomorrow”. A government owned entity has mechanisms such as taxation available to raise revenue – “ACC therefore has no apparent need to maintain a pool of invested assets to pre-fund its expected, contingent future obligations”.<sup>6</sup>

3.6 In summary, NZCCSS is opposed to the new section 169AA to Clause 15 related to full funding of residual liabilities by 31 March 2019 because:

- ACC is a government scheme and it is unnecessary to have an accounting structure designed for private insurers – an argument also supported by Michael Littlewood of the Retirement Policy and Research Centre
- There is no accurate way of forecasting future costs
- it creates liabilities that are then used as ‘evidence’ of a ‘financial blowout’ when in fact the scheme is in good financial shape
- It is inconsistent with government approaches to other portfolios of spending such as health, education and welfare (payments to NZ Super have been suspended)

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<sup>3</sup> The rationale for pre-funding ACC, Susan St John, 15 November 2009, article from the Retirement Policy and Research Centre

<sup>4</sup> Ibid

<sup>5</sup> Why does the Accident Compensation Corporation have a fund? Michael Littlewood, *PensionCommentary*, 2009-1

<sup>6</sup> Ibid:3

- It creates a need to cut back on essential supports (to reduce the liabilities) and therefore undermines the intention of the scheme, that is, to provide comprehensive no-fault personal injury cover for all.
- 3.7 NZCCSS recommends either a return to a ‘pay as you go approach’, the system under which ACC operated until 1999, or the development of a partially forward funded scheme. The latter recognises that there are some unavoidable cost increases (e.g. ageing population, medical advances) that need to be covered and a need for sufficient emergency reserves. This does not need to be equivalent to the reserves required under a full funding model.
- 3.8 We acknowledge that purpose of changing the full funding date from 2014 to 2019 is to help to ease large increases in levies necessary to meet full funding obligations. While we are opposed to the full funding model (for the reasons outlined above) if it does go ahead, the extension of the timeline will be helpful, particularly for people of low incomes who can least afford levy increases.
- 3.9 **Enable experience rating and risk sharing in the Work Account – Clause 14**
- NZCCSS is concerned that the changes under section 169 of Clause 14 that allow for ‘regulations to be made for experience rating and risk sharing of levy payers in relation to the Work Account levy rates’ will fail to increase worker safety. Advocates of ‘experience ratings and risk sharing’ purport that this approach provides incentives to employers to provide safe working environments and rewards them through lower levies or no claims bonuses. NZCCSS is concerned that workers injured in the workplace could be viewed as a financial liability for their employer and could be discouraged from making claims. This is because employee injuries in the workplace will impact negatively on their employer’s safety record and cause their employer’s levy to ACC to increase. NZCCSS is opposed to the introduction of experience rating and risk sharing in the Work Account.
- 3.10 **Enable risk rating for both vehicles and vehicle owners – Clause 24**
- Clause 24 section 216 enables in introduction of risk rating in regard to the Motor Vehicle Account. It is argued that risk ratings in this account will make drivers drive more safely by linking their vehicle ‘choices’ and driving record with levy levels. People who drive vehicles with high safety ratings would be able to receive levy discounts, and no claims bonuses could be offered to ‘good drivers’. NZCCSS contends that this approach breaches the no fault principle that underpins the ACC scheme and is fundamentally unfair. Low income people are unlikely to be able to afford the vehicles with high safety ratings and will therefore be penalised by having higher levies than their richer counterparts. We are opposed to the introduction of risk ratings for vehicles and vehicle owners.

#### **4.0 Cost Containment Amendments - & their potential harm**

##### **4.1 Hearing tests threshold – Clause 6**

Clause 6 of this Bill introduces a new 6% threshold for a person's injury related hearing loss before they are entitled to cover from ACC. We note that this new threshold is an addition to the existing scale of age related hearing loss. We also note that this new threshold is unprecedented and are concerned that other thresholds could be introduced which deny people below arbitrary limits access to support.

- 4.2 The Hearing Association has expressed its opposition to the 6% threshold pointing out that “an arbitrary limit has the potential to deny people the right they have to support from ACC and leaves them facing cost they may not be able to afford”.<sup>7</sup> As a cost saving measure it is short sighted as it shifts the cost to the public health system. It penalises older workers who historically did not have access to protective hearing equipment. It is also in conflict with the Woodhouse principles of comprehensive entitlement and complete rehabilitation. For these reasons NZCCSS is opposed to the introduction of a 6% hearing threshold.

##### **4.2 Vocational Independence tests requirements – Clauses 4 & 9**

- 4.2.1 Clause 4 section 2 of this Bill seeks changes the definition of ‘vocational independence’ reducing the threshold for capacity to work from the current 35 hours per week to 30 hours per week. Clause 9 section 91 makes it optional (rather than mandatory) for occupational assessors “to consider pre-incapacity earnings when undertaking initial vocational independence assessments.” The purpose of both these changes is to reduce entitlement and save money. It breaches the Woodhouse principles of comprehensive entitlement, complete rehabilitation and, importantly, real compensation.

- 4.2.2 Under these changes, we believe the more people will be assessed as ‘able to work’ because of the lower hourly threshold, vocational rehabilitation will be weakened because assessors will identify low skill job options as suitable, and more people will end up either in a low paid job (not commensurate with pre-injury earnings), or with no job at all. The latter group three months after being assessed as job ready, will have their weekly compensation entitlements stopped and will end up in the welfare system, should they be lucky enough to meet benefit eligibility criteria. At the very least assessors should be required to only put forward job options that are actually available in the job market and be required to propose several job options. We understand that currently an assessor only has to propose one alternative job option and there is no obligation for ACC to ensure a job is actually obtained.

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<sup>7</sup> Threshold could deny support after a life of work, Hearing Association Press Release, 15 October 2009.

Research undertaken in 2007 on 160 claimants who were assessed as having achieved vocational independence found that only 1% experienced an increase in income with 59% experiencing reduced incomes. Tellingly, only 1 in 5 found full time employment in a job identified as suitable, 46% ending up out of work and 23% ended up dependent on a benefit.<sup>8</sup>

4.2.3 Cost containment changes to vocational independence tests results in an ACC scheme that falls well short of New Zealanders expectations, breaches the social contract to between government and citizens. NZCCSS is therefore opposed to these changes.

#### 4.3 **Work Related Gradual Process, disease, or infection – Clause 7**

Clause 7 section 30 of this Bill seeks to reintroduce a three part test related to the causation of gradual process work related claims that operated prior to legislative amendments made in 2008. The effect of this reversal is to put the onus on the claimant rather than ACC to prove their eligibility. It goes against the principles of the scheme to introduce tests that create barriers to accessing entitlements. Given that the reintroduction of the three part test is seen as a 'cost containment measure' is evidence of its effectiveness in reducing the number of successful claims. NZCCSS is opposed to Clause 7 which reinstates the 3-part test.

#### 4.4 **Weekly Compensation Changes**

ACC provides weekly compensation for eligible claimants at a rate of 80% of pre injury earnings irrespective of whether the injury occurred at work or elsewhere. It is a unique feature of ACC not replicated elsewhere and is the feature that meets the Woodhouse principle of 'real compensation'. Consequently, the proposed amendments contained in clauses 33-42 in this Bill, are amendments which can be argued to compromise this principle.

##### 4.4.1 **Weekly compensation calculations for non-permanent employees (Clause 44 and Schedule 1**

Clause 44 Schedule 1 reinstates clauses that were repealed in 2008. These clauses outlined how weekly compensation payments would be calculated for permanent and non permanent employees (the latter includes seasonal workers, casual and part time workers) for long term (after 4 weeks) weekly compensation payments.

4.4.2 Currently non-permanent employees weekly compensation payments (long term) are calculated on the same basis as permanent employees – that is, by taking the amount earned in the 12 months prior to injury and dividing this amount by the number of weeks the during which the employee actually worked to earn this sum.

4.4.3 Long term weekly compensation payments for injured non permanent employees, if this amendment becomes law, will calculated by taking the amount earned 52 weeks prior to the

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<sup>8</sup> *Vocational Independence: outcomes for ACC claimants, 2007*, Hazel Armstrong and Rob Laurs, Wellington, February 2007

injury (no matter how short the employment period may be) and dividing it by 52 weeks rather than dividing it by how many weeks were worked.

4.4.4 This change effectively reduces the weekly compensation entitlements for the most vulnerable workers – an estimated 25% of the workforce can be classified as non permanent and are often the people with the lowest earnings. It places many low income families in a precarious financial position should a parent in non permanent work suffer a serious injury. The shorter the period of earnings prior to the injury the smaller the weekly compensation payment will be. For some this will inevitably mean poverty and hardship. For this reason NZCCSS is opposed to this change.

4.5 **Minimum Weekly Payment increases for low income employers**

This Bill seeks to reduce the entitlement of low income earners to a top up to their weekly compensation to a minimum weekly earning rate. Currently they can access the minimum weekly payment increase in the second week after their incapacity; this clause shifts this entitlement out to the sixth week. This effectively excludes low income earners who receive five weeks or less weekly compensation from receiving the minimum weekly earnings rate of payment. The aim of the increase in weekly compensation to a minimum amount was to ensure real compensation for low income earners for whom the 80% of income calculation for compensation would lead to undue hardship. We see no justification for shifting the entitlement to after five weeks and are opposed to this change.

4.6 **Disentitlement for suicide and self inflicted injury – Clause 10**

4.6.1 Clause 10 of this Bill reinstates the pre 2001 provision to disentitle claimants for wilfully self inflicted personal injuries or suicide (except for treatment) through the addition of a new section 119. Currently claimants are covered by ACC and receive full entitlements. The new restrictions mean that people can only receive entitlements (other than treatment) if their wilfully self inflicted injuries are a result of mental injuries (that result from a physical injury) or from a mental injury resulting from a sensitive claim (e.g. abuse) or a work related mental injury.

4.6.2 The reinstatement of very prescriptive disentitlement clauses is in our view unnecessarily harsh. It means that the partners of people who commit suicide (and their children) will receive no support during a truly harrowing time. It also means that many people will be excluded from entitlements because of the narrow definition of mental injuries. Whilst self inflicted injuries can be argued to not be accidental unless the individual has a mental impairment that meets ACC criteria, this debate is of little consequence to the injured and their families who have no other avenue of support. NZCCSS is opposed to this disentitlement

clause. We support the current ACC system which reflects the principles of community responsibility and no fault provision.

#### **4.7 Strengthening disentitlements for claimants for whom it would be repugnant to justice to provide entitlements – Clause 11**

4.7.1 As a Christian organisation we believe in just and compassionate responses and support for all people injured, irrespective of judgements regarding what they do, or do not, ‘deserve’ under the scheme. People who suffer an injury whilst committing an offence continue to be entitled to treatment and to surgery, albeit restricted to ‘that which is necessary to restore function to allow a claimant to work’. We support the retention of these commitments. The new clauses relate to automatic disentitlement to weekly compensation for people injured in the cause of committing a crime punishable by 2 or more years in prison.

4.7.2 There is no compelling evidence to suggest a need to introduce automatic disentitlements – prisoners do not receive weekly compensation as ACC makes application to the District Court and the Court must consider a list of factors when making a decision regarding whether the provision of entitlements would be repugnant to justice. This appears to be working well. The District Court is well placed to make independent, transparent and fair judgements. NZCCSS sees no justification for repealing section 122 of Clause 11 and substituting new clauses section 122 & 122A that make disentitlement automatic and give the Minister the ability to exempt a claim in exceptional circumstances. We are particularly concerned that nothing in the new section 122A ‘gives a claimant the right to apply to the Minister for the exemption’.<sup>9</sup>

### **5.0 Other points**

#### **5.1 Regulatory Impact Statement**

NZCCSS is concerned that the Treasury Regulatory Impact Analysis Team has reviewed the Bill’s Regulatory Impact Statement (RIS) and “considers that it does not meet the RIS standards required”.<sup>10</sup> Specifically mentioned is the absence of quantification of the costs to other government departments likely to occur as a result of this legislation. It is at the very least remiss not to carry out these calculations given that the rationale for many of the changes is ‘cost containment’. This will be ineffective if the costs shift to other agencies and will place stress on the budgets of MSD and the Ministry of Health as greater numbers of people seek support such as Sickness Benefits, or surgery that was declined under ACC.<sup>11</sup>

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<sup>9</sup> Explanatory Note, Part 1 Amendments to principal Act

<sup>10</sup> Explanatory Notes: RIS Executive Summary

<sup>11</sup> Orthopaedic surgeons have already commented in the media on the increases pressure being put on the public health system as a result of increasing numbers of claims being denied (*ACC denials have surgeons concerned for patients*, Dominion Post, 18 November 2009)

## 5.2 **Lack of Consultation**

It is disappointing to see that a Bill that contains many changes to ACC services that will be detrimental to New Zealanders has not been widely consulted on. We contend that the Bill's amendments are significant. It is therefore unacceptable to rush this legislation through without thorough consultation with 'external stakeholders', that is, the people for whom this legislation will affect.

## 5.3 **Incomplete Stocktake and Reviews**

The rushed nature of these changes is also reflected in the piecemeal approach to ACC reform. It appears likely that the yet to be completed Stocktake<sup>12</sup> will also require legislative reform and it would be wise to consider the current amendments in the context of both the Stocktake's recommendations and any recommendations from the ACC Boards various reviews.

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<sup>12</sup> In August 2009 the Minister for ACC, Hon Nick Smith, announced the establishment of a Stocktake Steering Group tasked with examining all ACC accounts, investigating causes of cost increases, and looking at alternative options for service provision and funding, the potential for experience rating, management of risks, and monitoring of ACC. It will also examine the governance and oversight of ACC's \$10 billion investment portfolio (Beehive Press Release 6 August 2009).

## **APPENDIX ONE – About NZCCSS**

### **NZCCSS Mission and Role**

NZCCSS works for a just and compassionate society in Aotearoa New Zealand. We see this as a continuation of the mission of Jesus Christ. In seeking to fulfil this mission, we are committed to:

- giving priority to poor and vulnerable members of our society
- Te Tiriti O Waitangi

The key roles of NZCCSS are to represent the common interests and vision of our members at the national level; to supply information and networking opportunities to support members provide quality services; and to develop, critique and advocate for policies that will assist poor, vulnerable and disadvantaged members of society.

A national Council, made up of two representatives from each denomination, governs NZCCSS. A small Secretariat team carries out the day-to-day work of the Council. This includes gathering and distributing information, research on social policy issues, and building relationships with government officials and others working in the community sector.

A Policy Group oversees the policy and research work that NZCCSS does in three key areas: child and family, housing and poverty and services for older people. Each Policy Group is made up of at least two council representatives plus social services managers, academics or others with particular expertise in that area. This means that the work that NZCCSS does is well informed by what is happening in our members' communities.

Collectively, our six foundation members represent 639 organisations that operate a total of 1214 social service programmes throughout New Zealand. Our members deliver a wide range of services that cover such areas as child and family services, services for older people, food bank and emergency services, housing, budgeting, disability, addictions, community development and employment services.

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