

**Submission of the ACC Futures
Coalition**

to the

**Ministry of Business Innovation and
Employment**

on the

NZ Income Insurance Scheme

April 2022

Submission of the ACC Futures Coalition to the Ministry of Business Innovation and Employment on the New Zealand Income Insurance Scheme

Preamble

The ACC Futures Coalition is a group of health providers, lawyers, community groups, ACC consumers, academics, and unions campaigning to maintain and improve ACC.

We were established in 2009 after attacks on the scheme and signals from the government of the day that they wanted to open the work account to competition (essentially to privatise that market). Since then we have broadened our agenda to pursue a comprehensive reform of ACC. Our manifesto (most recently reviewed in 2021) sets out our agenda for change.

Our purpose is:

To build cross-party support for retaining the status of ACC as a publicly owned single provider committed to the 'Woodhouse Principles', as a 'no fault' social insurance system for all New Zealanders. Our commitment is to have an ACC scheme that recognises the authority of Te Tiriti o Waitangi, is comprehensive in its coverage, is an integrated part of our health and social services system, has integrity and the trust of the public of New Zealand, and is focused on injury prevention, treatment, complete rehabilitation and compensation.

Introduction

The proposal for a New Zealand Income Insurance Scheme (NZIIS) would be a substantial reform if implemented. It would be a form of social insurance analogous in many ways to the ACC scheme, which is at its heart a system of social insurance based upon the principles espoused by the author of the Royal Commission Sir Owen Woodhouse and known as the 'Woodhouse principles'. These are:

1. Community responsibility
2. Comprehensive entitlement
3. Complete rehabilitation
4. Real compensation
5. Administrative efficiency.

The Accident Compensation Act 2001 describes the purpose of the Act as being:

...to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs).

The NZIIS as proposed potentially has major implications for the ACC scheme, particularly the intention for ACC to administer the NZIIS. There are also lessons to be learned from the history of

ACC that are relevant to the NZIIS and some technical issues on how the two schemes will operate together and what that might mean for claimants.

The ACC Futures Coalition has a wide range of affiliate organisations and some of those have divergent views on whether the NZIIS should be supported and will be making their own submissions on the proposal. Rather than take a firm position either in favour or against the scheme, this submission looks at the risks and opportunities for ACC and its claimants should the NZIIS be implemented. This means that the questions set out in the discussion are not necessarily the appropriate ones for us to answer.

Opportunities

1. Health conditions and disabilities

The NZIIS would provide coverage for any health condition or disability that would result in significant reduction in work capacity and coverage for all working arrangements.

This would help address one of the major gaps in the current ACC scheme – the exclusion from the scheme of individuals who have a disability that is not a result of injury and accident. This should limit the amount of ‘liability shopping’ that ACC currently engages in, when administering the line between what is an accident and what is not. This would be a major step forward, but there are also risks here that are addressed below.

2. Reskilling/retraining

The NZIIS is intended to provide a time for workers who are made redundant to think about retraining and reskilling options. The move to active labour market policies recognises that redundant workers may need to move into different or related occupations to that performed by the worker prior to being made redundant, with the understanding that retraining may be necessary. The time a worker spends on the scheme can be extended by up to a year when they are enrolled in a recognised training programme.

NZIIS is also intended to be supported by active case management, which is intended to support workers get back into the labour market with little or no wage scarring and this might include retraining or reskilling.

Currently ACC applies a vocational independence test to rehabilitation, which can result in a worker being removed from the scheme when they meet certain standards such as being able to work 30 hours a week, rather than going back into work equivalent to that which they had prior to their injury. As a result most injured workers find themselves on the jobseekers benefit after 2 years on the scheme, without any real attempt to meet their needs or with proper retraining options being available.

We would be looking for ACC to move towards this active case management approach and away from vocational independence testing. We see potential for ACC to deliver on the Woodhouse principle of complete rehabilitation.

3. Improving ACC’s culture

ACC has been chosen as the administrator of the NZIIS because of its understanding of a levy based scheme and its interactions across government. The discussion above about reskilling

and retraining indicates a gap between ACC practice in case management and the current ACC approach, which tends to reflect more of a private insurance approach. The ACC Futures Coalition would hope that this would result in a positive change to the culture of ACC, rather than the other way around. The possibility that the influence may be the other way around is a risk we raise below.

4. Build closer relationships with community providers, particularly Iwi and Pacific providers. The active case management approach being advocated for the NZIIS should help build closer relationships with community providers, particularly Iwi and Pacific providers. ACC itself has recognised that it needs to do more to engage with Iwi/Māori providers so that services can be appropriately delivered and it is hoped that NZIIS might lead to further improvements in this space.
5. Governance model
The NZIIS has a new form of governance based on the social partners of government, unions, business and Iwi/Māori.

ACC currently has a traditional governance model, which does not reflect the social contract at the heart of the scheme. Instead the emphasis in recent years has been to appoint people on the basis of their insurance, financial or legal background, rather than those who understand the foundations of the scheme and its impact on the lives of claimants. The fully funded nature of the scheme and the consequential size of the fund has helped drive this approach.

The ACC Futures Coalition sees the proposed model of governance as being relevant to ACC itself and, with some modification, it could be applied to the board of the accident compensation scheme.

6. Access to Justice
Access to justice for ACC claimants has been a problem for some time. The district court is the last chance that claimants have to challenge factual issues and most unrepresented claimants lose because law is complex and presenting the facts is complex. There are long delays in getting evidence and delays in getting access to ACC files. It is a long drawn out process that leads to a disconnect with ACC for claimants.

The ACC Futures Coalition has called for a disputes resolution system that looks much like that proposed for the NZIIS, but with the right of appeal to higher courts. We call for: low level mediation; access to a Tribunal that can adjudicate disputes; appeal on the facts to the High Court; and appeal on points of law as far as the Supreme Court. The disputes resolution process proposed for the NZIIS would therefore be a significant improvement on the current ACC system, but it must allow for appeal to the Supreme Court, not limit it to the High Court as currently proposed.

There are also risks that we address below.

Risks

1. Disruption from creating a new scheme

The NZIIS is a significant new scheme and if implemented the disruption from its establishment on ACC could be considerable. We note that around 10% of its funding is to be provided by the Crown or administration with the intention that there should not be a major impact on ACC, but given that ACC has been chosen for this role on the basis of its expertise, there will be an impact and it will have to be carefully managed.

2. Funding

Funding is one area where separation will be essential. There will need to be clarity about who is paying for what.

The two schemes will have different approaches to funding. ACC various accounts are fully funded along private insurance lines. It is the contention of the ACC Futures Coalition that this has driven behaviours that are consistent with private insurers, rather than what is expected of a social insurer, and levy setting that was unnecessarily inflated at the time the fund was being grown for this purpose.

The NZIIS scheme would operate two funds: one for displacement claims and one for health condition and disability claims. It would be fully funded to meet its annual liabilities, anticipating economic ups and downs. A small reserve fund would help improve the scheme's sustainability in case of worse-than-expected economic conditions. We understand that the reserves would sit at around 10 years' worth of costs, given that a recession happens approximately once every 10 years.

The Crown is also explicitly recognised as the funder of last resort to enable the scheme to cope with mass redundancies at a time of economic crisis.

There is a risk that either the NZIIS or ACC funds could experience a hit as a result of either demand or economic downturn and there will need to be clear rules in place to ensure that neither can access the funds of the other.

3. Culture

We have already made the point that there is potential for the culture of the new scheme to positively impact on ACC. However, there is also a risk that the established scheme could negatively impact on the culture of the NZIIS. We have referred to the private insurer behaviours that we think are driven by the fully funded model and these need to be challenged. We have also seen the new on-line arrangements that help keep claimants at arm's length from ACC and we would be concerned that similar arrangements should not be put in place for the NZIIS.

4. Administering the line between health and accident

While the NZIIS cover for health conditions and disability is very welcome, there could still be difficulty in working out liability between the two schemes with each arguing that the liability belongs to the other. Workers with gradual process injuries and illnesses arising from exposure to hazardous substances might find themselves on NZIIS with no right to compensation beyond the 6 months provided for there.

Similarly the 4 weeks paid notice does not align with the obligation on employers to pay one weeks sick pay under ACC, which might encourage some employers to treat a worker's illness as an injury.

Managing the boundary between NZIIS and the health system will also be a challenge. A worker with a life time of chronic disease may have to prove that an illness, which should theoretically be covered by NZIIS, is not related to their chronic disease. Like ACC at present, the scheme will be dependent on medical practitioners and it will be important that independent practitioners are used. This has been an ongoing issue with ACC.

5. Access to representation

Miriam Dean's Independent Review of ACC's Dispute Resolution Services found that claimants lacked access to representation and this significantly impacted on their access to justice in challenging ACC cover decisions. This situation has still not been addressed and therefore significant inequalities exist between those who can afford to pay for representation and those who cannot. The introduction of the NZIIS and the resulting eligibility disputes that arise will replicate this problem, unless free representation/advocacy services are funded.

Lessons for the NZIIS from ACC

As mentioned earlier there is a need for NZIIS to support workers getting back into work better than ACC does at the moment. ACC has struggled to provide comprehensive rehabilitation and the vocational independence testing regime needs to go. There needs to be a much stronger connection to the education and training sector than exists at the moment and case managers need really good understanding of the options that are available.

There are important elements of the ACC scheme that should be consistent across the two schemes. We support the income replacement rate being set at 80% and with there being a cap on insurable and leviable income set at the same rate as the accident compensation scheme. Abatement rules should align with ACC where the combined income insurance entitlement and income from employment can reach 100% of their prior employment income before it effects entitlement, as with ACC weekly compensation entitlement. Income above the 100% prior employment amount would be abated dollar for dollar. Abating entitlements dollar for dollar once the recipient has reached 100 percent of their previous income means that no one should be better off financially as a result of their redundancy, health condition or disability than they would have been in work.

ACC provides coverage to people who are self-employed and the NZIIS should do the same, particularly for vulnerable self-employed people working within the gig economy and for dependent contractors. Independent contractors would need to pay their own premiums for the NZIIS so they should also benefit in the event that their services are no longer required for non-ACC health condition/disability reasons.

Technical questions

We also have some technical questions about the interface between the two schemes.

1. Being on the NZIIS would be an exception to s 11(1)(a) of the Accident Compensation Act 2001(AC Act) as 'main benefits' being exempt for earner status. As NZIIS claimants would be earners, would they also qualify with the 'earner grace period' under clause 43 of the Accident Compensation Act when social insurance ceases?
2. If the employer is unable to pay the initial 4 week period due to firm ceasing or liquidation or receivership, who would pay for it?
3. Is the initial 4 week period paid for by the employer payment to be abated if they take up subsequent employment?

Conclusion

The NZIIS is a significant reform with implications for ACC. The relationship between the two schemes will bring both opportunities and risks for both and will require careful management. There are elements of the NZIIS where close alignment with ACC will make perfect sense (e.g. the 80% income replacement rate and the cap on insurable (and leviable) income being set at the same rate as the accident compensation scheme) and elements where having separation will be essential (e.g. funding and finances). Ensuring that alignment occurs where it is appropriate and separation is maintained where it is necessary, will be a fine balancing act. We will watch developments with interest.