Submission by

BusinessNZ

GROWING PROSPERITY AND POTENTIAL

to the

Accident Compensation Corporation

on the

Levy Consultation 2017-19

October 2016

ACC LEVY CONSULTATION 2017-19
SUBMISSION BY BUSINESSNZ[1]

1.0 INTRODUCTION

1.1 BusinessNZ welcomes the opportunity to comment on the proposed levy rate changes set out in ACC Levy Consultation 2017-19, along with changes intended to create more safe and healthy workplaces. BusinessNZ notes that ACC means to review and consult on levies every two years rather than annually and considers this should provide greater certainty about the levies businesses will pay.

1.2 In exceptional circumstances, such as in the event of a substantial change in the financial position of the ACC significantly affecting the scheme's sustainability, the ACC Board and Government may recommend levies be re-set for the second year of the levy period. This is prudent policy.

1.3 Many employers and motorists will welcome the proposed Work and Motor Vehicle Account levy cuts for years 2017-19, although it is noted that there will be a slight increase in the Earners Levy of 3% over the same period.

1.4 A 10% reduction is proposed for the average work levy (from $0.80 to $0.72 for every $100 of liable earnings), while the Motor Vehicle account levy is projected to drop by a significant 13% (from $130.26 to $113.94).

1.5 The levies proposed for 2017-19, across the various accounts, are generally significantly lower than would be the case if the proposed years were fully-funded. This is legitimate because funds across most of the accounts are now well in excess of a fully-funded state. Some of this excess will need to be returned to levy payers over time until the funding policy target of 105% is achieved, hence the use of the "funding adjustment" outlined in the Levy Consultation Documents.

1.6 BusinessNZ has for many years pointed out in its submissions to ACC the deficiencies of the annual ACC levy consultation round. Therefore it is pleasing to note that the passing into law of the Accident Compensation (Financial Responsibility and Transparency) Amendment Act has introduced a much more transparent process for levy determination, including an explicit government funding policy, which BusinessNZ generally supports.

1.7 The above Act has proved a major breakthrough in minimising (but not completely eliminating) the risks associated with government intervention in the premium setting process.

1.8 BusinessNZ has continuing concerns about the significant degree of cross-subsidisation in the Motor Vehicle Account, particularly in respect to motorcyclists who, as a group, continue to be heavily subsidised by motor vehicle owners.

[1] Background information on BusinessNZ is attached as Appendix 1.

However, BusinessNZ is pleased to note the Consultation Document statement that the Minister for ACC has asked the Ministry for Business, Innovation, and Employment (MBIE), together with ACC, to review the Motor Vehicle Account framework over the next couple of years, with among other things, the objective of developing future-fit funding proposals. This is a welcome but long over-due initiative to ensure greater equity in funding the account for existing and potential road users.

1.9 The balance of this submission is in two parts. The first deals with the continued cross-subsidisation issue, specifically as this relates to the Motor Vehicle Account. The second looks at some of the proposals to help achieve safer and healthier workplaces through various incentive products.

1.10 The submission makes a number of recommendations to ensure greater transparency for premium payers.

1.11 BusinessNZ would welcome the opportunity to discuss our recommendations with ACC officials and/or the ACC Board.

RECOMMENDATIONS

BusinessNZ **recommends** that:

1. **The proposed levy changes to the Work, Earners' and Motor Vehicle Accounts for the 2017-19 years proceed.**

2. **A thorough investigation of Motor Vehicle Account funding be carried out to enable the costs associated with the scheme to be more closely sheeted home to claimants, reflecting the spirit of the Accident Compensation (Financial Responsibility and Transparency) Amendment Act. The Minister for ACC's commitment to a review of the Motor Vehicle Account framework is therefore supported.**

3. **If, after a thorough review of the Motor Vehicle Account, in the opinion of the ACC Board and the Government there is a sound public policy reason for the continued cross-subsidisation of motorcyclists or any other new or existing road users (although no obvious reason occurs to BusinessNZ), the nature of the subsidisation be made transparent and funding provided from general taxation. The funding will then show clearly in the government accounts, allowing the quality of the expenditure to be judged alongside all other areas of government expenditure.**

4. **Before considering the removal of the WSD and/or WSMS or any changes to experience-rating, ACC provide stakeholders with a clear outline of what it is trying to achieve, detailed examples of how any new proposals would affect businesses – for example, through the provision of case studies - and indicate how what is proposed will improve overall outcomes. Only then will stakeholders be able to provide informed comment on the merits or otherwise of the ACC proposals.**

2.0 CROSS-SUBSIDISATION IN THE MOTOR VEHICLE ACCOUNT

2.1 A key levy-setting goal and a principle of the ACC Board is that levy payers should contribute their fair share to the ACC scheme's costs. Unfortunately, when it comes to the Motor Vehicle account, politics appear to gain the upper hand and these important aims are effectively ignored.

2.2 While the ACC Board is to be congratulated for continuing to move towards a framework for "risk based" rating cars on crash data, the Corporation's continuing refusal to grasp the nettle of cross-subsidisation between, in particular, motor vehicle owners and motorcyclists, is disappointing.

2.3 While it is useful to move down the track of ensuring greater risk-rating of motor vehicles and the like, this course should not be pursued with rigour before the major issue of cross-subsidisation of motor cyclists by motor vehicle owners has been effectively addressed.

2.4 The spirit of the Accident Compensation (Financial Responsibility and Transparency) Amendment Act, requires this ongoing issue to be dealt with urgently, otherwise levy payers will, rightly or wrongly, assume that the new legislation has not adequately addressed the old political games which have marred previous annual consultations.

2.5 Many road users, principally cyclists, effectively pay nothing towards the cost of on-road accidents (apart from those adjudged as being work-related, e.g. cycle couriers), while motorcyclists continue to be grossly subsidised by motor vehicle owners.

2.6 There have been moves over the past few years to reduce Motor Vehicle Account cross-subsidisation but these have been tentative to say the least, focusing mainly on removing some of the distortions within each vehicle class (e.g. between small and large motorcycles) rather than dealing with motorists' cross-subsidisation of motorcyclists per se. This process has effectively continued during the 2017-19 consultation round.

2.7 There will be motorcycle owners who can readily afford to pay the risk-rated premium associated with motor cycling while there will be car owners who struggle to pay the ACC licensing fee.

2.8 It is not clear from research that motorcyclists, on average, have any more or less ability to pay than other motorists or indeed professional rugby players in respect to risk-based work levies.

2.9 ACC, correctly in BusinessNZ's opinion, risk rates activities in the Work Account based on actual risk (not fault, as ACC is a no-fault scheme). This means a professional rugby player will pay significant ACC levies for ACC-related claims, given the relatively higher risk of injury to professional rugby players compared with individuals working in less risky environments, e.g. office workers.

2.10 It has sometimes also been argued that cross-subsidisation is justified because the motorcyclist is often not "at fault" in an accident involving a motorcycle, that is, does not cause the accident. In response, the following should be noted:

1. The "no fault" aspect of the scheme is simply government policy, providing cover for all accidents regardless of fault, with injured persons entitled to compensation without legal recourse;
2. ACC is attempting to recoup the costs of the scheme from those whose costs are greatest (have the highest accident costs), irrespective of fault;
3. Motorcycle riders (no external protection, no seatbelt, higher risk of not being seen by motor vehicles when overtaking etc.) are more prone to serious bodily injury than are people in cars. Injuries sustained by motorcyclists are likely to be more extensive whether the collision involves a motorcycle alone or is with another vehicle. Thus, regardless of who is at fault, riding a motorcycle, on average, results in a higher accident cost.

2.11 A graphic from the ACC 2017-19 Levy Consultation document (see below) makes the degree of cross-subsidisation abundantly clear, something ACC itself acknowledges.

> *"……most of the funding for motorcycle injuries still comes from levies paid by other road users. The graphic below shows that in 2017/18 levy period, when the overall costs associated with motorcycle-related injuries are expected to be $131 million, only $28 million will be funded directly from levies paid by motorcyclists. The remaining $103 million will be funded by other motor vehicle owners. On average this adds $30 to the rego for all other vehicle types"*

2.12 While the levy that would apply to actual claims costs would be relatively high (relative to current subsidised rates), BusinessNZ nevertheless considers rates should be more progressively based on risk. However it is acknowledged that it might take a number of years to achieve true risk-based levies for motorcycle owners.

2.13 Individuals considered in need of taxpayer assistance (generally income-related) receive support via various tax measures, including income support to enable them to purchase essential goods and services.

2.14 If government decides, for some rigorously determined public policy reason (although BusinessNZ cannot think of any), that motorcyclists, or any other road users, should be subsidised by other motor vehicle owners, the subsidy should be transparent, funded out of general taxation and explicitly recognised in the government accounts, as is currently government (taxpayer-funded) assistance to low income earners and the elderly (via NZ Superannuation payments) etc.

2.15 Continuing to cross-subsidise motorcyclists, or any other road users where it is practicable for them to pay for their behaviour, through increased levies on other motorists is both unjustified and defeats many of the principles the ACC Board states are upheld in the levy setting process. Of more fundamental concern, this cross-subsidisation tends to defeat the important object of greater transparency provided for in the Accident Compensation (Financial Responsibility and Transparency) Amendment Act which was promoted by the Government as a game changer in respect to ACC levy setting transparency.

BusinessNZ **recommends** that:

A thorough investigation of Motor Vehicle Account funding be carried out to enable the costs associated with the scheme to be more closely sheeted home to claimants, reflecting the spirit of the Accident Compensation (Financial Responsibility and Transparency) Amendment Act. The Minister for ACC's commitment to a review of the Motor Vehicle Account framework is therefore supported.

BusinessNZ **recommends** that:

If, after a thorough review of the Motor Vehicle Account, in the opinion of the ACC Board and the Government there is a sound public policy reason for the continued cross-subsidisation of motorcyclists or any other new or existing road users (although no obvious reason occurs to BusinessNZ), the nature of the subsidisation be made transparent and funding provided from general taxation. The funding will then show clearly in the government accounts, allowing the quality of the expenditure to be judged alongside all other areas of government expenditure.

3.0 **WORKPLACE INCENTIVE PRODUCTS**

3.1 As the Consultation Document indicates, ACC wants to use ACC levies to reward businesses that reduce injuries and support the rehabilitation of injured workers. Discontinuing the Workplace Safety Discount (WSD) and Workplace Safety Management Practices (WSMP) products is deemed consistent with this approach as these products recognise compliance rather than outcomes.

3.2 BusinessNZ is supportive of enhancing the current experience-rating system but believes it would be premature to remove the WSD and WSMP before putting other appropriate systems in place. The ACC document talks a lot about consulting and making improvements but has little in the way of concrete proposals for businesses to comment on. BusinessNZ considers it would be more appropriate for ACC to consult on actual proposals, potential costs and benefits, rather than simply adopting a free for all approach to future incentive systems.

3.3 BusinessNZ has long advocated the benefits of experience-rating and welcomed its introduction into the Work Account from 1 April 2010.

3.4 An accident insurance scheme should focus primarily on the provision of an appropriate framework so that accident numbers and their severity can be reduced.

3.5 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. For employers, employees, health professionals and insurers the right incentives matter.

3.6 BusinessNZ considers experience-rating essential to ensure employers have strong incentives to improve their accident rates. 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.

3.7 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.

3.8 Further, experience rating which makes appropriate use of statistical credibility offers substantial fairness and economic resource allocation efficiencies. Properly regulated, this can outweigh any perceived weaknesses associated with experience-rating. These perceived weaknesses are outlined below.

3.9 Four criticisms of experience-rating (and responses to them) are:

- First, accidents are unfortunate random occurrences and an experience-rating system cannot affect their outcomes. Many accidents (and health states) are random so little can be done to minimise them (except, possibly, at great cost).

On the other hand, a number of "accidents" could be avoided through appropriate health and safety management.

- Second, experience-rating offers employers only a limited incentive to reduce workplace accident numbers because costs can be passed on to consumers or employees, (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 to a limited extent but in reality, the ability to pass on costs is strictly limited. Most businesses are subject both to international and domestic competition; there is likely to be little ability to sustain cost increases, even on the margins.

- 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.

- Fourth, the argument is sometimes put forward that experience-rating encourages employers to put pressure on their employees either 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 might 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.

3.10 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.

3.11 Notwithstanding all of the above, implicitly, the ACC Consultation Document is seeking a realistic timeframe for employers' experience rating. There is no easy answer.

3.12 On the one hand good (or poor) outcomes need to be rewarded (or punished) although it is important to strike a balance so the costs associated with an unfortunate outcome don't rest with the employer for many years after the event. Obviously, the size of the company is also relevant. While there can be a legitimate argument as to an appropriate time-frame, BusinessNZ would opt for somewhere between 3-5 years. The consultation document's proposal to shorten the current 3-year experience-rating period would represent a retrograde step.

3.13 It is noted that ACC is to draft detailed proposals and seek feedback from stakeholders in the New Year. BusinessNZ welcomes this approach and in particular, asks for clarity about the reasons for any proposed changes and their implications for particular businesses and for case studies that provide a greater understanding of likely effects.

Discontinuing the WSD and WSMP schemes

3.14 BusinessNZ has previously noted that ACC intends to discontinue both the WSMP and WSD schemes as being compliance-rather than outcomes-based.

3.15 While BusinessNZ considers the WSMP and WSD schemes inferior to experience-rating, until more effective regimes are available for small-medium sized companies, both need to be retained in some form or other. It is not clear from the consultation document what would replace either scheme.

3.16 WSMPs and WSD on their own could be considered relatively ineffective injury prevention tools because there is no link to actual injury incidence only to the implementation of systems which might or might not be effective. Conversely, notwithstanding increased injury numbers, participating employers might escape penalty because they have a system in place.

3.17 While strongly supportive of experience-rating as the tool of choice, BusinessNZ notes that NZ has a disproportionate number of small to medium sized enterprises, making full experience-rating difficult to implement effectively.

3.18 On balance, however, BusinessNZ supports retaining a "systems-based" incentives programme such as WSMP or WSD alongside the more credible experience-rating. A "systems-based" incentives programme and true experience-rating of premiums (rewards/penalties based on outcomes) should provide a strong overall basis for injury prevention investment and result in rapid workplace reintegration following injury.

3.19 Any changes to experience-rating, and/or the WSP and WSD need to be presented to stakeholders in a credible package to ensure the implications for individual businesses, including underlying incentives, are clearly understood. A discussion that does not start from a sound options base will likely be of little benefit.

BusinessNZ **recommends** that:

Before considering the removal of the WSD and/or WSMS or any changes to experience-rating, ACC provide stakeholders with a clear outline of what it is trying to achieve, detailed examples of how any new proposals would affect businesses – for example, through the provision of case studies - and indicate how what is proposed will improve overall outcomes. Only then will stakeholders be able to provide informed comment on the merits or otherwise of the ACC proposals.

APPENDIX 1

Background information on BusinessNZ

BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups EMA, Business Central, Canterbury Employers' Chamber of Commerce, and Employers Otago Southland
- Major Companies Group of New Zealand's largest businesses
- Gold Group of medium sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into 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 and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and the Business and Industry Advisory Council (BIAC) to the Organisation for Economic Cooperation and Development (OECD).

It should be noted that the Motor Industry Association of NZ (Inc) does not support recommendation 2 and 3 in this submission by BusinessNZ.