

Submission

By



to the

Accident Compensation Corporation

on the

Experience Rating Information and Consultation Document

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**ACC EXPERIENCE RATING INFORMATION AND
CONSULTATION DOCUMENT
SUBMISSION BY BUSINESSNZ¹**

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to comment on ACC's experience-rating Consultation Document.
- 1.2 BusinessNZ has advocated for the introduction of experience-rating for a number of years and hence welcomes the proposal to introduce experience-rating into the Work Account from 1 April 2010.
- 1.3 This submission is in 2 parts: Part one outlines BusinessNZ's support for experience-rating in general. Part two briefly covers some specific issues related to experience rating.

2.0 RECOMMENDATIONS

BusinessNZ **recommends** that:

Experience-rating of the Work Account proceeds but with consideration given to the specific comments made in Part Two of BusinessNZ's submission.

BusinessNZ **recommends** that:

An independent review of the experience-rating framework be undertaken within three years' of its introduction to ensure that the framework is meeting its objectives.

¹ Background information on Business New Zealand is attached as Appendix 1.

3.0 **PART 1**

- 3.1 An accident insurance scheme should focus primarily on the provision of an appropriate framework so that the number of accidents and their severity can be reduced.
- 3.2 Reducing the overall costs associated with an accident insurance scheme requires all stakeholders (funders, claimants, health professionals and insurers) to face strong incentives to minimise the number of accidents that occur and their associated costs. For employers, employees, health professionals and insurers the right incentives matter.
- 3.3 BusinessNZ considers experience-rating essential to ensure there are strong incentives on employers to improve their accident rate. Employers with an accident rate consistently lower than average (within their risk class) will then be rewarded while those with a poorer than average rate will face higher premiums.
- 3.4 Often, within the same industry, similar businesses will have significant ongoing differences in accident claims and associated claims' costs, demonstrating the need to focus on individual enterprise risk. Experience rating is therefore crucial if employers are to benefit from better than average outcomes within their risk category.
- 3.5 BusinessNZ notes that the PriceWaterhouseCoopers (PWC) Report on the ACC Scheme Review (March 2008), commissioned by ACC, stated, in respect to experience-rating: *"...in our view, experience-rating which makes appropriate use of statistical credibility offers substantial fairness and economic resource allocation efficiencies, which if properly regulated, could outweigh the residual adverse incentive risk which may remain..."* (p. xxxiii).
- 3.6 Four criticisms of experience-rating are worth a brief mention:
 - First, accidents are unfortunate random occurrences and as such a system of experience-rating cannot affect their outcome. Because many accidents (and health states) are purely random little can be done to minimise them (other, possibly, than at great cost). By contrast, a number of so-called "accidents" can be avoided through appropriate health and safety management.
 - Second, experience-rating provides limited incentives for employers to reduce the number of workplace accidents because they can pass on costs to consumers or employees, (presumably through higher cost of product and/or lower wages than might otherwise be provided). In an insulated and protected environment where employers are not subject to competition, the above might be true but in reality, the ability to

pass on costs is strictly limited. Most businesses are subject both to international and domestic competition; therefore there is likely to be little ability to sustain cost increases (even on the margin).

- Third, in some cases employers may be experience-rated on an alleged “work-related” accident which they believe was completely beyond their control. While there will no doubt be some cases where employers feel unduly punished by experience-rating, for far more, experience-rating will be beneficial.
- Finally, the argument is sometimes put forward that introducing experience-rating will encourage employers to put pressure on their employees either not to report work-related claims or to report (work) claims as non-work related. Claims will then be funded out of the Earners’ Account with reduced impact on the employer’s experience-rating. This, too, may be true in theory (and such behaviour may occur on the margins) but a possibility should not be used to diminish the fact that experience-rating has a positive impact. Moreover, effective claims’ monitoring should ensure any employer or employee behaviour of this kind is minimised.

- 3.7 It should also be noted that irrespective of the existence of experience-rating, in some cases there may be incentives for employees to report “non-work” related accidents as having occurred at work. Again this misreporting of accidents can be minimised through the effective monitoring of claims and by having appropriate systems in place to detect fraud.

4.0 PART 2

- 4.1 There are a number of specific issues in the Consultation Document which BusinessNZ wishes to comment on. The first concerns the factors (costs) that should be reflected in experience-rating; the second, whether “systems-based” incentive programmes (e.g. ACC Workplace Safety Management Practices, WSMP) should be retained if experience-rating is introduced. The third is whether the Workplace Safety Discount (WSD) programme should be extended. The fourth is the potential impact of experience-rating claims which have occurred up to three years ago; and finally, the cost neutrality of experience-rating.

1. **Factors (costs) which should be reflected in experience-rating**

- 4.2 The ACC Consultation Document effectively provides for two experience-rating programmes - one for small employers (no claims discount) and one for larger employers (over \$10,000 ACC premium).
- 4.3 One could always argue over where the boundaries for small and large should be set but in general BusinessNZ considers the Document's cut off point is appropriate.
- 4.4 And it can be argued that for practical purposes, it is probably appropriate to exclude work-related, gradual process disease and infection and sensitive claims from experience-rating. However, some employers are of the view that the removal of gradual process (GP) claims from experience-rating could be seen as reducing the incentive for employers to manage GP injuries better. It is understood that in the previous experience-rating regime, where GP injuries that could be attributed to an employer were included, this led to a greater take up of best practice processes such as pre-employment screening, ongoing health monitoring for employees and exit testing. Notwithstanding the above, there are obvious practical issues with including GP injuries within an experience-rating framework and these would first need to be carefully considered.
- 4.5 The Consultation Document suggests two cost factors should be considered for experience-rating purposes for larger businesses: ***number of weekly compensation days paid by ACC during the claim activity period*** and ***number of claims incurred with cumulative medical and elective surgery costs greater than \$500***. Under a pure system of experience-rating, all claims' costs imposed on the ACC scheme would be subject to experience-rating. However, the proposals outlined above adopt a practical approach that should ensure both favourable return to work outcomes and injury prevention.
- 4.6 Some employers consider that the number of weekly compensation days paid by ACC during the claim activity period should also take into account 'part-days'. A number of employers, where possible, bring employees back to work for 'part-days' which assists in the overall rehabilitation process.

2. **Should "systems-based" incentives programmes (WSMP) be retained?**

- 4.7 The Consultation Document asks the very valid question of whether existing "systems-based" incentive programmes should be retained (but at a reduced level) when the proposed experience-rating framework is introduced.

- 4.8 BusinessNZ submits that WSMPs on their own could be considered a relatively ineffective injury prevention tool because there is no link to actual injury incidence, only to the implementation of systems which may or may not be effective. Conversely, notwithstanding a large increase in injuries, an employer enjoying the rewards of participation may not be penalised simply because there is an audited system in place.
- 4.9 BusinessNZ therefore supports the reintroduction of experience-rating in conjunction with a modified WSMP scheme as proposed. Experience-rating was, for a considerable time, the discount scheme of choice and provided positive incentives for employers of all sizes (and the self-employed) to strive to improve their workplace safety practices and to minimise risks. Experience-rating is beneficial also to small businesses that cannot enter the Partnership Programme or for whom the WSMP scheme is too cumbersome.
- 4.10 While BusinessNZ supports WSMP, the scheme is systems-based rather than output based, meaning there is an assumption that if employers have received a satisfactory audit from ACC, the risk of accidents in the workplace will be lower.
- 4.11 BusinessNZ considers it is much better to have an outcomes-based approach where the rate, and perhaps more importantly, the severity (cost) of injury are the relevant factors in setting premiums.
- 4.12 On balance, however, BusinessNZ considers that the proposal to retain “systems-based” incentive programmes (e.g. WSMP) should be accepted despite such programmes’ obvious deficiencies compared with the proposed experience-rating framework *which rewards actual outcomes*. Having both a “systems-based” based incentive programme and true experience-rating of premiums (rewards/penalties based on outcomes) should provide a strong overall basis for investment in preventing injuries and ensuring a rapid reintegration into the work environment following injury.

3. Workplace Safety Discount (WSD) programme

- 4.13 The Workplace Safety Discount (WSD) is only available to a limited subset of employers. Some employers have suggested that making the incentive programme available to a wider range of employers, for example retailers, would increase its impact on smaller employers. It would also give smaller employers an available structure to use for a health and safety management programme.

4. Backdating claims for experience-rating purposes

- 4.14 There have been suggestions that the use of backdated claims for experience-rating purposes (i.e. backdating claims for the last three years) could create some inequities as historical decisions and the claims management associated with these were made under the legislation and cost structures that applied at the time. Some employers consider that a more equitable process would be to start with a one year experience period which extends to a 3 year period over the next three years.
- 4.15 While BusinessNZ in general has always strongly opposed retrospective legislation, particularly on significant issues such as taxation or regulatory matters which may impact on property rights, a balance needs to be struck between minimising the impacts of retrospective legislation and, but at the same time, allowing for experience-rating to kick in as soon as practical. While some employers will no doubt be adversely affected by the retrospective nature of claims for experience-rating purposes, BusinessNZ is keen to ensure that experience-rating is implemented in a timely fashion.

5. Cost neutrality of experience-rating

- 4.16 One of the stated aims of experience-rating is that it will be cost neutral, that the penalties and incentives for employers essentially will be expected to balance each other out, meaning only an administration cost need apply. In this respect, BusinessNZ questions the 0.02c/\$100 levy to fund experience-rating which appears unduly high for a technically cost neutral scheme.

APPENDIX 1**BACKGROUND INFORMATION ON BUSINESS NEW ZEALAND**

Business New Zealand is New Zealand's largest business advocacy organisation.

Through its four founding member organisations – EMA Northern, EMA Central, Canterbury Employers' Chamber of Commerce and the Otago-Southland Employers' Association – and 73 affiliated trade and industry associations, Business NZ represents the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business NZ contributes to Governmental and tripartite working parties and international bodies including the International Labour Organisation, the International Organisation of Employers and the Business and Industry Advisory Council to the Organisation for Economic Cooperation and Development.