

IN CONFIDENCE

# ACCREDITED EMPLOYER PROGRAMME: OPERATIONAL REVIEW

Final Report for the Chief Executives' Steering Group

10 May 2008



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## PURPOSE OF THIS REPORT

- 1 This report provides the Accredited Employer Programme (AEP) Operational Review<sup>1</sup> Steering Group<sup>2</sup> with information about:
  - current issues with the AEP
  - opportunities for improvement
  - recommendations for readily implemented 'no fuss' operational solutions
  - other potential solutions that may need to be referred on for further consideration and/or development by others.

## INTRODUCTION

### Background

- 2 In October 2006 the New Zealand Council of Trade Unions (NZCTU) released an issues paper describing concerns about the AEP. At the same time, ACC had initiated an internal review of AEP audit practices. In December 2006, discussions between ACC, the NZCTU and Business New Zealand concluded in an 'in principle' agreement to conduct a collaborative operational review of the AEP. The Department of Labour also accepted an invitation to participate in the Review.
- 3 The Review was formally established by the participants as a joint initiative to develop advice, as appropriate, for the Review Steering Group, ACC Board, Department of Labour and/or the Minister for ACC. The focus of the Review has remained principally on operational issues and solutions.
- 4 Work undertaken during the Review included information gathering, options identification, and assessments to determine the operational viability of options. Consideration was also given to further work required to develop options, inform decisions about whether to pursue particular options or to refer issues to others for further consideration and/or development (eg, legislative or substantial framework changes).
- 5 The main deliverables required of the Review were the Interim Report and this Final Report. The Interim Report (15 November 2007) outlined options with potential for early implementation.<sup>3</sup> This Final Report addresses the balance of the Review's work.

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<sup>1</sup> The Review is a joint initiative of the NZCTU, Business New Zealand, the Department of Labour, and ACC.

<sup>2</sup> Current Steering Group members are Helen Kelly (President NZCTU), Phil O'Reilly (Chief Executive, Business New Zealand), and Dr Jan White (Chief Executive, ACC).

<sup>3</sup> Appendix One sets out the Interim Report recommendations and provides information on the implementation of those recommendations.

## Methodology

- 6 The following four workstreams were established to address the issues within the scope of this Review.<sup>4</sup>
- *Workstream 1 (NZCTU led)* – Employee and claimant experiences including: cover and entitlements; and stakeholder involvement
  - *Workstream 2 (ACC led)* – Entry and renewal standards; and responsive monitoring
  - *Workstream 3 (Business New Zealand led)* – Value of participation to employers
  - *Workstream 4 (Department of Labour led)* – Alignment of the Employment Relations, Health and Safety in Employment, and Injury Prevention, Rehabilitation and Compensation Acts.<sup>5</sup>
- 7 The workstreams were overseen and coordinated by a Technical Subgroup.<sup>6</sup> Project management support for the Review was provided through Monarch Consulting Limited. ‘Whole of Review’ workshops were held to assist with the integration of workstream outputs.
- 8 The Review has drawn information from a number of sources. Information sources included workstream meetings and discussions, consultation with wider stakeholder groups and five surveys summarised in the table below.

Survey Title	Respondents	Led by
AEP Claimant Satisfaction Survey	Claimants	ACC (an existing ACC survey to which a question was added seeking information about union membership).
Union Stakeholder Survey	Unions	Research New Zealand
Employer Survey	Employers (accredited employers, past accredited employers and non-accredited employers)	Research New Zealand
Auditor Survey	AEP Auditors	Workstream 2
Occupational Physician Survey	Occupational Physicians	Workstream 1

- 9 A series of workshops for accredited employers and NZCTU delegates were held in Auckland, Wellington and Christchurch. Discussions were also held with third-party administrators (TPAs) and the ACC Consumer Outlook Group. ACC has also received feedback from the ACC General Practitioner Liaison Group which was passed back to the Technical Sub-group for consideration.

<sup>4</sup> Each Workstream included participants from the NZCTU, Business New Zealand, ACC and Department of Labour.

<sup>5</sup> Workstream 4 terminated after the completion of the Interim Report.

<sup>6</sup> Technical Subgroup members included the workstream leaders, senior managers from ACC, representatives from the NZCTU, Business New Zealand and the Department of Labour, and consultants from Monarch Consulting Limited.

## SUMMARY OF ISSUES IDENTIFIED BY THE REVIEW

10 The Review has not identified a need for wholesale operational change. Many positive operational aspects of the AEP have been noted. For example, two-thirds of accredited employers that responded to the Review's employer survey claim that their organisation's safety record has improved since becoming accredited.

11 Nevertheless, the Review has identified the following operational issues.<sup>7</sup>

- The approach taken to AEP auditing and monitoring is more focused on confirming the establishment of (in some cases narrowly defined) systems and processes rather than on quality outcomes – for example an outcome-focused approach would be more concerned with:
  - confirming that systems and processes are 'fit-for-purpose'
  - ensuring that people responsible for implementing the systems and processes are competent
  - verifying effective implementation of systems and processes.
- There appears to be avoidable duplication between AEP and other compliance monitoring and audit activities (to varying degrees depending on the industries involved).
- There is limited union and employee engagement during the audit process by some accredited employers.
- Available injury management data does not enable a useful comparison of the performance of accredited employers with that of ACC.
- Anecdotal information and other information gathered during the Review suggest that expectations of 'same or better' delivery of claimant entitlements have not been consistently met.
- The process for dealing with poor performing accredited employers requires further development as the current practice appears to be ineffective.
- Upon joining the AEP the employer assumes dual roles (ie, managing an employment relationship, as well as injury and rehabilitation) and, unless the resulting conflict is effectively managed, there is potential for unintended consequences.<sup>8</sup>
- Some accredited employers appear to have a limited understanding of their legislative and contractual obligations and responsibilities under the AEP.
- There is uncertainty as to whether the use of Accredited Employer Reference Group (AERG) meetings are achieving the requirements of sections 20.4 and 20.5 of the AEP Framework (eg, the current AERG structure and approach provide only limited opportunities for employer feedback and AERG meetings serving more as a default mechanism for consultation or information dissemination by ACC).

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<sup>7</sup> This list is not intended to be exhaustive and the issues are presented in no particular order.

<sup>8</sup> The conflict relates to managing financial liabilities as well as ensuring the best outcome for the employee.

- There is little or no participation in, or understanding of, injury and rehabilitation management processes by some AEP claimants and union delegates.

## RECOMMENDATIONS

12 This consolidated presentation of the final Review recommendations is intended to assist with appreciating 'at a glance' how the recommendations address issues and, in some cases, relate to each other. While the rationale for each recommendation may not be immediately apparent here, the following 'Discussion' section of this report provides further explanatory information.

13 It is recommended that the Steering Group:

### Overall Review outcomes

- (a) **note** that the Review has not identified a need for wholesale operational change; however, in light of the issues identified, recommendations are made to support the process of ensuring continuous operational improvement
- (b) **note** that Review participants consider that Review reports establish a solid foundation for readily implemented administrative improvements and longer-term, continuous improvement of the AEP
- (c) **note** that Review participants consider that future, optimal operational AEP performance and effective implementation of substantive recommendations made by this Review will require strong leadership and a continuation of the open, inclusive and collaborative processes employed in the course of the Review.

### Continue to build a more outcome-focused approach

- (d) **agree** that additional scoping and analysis work should be undertaken to:
  - identify appropriate outcome indicators and related data requirements for incorporation, as appropriate, in AEP audit standards, guidelines and the template for AEP performance reporting (under development)
  - clarify the injury rates and rehabilitation outcomes of AEP claimants whose employers sit at different levels in the AEP, with a view to addressing any discrepancies that arise<sup>9</sup>

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<sup>9</sup> Noting that the pattern of employee injuries will vary according to the nature of the work they perform (eg, administrative industries will injure less people than the construction industry). It will be necessary, therefore to compare employers in similar industries and at different levels of the audit standard. Even then there will be potentially confounding variables.

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- inform amendments to the audit guidelines that will ensure a focus on quality, timeliness and appropriateness relative to an individual's needs (ie, rather than simple adherence to specified timeframes)
- consider, in light of the previous point, incorporation in the audit guidelines new criteria relating to:
  - ensuring the timely development of appropriate Action Plans and Rehabilitation Plans for injured employees
  - providing of alternative duties (where they are available) and rehabilitation opportunities without discriminating between work and non-work injuries
  - providing opportunities for delegates, health and safety representatives, and associated work colleagues to inform the allocation of alternative duties
  - ensuring an appropriate level of employee and union participation in focus groups and that the information obtained in the focus groups is used effectively to inform injury prevention and rehabilitation activities
  - ensuring that workplace forums are used, among other things, to actively encourage discussions about decision-making processes, injury management outcomes and concerns among elected employee representatives (ie, delegates and health and safety representatives), case managers, and other participants in the AEP.

### Review procedures for dealing with poor performance

- (e) **agree** that ACC review and implement its documented procedures and criteria for managing, suspending, or terminating an AEP contract with poor performing accredited employers (ie, employers that consistently fail the audit) to increase the transparency of ACC decisions and to provide certainty for all concerned about when such action will be taken.

### Build and maintain the tripartite approach

- (f) **agree** that ACC, NZCTU and Business New Zealand cooperate with a view to establishing and funding the operation of three new AEP forums as summarised in the following points<sup>10</sup>:
- **National AEP Advisory Forum:** Made up of senior representatives from Business New Zealand, the NZCTU and ACC the forum would meet periodically to raise and discuss issues and make recommendations on AEP operational improvements. Forum deliberations may also contribute to the development of information to inform decisions on more strategic AEP matters. This forum would not replace formal consultation with stakeholders and will include:
    - all unions affiliated with the NZCTU

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<sup>10</sup> The secretariat function and all venue and catering costs for all three types of forum would be met by ACC.

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- all groups affiliated with Business New Zealand<sup>11</sup>, including the New Zealand Association of Accredited Employers (NZAAE)<sup>12</sup>
- key members of ACC’s operational and strategic teams, including subject matter experts, as required, and a secretariat function for all meetings<sup>13</sup>
- **General Regional AEP Forums:** A general, regional meeting facility, to partly replace AERGs and to serve as a mechanism for informing all accredited employers, unions and other interested parties on issues and developments related to the AEP. The General Regional Forums will also replace existing meetings that have historically been arranged between ACC, the NZCTU and TPAs<sup>14</sup>
- **Regional AEP Technical/Operations Forums:** – Forums designed to address the detail of technical and operational matters related to the day-to-day management of injury claims. The Forums would refocus and replace the current AERGs, Reference Group and TPA meetings while still allowing for customisation to meet regional needs.<sup>15</sup>

### Provide broader access to INFORME and develop other resources

(g) **agree** that, to give continuing effect to the tripartite approach, ACC (in consultation with NZCTU and Business New Zealand) further develops:

- INFORME as a readily accessible technical resource for case managers and NZCTU Advocacy Service staff that operate within the AEP context
- a longer term option for extending access to INFORME to NZCTU affiliate delegates, and health and safety representatives, including consideration of the conditions and form of such access (eg, online and/or hard copy).

(h) **agree** that ACC, in consultation with NZCTU and Business New Zealand, develops:

- an AEP Claimant Handbook to inform claimants about their entitlements and to support effective management of injury and rehabilitation

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<sup>11</sup> There are three affiliate groups that comprise Business New Zealand. They include Foundation Members (eg, EMA Central) and Affiliated Industry Group members (eg, the New Zealand Association of Accredited Employers) and individual members.

<sup>12</sup> NZAAE is an incorporated society whose purpose is to serve the needs of accredited employers on issues pertinent to the strategic and operational needs of its members.

<sup>13</sup> Advisory Forum meeting schedules, terms of reference, operating principles, and resourcing support to participants will be determined by the Forum.

<sup>14</sup> Local variations of the Regional Forums could initially be conducted between ACC and accredited employers to establish how these Forums would best be conducted.

<sup>15</sup> The Technical/Operations Forums would be facilitated by ACC for the purposes of communicating all mandatory requirements of the scheme. TPAs and self-managing accredited employers will be the target audience for this forum, but all accredited employers and employee representatives will be able to attend. Meeting schedules for Technical/Operations Forums would be determined by ACC and would most likely be scheduled immediately after General Forums. This forum would not replace the training programmes that ACC run with regards to building technical and operational competency amongst accredited employers and employees/unions.

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- a training resource and training programme for union delegates and health and safety representatives to support their understanding of rehabilitation and claims management processes and their roles in these processes<sup>16</sup>
- guidance material to assist accredited employers to provide employees with adequate and timely information when they need it most (ie, information and support is most needed during the injury management period rather than during an employee's induction)

### Require a 'letter of intent' from the applicant employer

- (i) **agree** that ACC amends the originating and renewal AEP application forms (ACC 780) to introduce a requirement for the applicant employer to submit, with the application, and thereafter annually, a detailed letter of intent (addressed to ACC and copied to the unions on the employer's worksites) for the purposes of clarifying and confirming the employer's:
- reasons for seeking accreditation
  - understanding of their AEP-related obligations and risks
  - commitment to the underlying principles of the AEP.<sup>17</sup>

### Determine the ACC approach to accredited employer invoices

- (j) **agree** that, during 2008, ACC determines its preferred approach to the payment of accredited employer provider invoices and seeks agreement to this approach with accredited employers and providers.

### Other matters to be considered by ACC or the National AEP Advisory Forum

- (k) **agree** that the following matters be considered and actioned by ACC, or held over for prioritisation and consideration by the recommended National AEP Advisory Forum.
- NZCTU participants suggest that claimant case management practices are more likely to be adversarial, process-driven, less communicative to and inclusive of the claimant (eg, in the development of rehabilitation plans) and inconsistent with ACC-managed cases (eg, greater reliance on a contemporaneous workplace report of the injury).

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<sup>16</sup> This resource would be developed in the context of the training strategy recommended in the Interim Report and complement the *Claimant Handbook*. It could also be used by supervisors and site managers that deal with injuries less frequently.

<sup>17</sup> It is envisaged that the letter of intent would be developed and signed off at a senior management level within the applicant organisation.

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- Opportunities exist for employee confidentiality to be breached when employers have access to confidential medical information through company doctors or appointed specialists.
- The AEP framework does not currently reflect the 2002 amendment to the Health and Safety in Employment Act 1992 that provides for workers to elect health and safety representatives who are entitled to two days training.
- Lodgement/Acknowledgement of claims: Possible delays in acknowledgment of claims and/or delays in progressing investigations.
- The 'Receiving Insurer' issue is of concern to NZCTU participants who have suggested that a nominated party should be required to pay for the claim while cover is being disputed. There are also concerns that weekly compensation payments may be incorrectly calculated and entitlements may be suspended unreasonably due to these delays.
- There may be disputes surrounding the initial diagnosis of the injury, or claims may be declined because an injury report was not filled out contemporaneously with the injury event.
- Gradual Process Injuries: There may be general delays in process and claimants may be referred to specialists without being told of the purpose of the referral. Claimants may also be denied a choice of specialists.
- Return to Work/Rehabilitation Plans: There may be irregular or non-existent IRP meetings/plans. There may be no documented evidence as to how an employer has determined alternative work duties are safe for employees to undertake. IRPs may not have been negotiated or may not be suitable for the particular claimant. Review rights may not have been provided every time an IRP is updated and there may be no evidence that the claimant has been offered the option of a support person/representative.
- Treatment: Initial minor treatments may not be funded for claims where cover is pending.
- Unduly prolonged and complex case investigations may be delaying treatment, rehabilitation and return to work.
- Poor case management/communications may also be interfering with treatment and the claimant is often required to use the company general practitioner.
- Handback: Including examining the current process and the methodology used to calculate the residual liability when a work-injury is being handed back to ACC by an accredited employer, confirming if the current process is fair and transparent in its approach and exploring if there are alternatives that would add value for accredited employers.

## DISCUSSION

### Overall review outcomes

14 Review participants consider that:

- stakeholders within the AEP have indicated a willingness to work effectively together on areas that require improvement
- the Review reports establish a solid foundation for readily implemented administrative improvements and longer-term, continuous improvement of the AEP
- Review recommendations are practical, achievable and constructive proposals that are supported by the broad majority of Review participants
- optimal operational AEP performance will require strong leadership and a continuation of the open, inclusive and collaborative processes employed in the course of the Review.

15 As signalled in the Interim Report, the operational scope of the Review has meant that wider policy issues of particular interest to employers and unions have not been addressed by the Review.

16 A lack of quantitative data has prevented the Review from 'sizing' some of the issues. Review participants have noted that, unless data issues are resolved, it will also be difficult to determine the impact of Review recommendations.

### **Building a more outcomes-focused approach and procedures for dealing with poor performance**

#### *Relationship with Interim Report recommendations*

17 Recommendations (d) and (e) build on the Interim Report recommendations which reflected the need for work, beyond the capacity of this Review, to inform ACC decision-making about matters such as:

- audit and monitoring practices/activities and opportunities for rationalisation, for example in relation to matters such as:
  - recognition of equivalence (where similar audits are undertaken for different purposes)
  - combining audit activities to avoid duplication (eg, risk and assurance audit with the injury management section of the accredited employer audit)
  - a greater focus on the verification and implementation of systems with less auditor time spent on verifying documented systems and processes
  - altering the requirement for accredited employer's to change auditors after two consecutive audits
  - using a team-based audit approach that introduces specialist expertise where that may be appropriate

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- altering the frequency of audits and using ACC ‘spot checks’ to enable a more evidential understanding of accredited employer performance (including evidence of employee satisfaction) and to provide further incentives for continuous improvement, including by high-performing accredited employers
  - the utility of an audit system that involves ‘scoring’ to improve the value of the audit findings (rather than just pass or fail)
  - improving the information base required to support effective audits (eg, it has been suggested that a union contact database may be helpful)
- audit, monitoring and verification approaches in other sectors and potential learnings for application in the AEP (eg, to improve assurance and effective intervention where requirements are not met, or using a team-based audit approach that introduces specialist expertise where that may be appropriate)
  - opportunities to improve the information base required to support effective audits (eg, it has been suggested that a union contact database may be helpful).
- 18 Recommendations (d) and (e) are designed to reduce the burden on AEP claimants in terms of waiting for rehabilitation and return to work. They arise from further consideration of the adequacy of monitoring and audit processes, including expectations of achieving the ‘same or better’ delivery of entitlements for claimants under the AEP.
- 19 As per the Interim Report recommendations, ACC is currently scoping and analysing (and in some cases implementing) a variety of audit and monitoring practices/activities; identifying opportunities for rationalisation; and assessing audit, monitoring and verification approaches in other sectors.
- 20 Initial findings from these activities suggest that concerns that were raised about potential legislative barriers to implementing some of the suggested options in the Interim Report can be overcome. ACC has advised that an agreed template for AEP performance monitoring and reporting will be completed by August 2008.

### *Same or better delivery of entitlements*

- 21 Available data has not allowed the Review to establish with certainty whether or not expectations about entitlements have consistently been met. Review participants agree, however, that there is sufficient anecdotal and Review survey information to confirm that, in some cases, expectations have probably not been met and that this issue needs to be addressed.<sup>18</sup>
- 22 The NZCTU has also raised concerns about the level at which different employers sit within the AEP and the associated impact on the outcomes for AEP claimants in terms of service delivery.
- 23 While the Review participants agree that solutions will need to be identified to ensure that the ‘same or better’ delivery of entitlements are achieved for AEP claimants in the short

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<sup>18</sup> Union stakeholder survey.

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term, in the longer term the AEP audit will need to capture outcome-related information adequate to inform judgments about the success or otherwise of the AEP.

- 24 There is also a perception, primarily among NZCTU participants, that there is of a lack of union and employee engagement during the audit process and that this also affects the level of service delivered to AEP claimants.
- 25 The Review considered the seven options outlined in the following table. Also noted in the table are examples of advantages and disadvantages of each of the options.

<b>Option</b>	<b>Advantages</b>	<b>Disadvantages</b>
1. Amend both audit standards and audit guidelines, including changes to action plan, rehabilitation plan, alternative duties, and non-work rehabilitation requirements	An effective way to improve the performance and change the behaviour of accredited employers in terms of managing injury claims; AEP claimants will be more likely to receive the 'same or better' delivery of entitlements compared with ACC-managed cases	Potential increase in compliance costs for accredited employers, some of whom have already indicated that the financial incentives for remaining in the AEP are already diminishing. Altering the audit standards and/or guidelines may be a further driver for opting out of the AEP.
2. Amend the audit guidelines (not the audit standards), including changes to action plan, rehabilitation plan, alternative duties, and non-work rehabilitation requirements	Less work for ACC	Unlikely to change the behaviour of accredited employers, who rely primarily on the audit guidelines in terms of direction for injury management and rehabilitation. Not realistic because the guidelines would be inconsistent with the revised standards
3. In the absence of agreed performance benchmarks, undertake a comparative investigation of relevant international audit tools and requirements	Alignment with international best practice in terms of auditing of injury and rehabilitation management; potential for increasing the focus on outcomes for claimants	Review participants are aware that ACC has licences to the NIDMAR audit tools, with a view to all of New Zealand implementation. ACC is currently trialing the audit tool, so undertaking a separate comparative study may not be an efficient use of ACC's resources <sup>19</sup>
4. Rely on the implementation of the NIDMAR programme to address the audit issue	Aspects of the NIDMAR approach may be appropriate in terms of resolving the issue in the long term	Due to the pilot process of the NIDMAR audit tool, it is not clear if the tool is completely fit-for-purpose. This may leave the AEP with an inadequate solution in the interim
5. Refer outcomes-related data issue to ACC for further scope and analysis, the result	A structure and process for addressing this issue has already been established (ie,	May require additional resources from ACC

<sup>19</sup> The Review is aware of the Canadian National Institute of Disability Management and Research (NIDMAR) programme. Implementation of any options that affect the current AEP audit will need to be closely monitored, coordinated and integrated with the NIDMAR project.

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of which would be incorporated in the same template for AEP performance monitoring and reporting	on the ACC work programme) A solution would be developed relatively quickly (ie, by August 2008)	
6. Amend both audit standards and audit guidelines to encourage greater employee and union participation	Likely to be an effective way to increase claimant and union participation in the audit process; AEP claimants will be more likely to receive the 'same or better' delivery of entitlements compared with ACC-managed cases	May include a small compliance cost for employers (eg, to extend the length and change their approach to focus groups, workplace forums). May also require Ministerial approval
7. ACC to scope and analyse the injury rates and rehabilitation outcomes of AEP claimants whose employers sit at different levels in the AEP	This will provide useful evidence as to whether there is an issue that needs to be addressed	There is currently no quantitative evidence to suggest that there is a discrepancy between the level of service provided to claimants whose employers sit at different levels in the AEP, and the findings could reveal nothing of any relevance

26 Options involving amendments to the current audit standards and/or audit guidelines to include additional criteria are designed to improve claimant outcomes, despite the current lack of quantitative evidence.

27 The Review notes that ACC is implementing Interim Report recommendations on scoping activities needed to inform an analysis of audit, monitoring and verification approaches in other sectors and potential learnings for application in the AEP (eg, to improve assurance and effective intervention where requirements are not met, or using a team-based audit approach that introduces specialist expertise where that may be appropriate).

*Poor performing accredited employers*

28 The Review heard that some poor performing accredited employers:

- are continually identified by current monitoring arrangements as having serious systemic problems in the area of injury management
- do not necessarily make the changes required to ensure sustainable improvements
- require substantial resources and support from ACC to address deficiencies and are ultimately being subsidised by other accredited employers
- are not always penalised as a result of failing the audit process.

29 Review participants agreed that a solution is required to ensure that:

- the performance of employers that are not meeting their obligations is addressed appropriately

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- procedures that already exist to manage employers who do not maintain the minimum level of compliance, need to be consistently implemented and monitored
  - AEP claimants continue to have their needs met and are provided with the services that they are entitled to.
- 30 The Review has noted that, currently, the only legal option for addressing the poor performance of accredited employers is in section 7.4 of the Agreement between ACC and the accredited employer.
- 31 Section 7.4 provides that *'Where an audit reveals a deficiency on the part of the accredited employer, the accredited employer must, within a period specified by ACC, submit to ACC an action plan to remedy the deficiency.'*
- 32 The Review has also noted that, in accordance with the Injury Prevention, Rehabilitation and Compensation (Work Account Levies) Regulations 2008, ACC is entitled to request a full (second) Health and Safety audit on certain grounds and can also discontinue or reduce the employer's workplace levy discount.
- 33 Concerns were expressed during the Review about the effect on the integrity of the audit standards and the overall AEP if an employer, who does not sustain primary level practices, is not sufficiently impacted by failing their audits.
- 34 The Review concluded that the poor performance of some accredited employers could be mitigated by suspension requirements in enhanced ACC procedures; for example, prolonged poor performance, or a demonstrated lack of commitment to continuous improvement, could act as triggers for suspension.
- 35 Other options with regard to this issue were not identified or considered. Consideration will, however, need to be given to whether:
- audit standards and/or guidelines will need to be amended
  - the standard contract between ACC and an accredited employer will need to be amended
  - further legislative change is required to establish and/or clarify suspension requirements.

### **Building and maintaining the tripartite approach**

- 36 Recommendation (f) has been developed by the Review in light of clauses 20.4 and 20.5 of the AEP Framework. The recommendation arose from consideration of options for building and maintaining the tripartite approach, while ensuring that the utility of existing structures such as the AERGs was not lost.
- 37 Options considered by the Review and examples of the advantages and disadvantages of the options are outlined in the following table.

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<b>Approach</b>	<b>Advantages</b>	<b>Disadvantages</b>
Continue with AERGs in their current form	Would not require any additional resources or process changes	Continues the status quo whereby there is only limited opportunity for feedback and operational suggestions. It does not address the goal of goal of tripartite participation/representation.
Review the approach to developing the AERG agendas	Opportunity to better align the agenda to the requirements identified in the Framework, and to limit ACC's use of AERG meetings for consultation purposes	Does not address the underlying issue in terms of participation, nor does it address the goal of tripartite participation/representation.
Replace AERGs as part of a broader tripartite approach	More opportunities for a collaborative approach	Depending how the approach is implemented, some accredited employers may feel inadequately informed about the change
Smaller more focused group, comprising of representatives elected by accredited employers and ACC	Possible efficiency gains by getting the right people together at the right time	Tried before, and was unsuccessful. The smaller group did not lead to broader stakeholder buy-in. It was not sufficiently inclusive or representative and access to all accredited employers was not achieved. This resulted in limited understanding by all accredited employers and did not address the regional realities of accredited employers throughout New Zealand. Also, this approach does not address the goal of tripartite participation/representation.

**Access to INFORME and other resources**

38 Recommendations (g) and (h) are made to help give effect to the tripartite approach and to build on Interim Report recommendations. They arise from consideration of how the roles and interests of the various AEP participants impact on the efficacy of the AEP, in particular the impact on AEP claimants.

39 Review participants consider that there is room to improve information flows between all AEP participants which, in turn, could progressively increase:

- identification of effective injury prevention approaches and case management initiatives
- employer and public awareness of obligations, requirements, and entitlements under the AEP

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- claimants' understanding and access to entitlements.
- 40 NZCTU participants have indicated that existing resources and support services for AEP claimants and union representatives (for instance, company procedures for injury and rehabilitation management) are often provided to claimants on induction, rather than during the injury management period. There also appears to be a low level of understanding among accredited employers about all aspects of financial risk exposure associated with being in the AEP.
- 41 To help to address these issues, the Interim Report recommended that ACC establish an AEP development framework and training strategy. The intention being that, among other things, the strategy will link to monitoring results, identify specific training needs and priorities and provide information about available training resources. ACC has indicated that it has made positive progress towards the development of the strategy and that it is scheduled to be launched in January 2009.
- 42 As few new entrants to the AEP are now expected, entry-related issues might (at least for the time being) reasonably be regarded as a relatively low priority. Accordingly the latter stages of the Review focused more on options with potential to mitigate the unintended consequences of the dual role of the employer and to enhance the AEP as a whole.
- 43 The preferred options are progressive development of INFORME as a core AEP resource and better information for claimants about their entitlements and to support effective management of injury and rehabilitation.

### *An AEP handbook for claimants*

- 44 In developing the recommendations in this report, the Review noted the success of the existing ACC resource entitled '*How we will help you with your recovery*', particularly through timely delivery by the claims manager directly to claimant. The Review envisages that the new AEP handbook would be available in hard copy and online through the ACC, NZCTU and affiliate union websites and employer intranets.
- 45 The handbook could cover a wide range of injury claim management issues, including:
- AEP stakeholder roles (eg, claimant, case manager, health and safety representatives and TPAs)
  - relationship between ACC and the AEP
  - claimant representation
  - doctors and other health care providers
  - rehabilitation
  - getting your claim accepted
  - gradual on-set issues
  - degeneration and aging
  - specialist
  - inability to return to work
  - changing careers

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- financial and other entitlements
- return-to-work issues (eg, restricted duties, raising issues and managing pain)
- lump sum compensation.

46 Care would need to be taken to ensure that the document is developed collaboratively by AEP stakeholders for a claimant audience. The guidance provided would need to present an accurate interpretation of relevant legislation, the AEP Framework and the audit standards and guidelines.

### *Further training resources*

47 The Review considered that an increase in an understanding of issues faced by claimants and employers alike is likely to lead to a more consistent delivery of entitlements for AEP employees. The recommended training resource could cover the following issues.

- basic conflict resolution techniques
- the Code of ACC Claimants' Rights
- common disqualifications from cover
- declined decisions and deadlines
- rehabilitation planning
- safe and durable return to work planning
- understanding audits
- boundaries between injury and employment.

### **Letter of intent from the applicant employer**

48 Recommendation (i) arises from the Review noting that some employers do not appear to have entered the AEP with a full understanding of their responsibilities and the relevant legislative requirements. Workstream 3 discussions indicated that this is particularly evident in relation to the claims hand-back process.

49 Review participants agree that a requirement for an employer's letter of intent to accompany AEP applications would help encourage the employer to gain a more sophisticated understanding of their role and responsibilities. The letter would also give ACC a better understanding of the employer's reasons for entering the AEP and serve as a prompt for providing further advice or guidance to the employer about the AEP where the content of the letter indicates that is appropriate or necessary.

50 In response to Interim Report recommendations, ACC has already drafted 'best practice' guidance material for all new AEP entrant employers to ensure that, prior to entry, employers understand fully their responsibilities and the requirements of the AEP. The material is due to be piloted in conjunction with the next new AEP employer application.

## **ACC approach to payment of accredited employer provider invoices**

- 51 Recommendation (j) arises from the following.
- 52 Since 2003 ACC has operated a clearing house for the invoices from treatment providers relating to accredited employer claims, and currently handles about 60 percent of all accredited employer claims. ACC has previously declined to 'clear' accredited employer invoices (for both financial and GST reasons). Instead, ACC gives the treatment provider the name and address of the accredited employer against invoice transactions relating to an accredited employer claim, free of charge.
- 53 Recent analysis suggests that accredited employer invoices received by ACC total about \$1.1 million per annum. It is thought that other invoices administered by ACC are possibly related to accredited employers but, for a variety of reasons, ACC is unable to quantify those claims.
- 54 ACC has considered this issue internally and has identified three potential options:
- maintaining the status quo
  - introducing buyer-created tax invoices produced by ACC (covering both ACC and accredited employer billing). These invoices would be passed to accredited employers by ACC each week or month. The accredited employer would still need to pay the provider.
  - ACC paying providers (less a small handling fee to cover costs) and recovering from accredited employers.
- 55 ACC's current preference is to implement the use of buyer-created tax invoices, while providers (in particular general practitioners) are strongly in favour of ACC paying their invoices. ACC has indicated that it will determine its preferred approach to managing the reimbursement of providers during 2008, and will then seek agreement to this approach with accredited employers and providers.

## **Other matters to be considered by ACC or the recommended Advisory Forum**

- 56 Recommendation (k) refers to a number of other matters raised in the course of the Review process. These matters were identified too late in the Review process and/or were too complex to enable adequate consideration in the limited time available.
- 57 These matters have been recorded for the sake of completeness (without detailed discussion) to ensure that they are referred for further prioritisation, consideration and action, as appropriate, by ACC or by the recommended National Advisory Forum.

## APPENDIX ONE: INTERIM REPORT RECOMMENDATIONS AND IMPLEMENTATION UPDATE

The following is the full text of the recommendations in the Interim Report submitted to the Review Steering Group on 15 November 2007.

### ***General progress and issues under consideration (as per the Review plan)***

- a. **note** that the Review is on track and Review workstreams are working constructively and with a high level of participation and engagement.
- b. **note** that, as provided for in the approved Review plan, issues being considered by the Review for operational improvement include matters relating to: monitoring and evaluation; financial liabilities; government interests; efficacy of the AEP; claimant experiences; and employer and public awareness.

### ***Information gathering***

- c. **note** that information gathered to date through surveys, consultation with accredited employers, third party administrators, unions and employee representatives (summarised in this paper), and ongoing information gathering and analysis will inform the development of the final Review report in March 2008.

### ***Options with potential for early consideration and implementation***

- d. **note** that the Review has identified potential administrative, 'business as usual' improvements to the AEP for consideration by ACC, such as modification of the AEP entry forms to better capture union and employee representative involvement in the self-assessment process.
- e. **note** that the Review has identified the following four more substantial options with potential for early implementation (ie, options that can be further developed and/or initiated before the final Review report in March 2008):
  - **Option 1:** Guidance material on best practice 'partnership' activities prior to entering the AEP to:
    - encourage and support active engagement with unions and employees
    - ensure employers understand fully, prior to entry, their responsibilities and the requirements of the AEP.
  - **Option 2:** An AEP development and training strategy linked, amongst other things, to monitoring results that identifies specific training needs and priorities and provides information about available training resources. This option would also include:
    - development of a communications strategy for informing stakeholders about the relationship between the AEP and the Health and Safety in Employment Act

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- development of information to support employers and employees to concurrently implement the Employment Relations Act and the Injury Prevention, Rehabilitation and Compensation Act (IPRC Act).
- **Option 3:** Scoping how data gathering, analysis and reporting can be improved to inform the development of benchmarks for measuring AEP performance. Areas of focus would be determined through consideration of the purposes of collecting specific data and identifying strengths and weaknesses in current data sets (eg, coverage, gaps, and comparability and quality issues). Consideration would also need to be given to the frequency and methods of collection.
- **Option 4:** Scoping an analysis of audit and monitoring practices/activities and opportunities for rationalisation; and assessing audit, monitoring and verification approaches in other sectors and potential learnings for application in the AEP. Elements of this option include considering:
  - recognition of equivalence (where similar audits are undertaken for different purposes)
  - combining audit activities to avoid duplication (eg, risk and assurance audit with the injury management section of the accredited employer audit)
  - a greater focus on the verification and implementation of systems with less auditor time spent on verifying documented systems and processes
  - altering the requirement for accredited employer's to change auditors after two consecutive audits
  - using a team-based audit approach that introduces specialist expertise where that may be appropriate
  - altering the frequency of audits and using ACC 'spot checks' to enable a more evidential understanding of accredited employer performance and to provide further incentives for continuous improvement, including by high-performing accredited employers
  - the utility of an audit system that involves 'scoring' to improve the value of the audit findings (rather than just pass or fail)
  - improving the information base required to support effective audits (eg, it has been suggested that a union contact database may be helpful).
- f. **note** that, if Review workstreams do not have all the capacity required to complete work on the options themselves, early and/or ongoing implementation will require new resource commitments (most likely by ACC) to enable the options to be pursued in the near future.
- g. **note** the following 'ballpark' estimates of the fulltime equivalent (FTE) resource and time required to complete the work on each of the options:<sup>20</sup>

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<sup>20</sup> Estimates developed by ACC and the Review Manager to give the Steering Group a feel for the likely relative scale of the options. More detailed consideration of the Review Team's capacities and costings for any additional resources would be required before making any firm resource commitments.

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- **Option 1** – *Guidance material on best practice*: 0.6 FTE for 6 months, assuming development of 2-3 tailored guidance resources. May also require a budget for publication and distribution of the material.
  - **Option 2** – *AEP development and training strategy*: 1 FTE for 1 year. May also require a budget for related info-base and web development work. There are also likely to be additional costs beyond development (eg, promotion and rollout).
  - **Option 3** – *Scoping data gathering, analysis and reporting*: 1 FTE for 6 months, assuming research and development of a report and recommendations.
  - **Option 4** – *Scoping analysis of audit and monitoring practices/activities*: 1 FTE for 3 months assuming research and development of a report.
- h. **indicate** which, if any, of the four options for early implementation should be pursued.
- i. **indicate** the preferred order of priority and timeframe for implementation of the options that are to be pursued.
- j. **note** that initial priorities may need to be reviewed as the Review continues.

### ***Residual Account issue for referral***

- k. **note** that, in the course of the Review, Business New Zealand participants have suggested that consideration be given to legislation to: enable transfer of post-July 1999 lodged claims in the Residual Account to the Work Account; fully fund gradual process claims from the date of lodgment without attribution or reassignment; ensure fair and equitable contribution by accredited employers for claims with work related causes where the claimant is no longer in the work force.
- l. **agree** that the suggestion to consider legislative change outlined in the previous recommendation be referred to the Department of Labour as implementation of the suggestion is outside the scope of this operational review.
- m. **note** that Business New Zealand participants have commenced work on developing further supporting information on this issue for consideration by the Department of Labour.

### ***Future report, change management and Review directions***

- n. **note** that the process for managing overall operational improvements will need to be developed after consideration of the final, March 2008, report by Steering Group and any wider consultation that may be required before final decisions are made.
- o. **provide** feedback and, as appropriate, direction to the Review on the further development or consideration of points of agreement and other issues outlined in this report.

**Interim Report Implementation - Summary of Progress to Date**

<b>Issue being addressed</b>	<b>Interim Report Recommendation and/or option ref.</b>	<b>Action taken</b>	<b>Timeline for Completion</b>
Lack of union and employee involvement in the audit process	Rec. d. Administrative improvements	ACC is currently considering the modification of the AEP entry and renewal forms to better capture union and employee representative involvement in the self-assessment process. This is intended to provide unions and employee representatives with an additional opportunity to confirm that the employer has consulted with them about entering and/or renewing their membership to the AEP. It also provides an opportunity to gather information about union and employee representation in the AEP for on-going validation by ACC.	Currently being considered
Lack of employer understanding of obligations and responsibilities on entry into the AEP	Recs. e – j Options with potential for early consideration and implementation (Option 1)	ACC has developed 'best practice' guidance material for all new AEP entrant employers to ensure that, prior to entry, employers understand fully their responsibilities and the requirements of the AEP	This material is due to be piloted in conjunction with the next AEP employer application, the date of which is unknown
Lack of training for AEP stakeholders	Options with potential for early consideration and implementation (Option 2)	<p>ACC is developing an AEP Development and Training Strategy that will be linked to monitoring results that identify specific training needs and priorities, and will provide information about available training resources. This option will also include:</p> <ul style="list-style-type: none"> <li>• development of a communications strategy for informing stakeholders about the relationship between the AEP and the Health and Safety in Employment Act</li> <li>• development of information to support employers and employees to concurrently implement the Employment</li> </ul>	Due to be launched in January 2009

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		Relations Act and the Injury Prevention, Rehabilitation and Compensation Act (IPRC Act).	
Absence of benchmarks for measuring AEP performance	Options with potential for early consideration and implementation (Option 3)	ACC is currently scoping how data gathering, analysis and reporting can be improved to inform the development of benchmarks for measuring AEP performance. Areas of focus will be determined through consideration of the audience and purpose of collecting specific data and identifying strengths and weaknesses in current data sets (eg, coverage, gaps, and comparability and quality issues). Consideration is also being given to the frequency and methods of collection and a link is being established with another ACC Review related to data quality.	An agreed template for AEP performance reporting will be completed by August 2008
Process-driven audit, monitoring and verification approach	Options with potential for early consideration and implementation (Option 4)	<p>ACC is currently scoping and analysing a variety of audit and monitoring practices/activities; identifying opportunities for rationalisation; and assessing audit, monitoring and verification approaches in other sectors (eg, health, education and building sectors). The purpose of the analysis is to identify alternative approaches for application in the AEP. Initial findings from ACC's scoping and analysis activities suggest that positive progress has been made to overcome potential legislative barriers to implementing some of the suggested options identified in the interim report. Issues being considered by ACC in the context of this work include:</p> <ul style="list-style-type: none"> <li>• recognition of equivalence (where similar audits are undertaken for different purposes)</li> <li>• combining audit activities to avoid duplication (eg, risk and assurance audit with the injury management section of the accredited employer audit)</li> <li>• a greater focus on the verification and implementation of systems with less auditor time spent on verifying documented systems and processes</li> <li>• altering the requirement for accredited employer's to change auditors after two consecutive audits</li> <li>• using a team-based audit approach that introduces</li> </ul>	

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		<p>specialist expertise where that may be appropriate</p> <ul style="list-style-type: none"><li>• altering the frequency of audits and using ACC 'spot checks' to enable a more evidential understanding of accredited employer performance and to provide further incentives for continuous improvement, including by high-performing accredited employers</li><li>• the utility of an audit system that involves 'scoring' to improve the value of the audit findings (rather than just pass or fail)</li><li>• improving the information base required to support effective audits (eg, it has been suggested that a union contact database may be helpful).</li></ul>	
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## APPENDIX TWO: RELATED DOCUMENTS

Following the release of this final Review report, the final report and the following related documents (or links to the documents) will be published on the ACC website.

1. Accredited Employer Programme: Operational Review - Interim Report for the Chief Executives' Steering Group (15 November 2007)
2. Accredited Employer Programme: Operational Review Approved Project Plan (17 August 2007)<sup>21</sup>
3. Framework for the Accredited Employer Programme (*New Zealand Gazette*, April 2000, Issue No. 41)
4. Partnership Programme, Audit Guidelines: Injury Management Practices (September 2006)
5. Partnership Programme, Audit Standards, Effective 1 April 2002 (ACC440)
6. ACC Partnership Programme Claimant Satisfaction Survey 2007, Final Report (Research New Zealand, December 2007)
7. AEP Operational Review: Feedback from Employers (Research New Zealand, November 2007)
8. AEP Operational Review: Feedback from Union Delegates (Research New Zealand, November 2007)
9. AEP Operational Review: Summary of Auditor Survey Results (ACC, November 2007).

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<sup>21</sup> This is the initial version of the project plan approved by the Steering Group, incorporating adjustments discussed at the 30 July 2007 Steering Group meeting.