The ‘Way Forward’ - CTU perspective

[Acknowledge Sir Owen and Minister for ACC]

The New Zealand Council of Trade Unions - Te Kauae Kaimahi (CTU) is a representative body of 40 affiliated trade unions representing over 350,000 union members across the public and private sectors. As such, the CTU is the largest democratic organisation in Aotearoa-New Zealand.

The CTU believes that the ACC scheme is a world-leading, innovative and unique system for handling the consequences of personal injury by accident and as such it is a scheme that all New Zealanders can justifiably be proud of. It is a socially just scheme in that it provides 24-hour, no-fault comprehensive coverage to all New Zealanders who are injured at work, at home, on the road or on the sports field. And it is a scheme that is predicated on very sound economic principles as (in most cases) the community shares the cost of the individual’s injury. This socialised response to the burden of injury reflects the trade-off of the right to sue in exchange for comprehensive cover - this is encapsulated in the principle of community responsibility. New Zealanders are also very fortunate that this social bargain has spared us the divisiveness of a litigious culture.

The CTU strongly advocates the retention of ACC as a national public fund provider and would reject any calls for the scheme to be privatised or for employers to be offered the ‘choice’ of private insurance providers. From the outset, Sir Owen and his fellow Commissioners were acutely aware of the pitfalls of entrusting the management of a social responsibility to insurance companies - the profit-making motivations of private insurers are incompatible with the objectives of a social services agency like ACC. The negative experiences of New Zealand workers under a privatised scheme in the late 1990s and indeed the negative experiences of some New Zealand workers under the quasi-privatised Accredited Employer Programme today would suggest that the words of Sir Owen, cautioning against the handling of accident compensation by private enterprise, should be heeded.

That is not to say, that the CTU believes that the current framework surrounding both the operation of ACC and the scheme itself is entirely satisfactory - there is definitely room for improvement. It is timely to reflect whether, 40 years on, the ACC scheme
gives effect to the spirit and intent of the Woodhouse principles as well as considering the way forward.

An area of particular concern is vocational rehabilitation as the CTU does not believe that full expression has been given to the concept of complete rehabilitation. The Royal Commission considered that the nation had a clear duty and a vested interest to promote and foster “the physical and economic rehabilitation of every adult citizen whose activities bear upon the general welfare”. The Commissioners saw all New Zealanders contributing to a national effort so that “the process of rehabilitation should be developed and encouraged by every means possible as it has much to offer New Zealand both in human and economic terms”. The CTU would argue that the vision of complete rehabilitation has not been met and, in fact, has been hindered by the application of ‘work capacity testing’, in its current guise as the vocational independence process, as well as by New Zealand’s failure to ratify ILO Convention 1591.

One of the essential problems with the vocational independence process is that a determination of vocational independence may exit a person, who is suffering permanent partial disability and cannot return to their pre-injury employment, from the scheme on the basis that they have the capacity to work in a job that is often of lesser social status and income to their pre-injury employment. This situation is compounded by the fact that there is no requirement for job placement (ie, the jobs need exist only on paper), there is no validation of labour market realities (which can result in absurd scenarios – a panel beater who is Vled as a social worker, which requires a tertiary qualification) and no compensation is provided for long-term loss of earnings. There is also no statutory requirement to retrain a claimant in a job of similar social/economic status or until recently, to provide any follow-up by ACC, of Vled claimants to ensure that they were still attached to the labour market and had achieved durable RTW. Recent research has demonstrated that not only do injured workers experience an income loss after spells off work through injury but also that some claimants who have been deemed VI may end up out of work on W&I benefits. The CTU contends that these shortfalls need to be attended to.

1 C159 requires each member state to consider the purpose of vocational rehabilitation as being to enable a disabled person to secure, retain and advance in suitable employment and thereby to further such person’s integration and reintegration into society.
The CTU believes that in spite of the changes proposed by the recent IPRC Amendment Bill (No. 2) more work needs to be done to ensure that

- the rehabilitation of injured people is meaningful;

- the role of retraining is strengthened, especially around development of foundation skills (which is consistent with government objectives of lifelong learning as well as upskilling initiatives in the Nordic countries);

- areas of labour market vacancy and skills shortages are targeted (as happens in the UK through a programme undertaken by the TUC); and

- compulsory literacy/numeracy/computing skills testing is introduced into the VI assessment process.

The CTU submits that if a person cannot return to their pre-injury employment, every effort should be made to ensure that they can be retrained and reconnect to the workforce in a job of similar social and economic status. If this is not possible, some thought should be given to ‘top-up’ payments along the lines of the permanent pension to ensure that these workers are not seriously financially disadvantaged.

The CTU asserts that if the nation’s goal is the re-integration of injured people into work then industry approaches and inter-agency co-operation (ie. between ACC, MSD and MOH) are vital to ensure that RTW strategies are aligned and that claimants do not fall through the cracks. Given that New Zealand’s workforce is aging and the labour market is tight (in terms of low unemployment) a co-ordinated whole-of-government strategy in partnership with unions and business would help address the changing demands of the labour market, and areas of skills shortages and help build a better workplace for the future.

The CTU is also concerned about workers at both ends of the age spectrum. Young workers who are injured and may not be able to return to the workforce may experience significant loss of potential future earnings. The CTU is aware that the Bill attempts to address this situation but more work could still be done in order to ensure that compensation for loss of potential earnings adequately reflects an average life-long pattern of earnings. Equally, the CTU is concerned about older workers, particularly those who have worked in heavier industries, and find themselves ‘worn-out’ before retirement age. Often these workers may have low literacy, numeracy
and computing skills and so targeted retraining may have to focus on utilising their industry knowledge creatively (a good example of this is where a builder uses industry knowledge to retrain to become a building inspector).

Although a primary focus of the IPRC Act is rehabilitation, the CTU also sees scope for improvement in accident and injury prevention. The CTU believes that an improved workplace H&S culture with better quality of work and safer workplaces will lead to more focused accident prevention initiatives. One of the most notable achievements of the CTU over the last five years is a joint ACC-CTU H&S project which to date has trained almost 18,000 elected health and safety representatives through a recognised and government endorsed/funded health and safety training programme.

Effective worker participation in injury prevention and health protection in the workplace has been identified as the key to successful H&S safety management since the publication of the Woodhouse Report in 1967 for both workers at work and at home. The report itself specifically endorsed the Swedish approach of ‘active cooperation between management and employee and in a wider sense between the trade unions and employers’. Further tripartite and government initiatives such as the creation of the Workplace H&S Council, consultation around strengthening the role of DOL H&S Inspectorate and TEC linking into H&S training add further value to this area. The CTU believes that these initiatives can help create a smarter and safer workforce, however the ACC scheme must be underpinned by good H&S practices and a responsive regulatory environment, as enforced by DOL, that punishes negligence causing accident and/or injury.

The CTU believes that in most cases, ACC claimants do see the benefits of comprehensive entitlement and real compensation. 80% of pre-injury earnings is reasonable compensation by international standards and claimants often receive their entitlements in a timely manner. The CTU does note, however, that lump sums for permanent injury are quite low and there are still some arbitrary aspects around the calculation of compensation, for example, the implications for a worker’s first week of pay depending on whether the injury is work or non-work related.

The CTU is also concerned that the ACC Scheme still does not meet the requirements of the international minimum standards laid down in ILO Conventions.
In particular, all necessary treatment should be provided for people who are injured in accidents at no cost to the injured person in accordance with ILO Convention 17. Since 1990, injured workers have been required to meet part of the cost of treatment of work injuries and, since 1993, Governments have admitted being in deliberate breach of New Zealand’s international law obligations under ILO Convention 17 a breach which has continued under the current legislation. The CTU would strongly urge the NZ government to take the necessary steps to ensure full compliance with the Convention.

As an organisation committed to the principles of social justice, the CTU would also like to continue the debate around extending the ACC scheme’s coverage to victims of illness as well as injury. The Woodhouse Report acknowledged that there is no logical rationale for this arbitrary distinction. The authors suggested that the disparity in cover and entitlement for those incapacitated through illness rather than injury should be rectified through an incremental extension of the scheme. This is a well-traversed path but there needs to be more discussion about the horizontal inequities that persist across the dual systems of ACC and health when it comes to treating people with disabilities. For instance, the CTU sees particular benefits and advantages in terms of enhancing economic productivity through the rehabilitation and retraining of sick people of working-age. The CTU does not purport to have the answers but the extension of the ACC scheme (as was also proposed by the Australian Woodhouse report) is both an economic and a political question and should be a live policy issue for ACC, MSD, MOH and New Zealand in general. The CTU submits that the first step towards granting New Zealanders truly comprehensive cover should entail extending the scheme to cover all claimants suffering from occupational diseases, including cancers.

Finally, the CTU would like to reiterate its position that the way forward is for ACC to remain a state-run scheme, but one that is constantly improving and innovating. The CTU believes that National’s intention to reintroduce competition to the accident compensation market to give employers and the self-employed a choice of providers for accident insurance cover would seriously undermine the notions of community responsibility and complete rehabilitation - both concepts embraced by the Marshall administration at ACC’s inception. There is no great clamour from the NZ public for ACC to be privatised and the previous privatisation of accident
insurance in this country has not had an impressive track record, furthermore, the catastrophic downfall of HIH in Australia acts as a particularly cautionary tale.

ACC is the product of a unique and radical vision and it is still regarded with envy by developed nations for the breadth of its coverage and its no-fault nature. ACC is a very efficient organisation, it has national reach and is well-connected with a wide range of healthcare providers and different sectors of the community. It has increasingly recognised a need to become a more claimant-centric organisation that empowers claimants, undertaken steps to access disadvantaged communities and upskill case managers (eg. through the purchase of the NIDMAR licenses). It is extremely difficult to foresee these qualitative elements and many others surviving in an environment where private insurers compete for profit margins and market share. In contrast, ACC has a well-developed understanding of its social obligations and the CTU looks forward to continuing to work with ACC, business and other government agencies to make NZ workplaces safer for our workers and collectively aspiring to achieve Sir Owen’s vision.

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