



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	2022/23 – 2024/25 ACC Levies	Date to be published	22 December 2021

List of documents that have been proactively released

Date	Title	Author
24 November 2021	2022/23 – 2024/25 ACC Levies	Office of the Minister for ACC
24 November 2021	Cabinet Economic Development Committee Minute of Decision, 2022/23 – 2024/25 ACC Levies [DEV-21-MIN-0249 refers]	Cabinet Office
17 November 2021	Stage 2 Cost Recovery Impact Statement: 2022/23 – 2024/25 ACC levies	Ministry of Business, Innovation and Employment
18 November 2021	Regulatory Impact Statement: Experience Rating – increase loading and add fatality modifier	Ministry of Business, Innovation and Employment
25 October 2021	2022/23 – 2024/25 ACC levies: Levy Scenarios and Super Rugby classification Units	Ministry of Business, Innovation and Employment
29 October 2021	ACC levies 2022/23 – 2024/25: Final ACC and MBIE recommendations	Ministry of Business, Innovation and Employment, Accident Compensation Corporation

Information redacted

YES / NO

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Some information has been withheld to protect confidential advice to Government and the privacy of natural persons.

Regulatory Impact Statement: Experience Rating – increase loading and add fatality modifier

Coversheet

Purpose of Document	
Decision sought:	<p>The document provides an analysis of proposals to be put to Cabinet to amend the Accident Compensation (Experience Rating) Regulations 2019. These regulations provide for ACC to adjust a medium to large sized employers' ACC Work Account levy up or down in line with their claims experience.</p> <p>The analysis covers options for two proposals to increase the recognition of poor injury performance by employers, and thereby reduce subsidisation of employers with poor injury performance by other levy payers:</p> <ol style="list-style-type: none"> Better recognise poor performance by increasing the maximum experience rating loading: <ul style="list-style-type: none"> Status quo – retain a maximum 75% loading Increase the maximum loading to 100% (MBIE and ACC preferred option), and Adding a fatality modifier to better recognise the impact of fatalities: <ul style="list-style-type: none"> Status quo – retain current settings (MBIE's preferred option) Impose a 20% levy loading in the first year after a fatal injury followed by a 10% loading in the second year (ACC's preferred option) Treat each fatal injury like a serious injury requiring a year or more away from work, which would increase the levy by between zero and 80% depending on the size of the employer and rounding in the calculation.
Advising agency:	MBIE (with input from ACC as operational agency)
Proposing Ministers:	Minister for ACC
Date finalised:	19 November 2021
Problem Definition	
<p>ACC's Experience Rating Programme is intended to incentivise employers to deliver better health and safety outcomes by adjusting their employer levy based on past claims experience¹, while also reflecting the costs that employers with poorer claims experience impose on the Scheme. Analysis in 2014 suggested that Experience Rating did not</p>	

¹ Number and severity of injuries, rehabilitation performance.

appear to be delivering a material reduction in claims, and in some instances was not equitably reflecting the costs of employers' poor performance, to the detriment of better performers.

Initial reforms agreed in 2018 were implemented in 2020 to simplify Experience Rating so the incentives were clearer and make it more responsive to performance, but not to better reflect levels of employer performance (maximum loading and fatality modifier).

This means that Experience Rating:

- may not be providing sufficient incentive to employers to change their behaviour to improve injury performance
- is not reflecting the costs poor performing employers impose on the Scheme, and making better performing employers subsidise employers with poor injury performance.

Executive Summary

Experience Rating provides a financial incentive to employers to reduce workplace injuries and improve return to work times by adjusting their Work Account levy upwards or downwards, depending on past claims experience. This ensures that employers bear the costs to the Accident Compensation Scheme of injuries that occur at work. It also supports the overall the rationale of the levy system to collect sufficient levies, from those who are provided with cover, to fund the cover provided.

Four proposals were previously developed as part of a 2018 suite of changes to simplify and improve the effectiveness of the Experience Rating Programme following earlier analysis that appeared to show that generally the Experience Rating was not resulting in a reduction in claims, and was not always equitably distributing the cost of claims.

The proposals agreed in 2018 included improving the responsiveness of the levy adjustment calculation, removing a link to the outcomes of the employer's peers and lessening the influence of older claims.

The fourth category of proposals from the suite, to strengthen consequences of unwanted performance, was not fully agreed by Cabinet, as there were concerns about the lack of information on some aspects of the likely impacts. It was decided that further work would be done and that the remaining fourth category proposals be reconsidered at the next appropriate levy-related consultation.

The two parts of the proposal to strengthen incentives for employers, to now be considered, are to:

- increase the maximum experience rating loading (the addition to the standard levy) from 75% to 100%, and
- introduce a fatality modifier that increases the experience rating loading when a workplace fatality occurs.

Increasing the maximum loading from 75% to 100% will increase the levy imposed on a relatively small number of employers while lowering the average levy paid by everyone else by a little under one cent per \$100 of liable earnings of employees. It will ensure ER distributes costs equitably, but it is uncertain whether it will lead to behaviour changes. MBIE recommends increasing the maximum loading to 100%.

Introducing a fatality modifier will increase the levy of a small number of employers because of the rarity of workplace fatalities, and so therefore will have only a marginal effect on the average levy for other employers. It will treat fatalities more equitably than the status quo, which treats them the same as minor injuries, but both of the options have the potential to over penalise some employers. It is uncertain whether it will lead to behaviour

changes. Therefore, MBIE does not recommend a fatality modifier be implemented in the current ER system.

Limitations and Constraints on Analysis

The options analysed in the RIS focus on changes that could be made to the Experience Rating system:

- Under its current general policy parameters and operational settings – it does not consider any potential broader options for a ground-up review or reform of Experience Rating.
- To address the final two proposals in the *strengthening consequences* category of the suite of changes first considered by Cabinet in 2018 (see Section 2 of this RIS, page 8): maximum loadings and a fatality modifier.

Therefore, this RIS does not consider broader options to incentivise better employer health and safety performance, either in the Accident Compensation regulatory system or other systems.

In 2018 consideration of those two proposals was deferred as MBIE advised that it considered there was a lack of information on some aspects of the likely impacts.

MBIE now considers that further work carried out by ACC has provided adequate information to estimate the levy impacts of the proposed changes and a range of potential impacts on injury claims.

An analysis of the relevant portion of submissions from the ACC levy consultation for 2022/23 to 2024/25 levies helped inform the analysis in this paper.

Responsible Manager(s) (completed by relevant manager)

Hayden Fenwick
Manager Accident Compensation Policy
Ministry of Business, Innovation and Employment



18 November 2021

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Business, Innovation and Employment

Panel Assessment & Comment: MBIE's Regulatory Impact Analysis Review Panel has reviewed the Regulatory Impact Statement '*Experience Rating – increase loading and add fatality modifier*' prepared by MBIE. The Panel considers that this RIS **partially meets** the criteria necessary for Ministers to make informed decisions on the proposals in this paper. The key reason for this judgement are the limited options considered for the maximum experience rating loading coupled with limited statistical analysis presented on the equity impacts of each option. This limits confidence that the preferred maximum experienced rating loading is the best possible solution.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

What is Experience Rating?

1. Experience Rating is part of the ACC levy system.
2. In the levy system, broadly:
 - ACC actuarially calculate the lifetime costs of claims occurring in a year, and determine what they think the average levy rate across the Work Account should be to recover the costs of accidents at work.
 - This average rate for business levy payers contributing to the Work Account is then adjusted so it varies according to industry and Classification Units. These classifications are basically a measure of the risk rating determined for each industry.
 - This is then further modified by Experience Rating (“ER”), which applies levy discounts or loadings to an individual employer based on actual claims over the prior 3 years compared with other employers in their industry. This gives each firm’s final Work Account levy.
3. The Accident Compensation (Experience Rating) Regulations 2019 (the Regulations) provide the mechanism for ACC to adjust a medium to large employers’ ACC Work Account levy up or down in line with their injury claims experience.

What is it intended to achieve?

4. ER was introduced in April 2011 with the intention of:
 - providing a financial incentive to employers to reduce the number and severity of workplace injuries and improve return to work outcomes, and
 - improving the equity of the work account levy across employers, by ensuring the levy each employer pays reflects their health and safety performance and the likely costs to the AC Scheme.
5. Employers with very good claims experience receive levy discounts of up to 50%, while those with negative claims experience have a loading of up to 75% imposed.

How does it *operate* in practice?

6. The ER levy adjustment is now based on two key factors:
 - a rehabilitation component based on the employee compensation days an employer has per dollar of employee earnings, compared to other employers in the same sort of industry
 - a risk management component based on the number of employee claims (costing over \$500) and deaths, per dollar of employee earnings, compared to other employers in the same sort of industry.
7. Those components are inputs to a formula that calculates a discount or loading that is rounded to the nearest 10% by the use of bands. The result can be a discount of up to 50% or a loading of up to 75%, on top of the standard levy. The steps for the calculation (which is carried out by ACC) are set out in the Regulations:
<https://www.legislation.govt.nz/regulation/public/2019/0038/latest/LMS158425.html>

8. ER is compulsory, applying to medium and large employers (and groups of employers) who pay annual ACC levies of \$10,000 or more (ie firms employing approximately 28 or more people on the average wage at the average levy rate).
9. ER applies to approximately 15,000 employers (3%), employing approximately 40% of the workforce.
10. Although ER is focused on medium to large employers, it is funded through a surcharge of just under 3 cents per \$100 of liable earnings of employees by all employers liable for the employer levy, including small employers not subject to the programme. This is an addition to the aggregate levy, before adjustments are applied.

What does it *achieve* in practice?

11. An analysis of ER data performed by Sapere in 2014 failed to identify a statistically valid improvement in claims per employee. From this work it was concluded that while ER may have influenced behaviour in some cases it did not appear to be delivering a material reduction in claims.
12. Further, it was determined that design features of ER meant that poor performers were not bearing the cost of that performance through ER loadings, and that they were therefore being, at least in part, subsidised by better performers.
13. This led to further policy work by ACC on ER. A suite of four categories of proposed changes to simplify and improve the effectiveness of ER was proposed to Cabinet in 2018:
 1. Simplify the experience calculation
 2. Improve the responsiveness of the levy to changes made by a business
 3. Manage the increased levy volatility introduced by the above changes
 4. Strengthen consequences for unwanted performance
14. The then Minister for ACC proposed that the first three of the four categories of changes be introduced, and Cabinet agreed. The proposals adopted included improving the responsiveness of the levy adjustment calculation, removing a link to the outcomes of the employer's peers and lessening the influence of older claims
15. It was anticipated that Cabinet would reconsider decisions on the fourth category in conjunction with the next levy round.

What will happen if no change is made?

16. Without change, ER will continue to:
 - not be providing sufficient incentive to employers to change their behaviour to improve injury performance
 - not reflect the costs poor performing employers impose on the Scheme, and making better performing employers subsidise employers with poor injury performance
17. ACC has been running an annual campaign to promote awareness and understanding of ER. This includes proactive outreach to customers who are new to the programme and those whose claims experience is trending in a negative direction (high loading or 20+% shift) to provide relevant and timely insights to customers, so they have an increased

awareness and understanding of the impact of experience rating and their ability to take action to reverse the trend. This may influence employer behaviour.

What is the policy problem or opportunity?

ER was not achieving its intended outcomes

18. Analysis in 2014 suggested that ACC's Experience Rating Programme did not appear to be delivering a material reduction in claims, and that it wasn't equitably distributing the cost of claims in ER.
19. The research undertaken by ACC when introducing ER in 2011 found that for experience rating to positively impact the management of occupational health and safety the following should be met²:
 - The cost of insurance needs to be perceived as high in absolute terms. Rates above 1% or 2% of payroll appear to motivate employers
 - The value of discounts or loading needs to be perceived as high, either in absolute terms or relative to the firm's overall profitability. Typically, at least 25% of the normal levy.
 - Discounts or loadings need to be received within one to three years to influence firms
 - Rates varying greatly from one year to the next can aggravate employers
 - The motivational impact of experience rating can be diluted by factors such as competition between insurers, which can result in insurers offering lower rates regardless of actual claims

Changes agreed in 2018 addressed some of the identified issues

20. While initial reforms were implemented in 2020 to simplify ER and make it more responsive, there were no changes made to the way costs of claims were distributed between good and poor performers in ER.

But ER still does not adequately or equitably reflect the costs some employers impose

21. For ER to work as intended it is important that the programme provides sufficient incentive for employers to change their behaviour to improve worker safety, and sufficiently adjusts levies to make them better at reflecting the health and safety performance of employers.
22. The overall average employer levy is now 0.67% of payroll and has decreased from 1.15% of payroll since ACC's 2011 research. The current 75% maximum loading in Experience Rating will, on average, only bring the Work Account levy to 1.17% of payroll. Increasing the maximum loading to 100% will increase this figure a little more, to be significantly over 1%, at 1.34%.

The loading maximum is too low, likely not providing enough of an incentive while penalising good performers

23. The current limit of a 75% maximum loading means that an employer which has a claims history that is significantly worse than the average for similar employer is being subsidised by all other employers. The 75% maximum loading was chosen to ensure

² Health and Safety Executive, *Changing business behaviour – would bearing the true costs of poor health and safety performance make a difference?* 2002

that employers were incentivised to improve their health and safety performance without over penalising them.

24. Given the limited incentive impact found by Sapere, it is likely that the 75% loading is too low, and that more weight should therefore be given to moving employers closer to the cost of their own claims and better balancing discounts and loadings within ER, reducing the cross-subsidisation from better performing employers.

Fatalities are treated the same as minor injuries, meaning some employers do not bear the costs of their performance

25. In calculating the ER adjustment there is currently no difference in effect between a fatal injury and any other employee work injury claim over \$500 that doesn't result in time off work. This was an oversight in the initial design of ER. This means, for example, that a work-related fatality has the same impact on an employer's ER adjustment as a severely sprained ankle requiring \$500 of medical treatment, even though a fatality (which is much rarer) is a much more severe consequence and cost on the AC Scheme.

26. There is also an inconsistency between the No Claims Discount programme, a simpler financial incentive scheme applying to smaller employers under the umbrella of experience rating, and the Experience Rating Programme applying to medium to larger employers. The No Claims Discount programme moves an employer between a discount of 10%, no discount and a loading of 10%, depending on claims and deaths.

What objectives are sought in relation to the policy problem?

27. There are two objectives relating to ER that are sought when seeking to solve the policy problems. These are to:

- make the employer levy more fairly reflect the costs imposed on the scheme by a particular employer, and
- provide sufficient financial incentive to drive employers to make changes that promote injury prevention and sustainable return to work outcomes.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

28. The options for change are compared by evaluating them against the following criteria:

Primary criteria, aligned to ER objectives

- a) *Equity*: Changes to the programme improves equity across employers by making the levy each employer pays more closely match their claims costs (weighted 30%); and
- b) *Injury prevention & Sustainable Return to Work Outcomes*: Financial incentives influence employer behaviour which results in improved injury prevention and sustainable return to work outcomes for employees (weighted 30%).

Secondary criteria

- c) *Administrative efficiency*: – administration is cost efficient for ACC and levy payers (weighted 20%); and,

- d) *Risks*: Risk of unintended consequences and perverse outcomes is minimised (weighted 20%).

What scope will options be considered within?

29. The proposed changes to ER originate from the last of four proposals in a suite of changes previously put to Cabinet to simplify and improve the effectiveness of ER, following earlier analysis that appeared to show that generally ER was not resulting in a reduction in claims. The previous Minister had agreed to ACC doing work to improve the operation of ER within existing policy parameters, ie not a fundamental review, and not looking at other ways to achieve the outcomes that ER intends to achieve.
30. The suite of previous changes that were approved and put in place included improving the responsiveness of the levy adjustment calculation, removing a link to the outcomes of the employer's peers and lessening the influence of older claims.
31. The prior Minister did not, at that time, support the fourth category proposal in the suite, of increasing the consequences for poor performance, and left it for consideration at the next appropriate levy-related consultation.
32. For the reasons set out above, the scope of the options to be considered is limited to those that were developed for the original fourth proposal in the suite. These are able to fit into the existing ER system in a practical sense, and are already familiar to stakeholders.
33. The way ER calculations work, there are only two real options to more equitably reflect the impact of workplace fatalities within current settings (ie any other options would require a complete redesign of ER, which isn't in scope of this policy work), as outlined below at paragraph 35.

What options are being considered?

Maximum loadings

34. For increasing the maximum experience rating loading, only the proposal to increase the maximum loading from 75% to 100% (preferred by both MBE and ACC) and the status quo have been considered as options.

Fatality modifier

35. For the introduction of a fatality modifier, the following options have been considered:
- *Option 1 - Status quo*: retain the current experience rating calculation settings (**MBIE's** preferred approach)
 - *Option 2 – Add a new fixed-step fatality modifier*: impose a new 20% levy loading in the first year after a fatal injury followed by a 10% loading in the second year (**ACC's** preferred approach)
 - *Option 3 – Add fatalities to the rehabilitation component of the experience rating calculation*: treat each fatal injury like a serious injury requiring a year or more away from work, which would increase the loading so that the levy is increased by between zero and 80% depending on the size of the employer and rounding in the calculation.

Stakeholder views

36. Stakeholders were consulted by ACC as part of its consultation on levy rates for the next three-year period. Stakeholders had five weeks to make submissions, which had a deadline of 5 October 2021.
37. There were 44 submissions that addressed the proposal to increase the maximum loading. A majority of submitters (57%) supported raising the maximum amount levies can increase for employers in ER. These responses supported increased levies for poor health and safety performance, so that everyone is paying a fair rate and has an added incentive to develop and improve a culture of workplace safety.
38. Some respondents highlighted concerns regarding the potential to be penalised for factors outside of their control, and urged that more consideration be given to issues regarding the attribution of claims as workplace, or non-workplace injuries.
39. Manage Group stated in their submission that they consider employers do not understand the nuances of ER well enough in order for behavioural change to occur.
40. There were 45 submissions that addressed the fatality modifier proposal. Around half of submitters (47%) supported increasing the impact of a workplace fatality in ER. There was a sentiment expressed that workers and their whanau have the right to return home safely each day.
41. Many respondents emphasised the importance and responsibility employers have for ensuring workplace safety that prevents loss of life, and that the proposal would assist in driving workplace safety change.
42. Other respondents commented that while they support and encourage systems that improve workplace safety, they are concerned that the proposal could result in penalising employers for factors outside of their control. They would like a robust investigative process that considers fault and employee responsibility, and could focus on all incidents involving injury rather than just those that result in fatalities.
43. Some submitters note the potential blurring of responsibilities between ACC and WorkSafe that could result in a penalty being applied by ACC for a fatality despite the employer being fully compliant with the Health and Safety at Work Act and not liable for prosecution by WorkSafe.
44. Other submitters commented on issues of equity between small and large employers. This included highlighting the inconsistency of the option that would see smaller employers paying up to 80% more in levies while some larger employers would receive no increase. They also noted there should be equity with the No Claims Discount programme that is already established.
45. Overall, the larger stakeholders tended to advocate for ACC to provide more support and education to poorer performing employers (not an option that was developed for consultation, although ACC does provide education on ER as noted at paragraph 17) rather than penalising them.
46. There was little engagement with the third fatality modifier option of adding fatalities to the rehabilitation component of the ER calculation.

How do the options compare to the status quo/counterfactual?

1. Options assessment for increasing the maximum loading from 75% to 100%

Criteria for Assessment	Option 1: Status quo	Option 2: Increase maximum loading from 75% to 100%
Injury prevention & Sustainable Return to Work	(0) Neutral	<p>(+?) May be positive but outcomes uncertain.</p> <p>A more responsive programme is expected to send clearer price signals which may influence employer behaviour. However, it is likely that many employers do not understand or care about the nuances of the calculation well enough to react (which was a general claim made about experience rating in a submission by a major stakeholder).</p>
Equity	(0) Neutral	<p>(+) Positive</p> <p>The change will deliver a more differentiated loading for poor performers which will better reflect past claims costs. This will improve the fairness of the programme. It will reduce cross-subsidisation within ER. A majority of stakeholders supported the change.</p>
Administrative efficiency	(0) Neutral	<p>(0) Neutral</p> <p>There may be some small additional administrative costs associated with implementation but no change in the ongoing costs of the programme.</p>
Risks	(0) Neutral	<p>(0) Neutral to Low Risk:</p> <p>There may be a small increase in the risk of claims suppression and disputation.</p>
Net impact	(0) Neutral	(0/+) Neutral to positive

2. Options assessment for the introduction of a fatality modifier

Criteria for Assessment	Option 1: Status quo	Option 2: Add a new fixed-step fatality modifier	Option 3: Add fatalities to the rehabilitation component of experience rating
Injury prevention & Sustainable Return to Work	(0) Neutral	<p>(+?) May be positive but outcomes uncertain. A clearer and larger penalty for fatalities may influence employer behaviour. However, fatalities are very rare and largely unpredictable, and employers will have other motivations like protecting their reputation and avoiding prosecution to prevent workplace deaths, so it is uncertain if deaths would drop.</p> <p>ACC considers a levy increase will be sufficient to change behaviour.</p>	<p>(+?) May be positive but outcomes uncertain. The possibility of a larger penalty for fatalities may influence employer behaviour. However, employers may not understand the change. Fatalities are also very rare, and employers are likely to have other motivations than financial to prevent workplace deaths, so it is uncertain if deaths will drop.</p> <p>ACC considers a levy increase will be sufficient to change behaviour.</p>
Equity	(0) Neutral	<p>(-/+?) Maybe positive but might be punitive The change will generally better reflect claims costs, but for large employers it may become punitive (a claim made by some major stakeholders). Fairness will usually be improved but sometimes might be worsened. Just under half of submissions supported this option.</p>	<p>(-/+?) Might be positive but might impose no loading The change will better reflect claims costs although larger employers could sometimes have no loading imposed and the smallest of medium sized employers it applies to could pay up to 80% more. This will improve the fairness of the programme, but not in all circumstances. There was also no stakeholder support for this option.</p>
Administrative efficiency	(0) Neutral	<p>(0) Neutral There may be some small additional administrative costs associated with implementation but no change in the ongoing costs of the programme.</p>	<p>(0) Neutral There may be some small additional administrative costs associated with implementation but no change in the ongoing costs of the programme.</p>
Risks	(0) Neutral	<p>(0) Neutral Unlikely to have any unintended consequences.</p>	<p>(0) Neutral Unlikely to have any unintended consequences.</p>
Net impact	(0) Neutral	<p>(-/+?) Marginally negative to positive Could be punitive in some circumstances.</p>	<p>(-/+?) Marginally negative to positive Calculation method means a fatality might sometimes impose no additional loading</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Maximum loading

MBIE and ACC prefer option 2, increasing the maximum loading to 100%.

- 47. ACC’s expectation is that the increased loading will encourage some employers to focus on their workplace safety to avoid receiving or continuing to receive a greater levy increase.
- 48. MBIE, given the uncertainty around the incentive effects of ER highlighted by the 2014 Sapere analysis, is not certain that there will be an ex-ante incentive effect, although it is marginally more likely than under a 75% loading
- 49. It is certain that equity will be increased by making the employer levy better reflect claims costs, which is why MBIE prefers this option to the status quo.
- 50. ACC estimate that 14% of 15,000 total employers in ER (usually medium-sized or large employers) would pay a higher levy as a result of this proposal. However, only 1% of employers would move up by more than one band (i.e. have a greater than 10% levy increase).
- 51. There are currently 31 employers with claims histories that are significantly worse than the average over the last three-year period. Their current experience rating adjustment, based on their claims histories, reflects the current maximum levy increase of 75%.
- 52. Under option 2:
 - 14 of these employers would receive an 80% levy increase
 - nine would move to a 90% levy increase
 - eight would receive the new maximum levy increase of 100%.
- 53. The total increase in levies for employers expected to get an increased loading is estimated to be \$8 million, which will be used to reduce the cost of the programme currently being met by all the other Work Account levy payers. More detail of how total levies are expected to reduce for each of the main customer types is given in **Table 1** below.

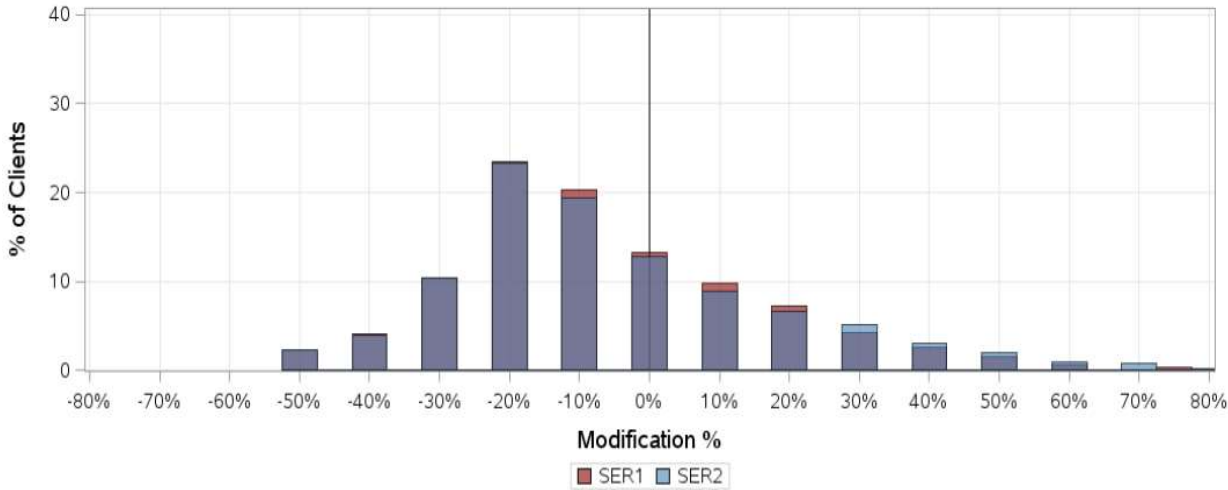
Table 1: Calculation of levy change by customer type

	Status quo (\$m)	After proposed ER changes (\$m)	Change (\$m)
Employers in Experience Rating programme	16	12	-4
Employers in the No Claims Discount programme	10	8	-3
Other employers in the Work Account	5	4	-1
Total	31	23	-8

54. Modelling commissioned by ACC shows (in Figure 1 below) the change in the distribution of loadings from introducing a maximum loading of 100%:

Figure 1: Comparison of loading distribution under current and proposed loading maximum

The current (SER1) modifier distribution is shown in red and the proposed (SER2) distribution is overlaid in blue. Note that for most bands the SER1 and SER2 values are the same.



55. The overall average employer levy is now 0.67% of payroll and has decreased from 1.15% of payroll since ACC’s 2011 research. The current 75% maximum loading in Experience Rating will, on average, only bring the Work Account levy to 1.17% of. Increasing the maximum loading to 100% will increase this figure a little more, to be significantly over 1%, at 1.34%.

56. ACC consider that this increase might provide sufficient incentive for employers change their behaviour to improve worker safety and reduce worker claims.

57. Both MBIE and ACC agree that the loading maximum change would also mean the employer levy better reflects the costs imposed on the scheme by particular employers and improves equity.

Fatality modifier

MBIE prefers the status quo because neither option 2 or 3 are consistently able to accurately reflect the cost of fatalities to the scheme and it is uncertain if they will cause any reduction in workplace deaths

58. MBIE considers it unlikely an ex-ante financial incentive will make a sufficient difference to employer behaviour to reduce workplace deaths, considering all the other factors in play and evidence about the impact of ER.

59. MBIE also considers that the limitations imposed by the current operationalisation of ER calculations means that neither option 2 nor option 3 will accurately reflect the costs of

fatalities to the AC Scheme, although both options could be argued to be more appropriate than treating a fatality in the same way as a minor injury.

60. If a fatality modifier is to be pursued further, MBIE considers more work needs to be done to determine a fair and effective way of treating fatalities, as part of a broader review to clarify the purpose and effectiveness of incentives under ER, compared to a more accurate allocation of costs.

ACC prefers Option 2, as it tends to improve the fairness of experience rating, although in some circumstances will make it punitive

61. Imposing a 20% loading on those larger employers who are in ER could increase their levy well in excess of the costs of a fatality to the AC Scheme. An example of a nearly \$400,000 loading applying to a larger employer is outlined below. The consultation document did float the idea of cap to get around this problem, but that modification was not supported by stakeholders.

62. ACC anticipates levy increases resulting from fatal claims, should a fatality modifier be adopted, would impact only a handful of employers in ER each year (in an average year, ten employers in the programme have a fatal claim).

63. The levy adjustment for workplace fatalities:

- would only be applied once, to a maximum of 20%, regardless of the number of deaths at a workplace
- couldn't exceed the maximum levy increase for ER (ie the proposed 100% increase)
- would be excluded from rehabilitation and risk management components (used to assess an employer's claims history in the calculation) to ensure they're not counted twice
- wouldn't include any claims relating to an 'adverse event' such as an earthquake (the Minister for ACC may declare an adverse event in extreme situations).

64. The use of fixed adjustments (20% and 10%) under option 2 means the financial impact of a fatal injury is proportional to the size of the levy. A larger employer would pay a larger dollar amount.

65. **Table 2** below shows how the fatality modifier would apply to different sized employers in ER if they had one fatality in the most recent year. For example, an average employer paying over \$1 million a year in Work Account levies would have an average additional levy amount of nearly \$400,000 imposed in the first year if it had one fatality.

Table 2: How a 20% loading fatality modifier would apply to most recent year

2020 Work Account levy	Number of Employers	Average Fatality Adjustment (1 st experience year ie 20%)
Up to \$25,000	4,394	
\$25,000.01 to \$50,000	2,037	\$6,975
\$50,000.01 to \$100,000	1,074	
\$100,000.01 to \$250,000	546	\$30,336
\$250,000.01 to \$500,000	167	
\$500,000.01 to \$1,000,000	40	\$130,565
Over \$1,000,000		

66. As noted in the research supporting the introduction of experience rating in 2011, a significant change in levy rates can in theory have a motivational impact on employers. ACC considers that as both options for the introduction of a fatal modifier create significant increases in levies for employers, either might provide a sufficiently large signal to motivate improved health and safety behaviour by employers.

Neither MBIE nor ACC prefer Option 3, as it will, in some circumstances, impose no additional loading on an employer experiencing a workplace fatality

67. This option is not favoured by MBIE or ACC. While it tends to improve the fairness of ER by generally making the levy better reflect the costs imposed by a particular employer, analysis shows that large employers may receive little-to-no levy impact from a workplace fatality, where smaller employer might receive a significant loading.

What are the marginal costs and benefits of the preferred options?

Introducing a fatality modifier

68. MBIE's preferred option is to retain the status quo, so there are no marginal costs or benefits.

Maximum loadings

69. The marginal costs and benefits of MBIE's recommended option of increasing the maximum experience rating loading to 100% are outlined below.

4.1 Summary tables of costs and benefits

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action		
Levy payers subject to programme with performance poor enough to attract extra loading	Increase in loading applied to those employers with poor claims performance: There are currently 31 employers with claims histories that are sufficiently worse than average over the last three-year period to warrant having their loading increased from the current maximum of 75% to between 80% and 100%.	Estimated additional loading: \$8 million in total would be collected from poorly performing ER employers. This proposal is cost neutral to the AC Scheme.
Employees	Affects approximately 40% of workforce, or approximately 1.1M workers. Claims costs are expected to reduce marginally, but there is an increased risk some of this reduction is achieved through claims suppression rather than improved injury prevention and claims management. There is, however, little evidence of systemic claims suppression in New Zealand.	Low & uncertain.
All levy payers (including those not subject to programme)	Work Account levy payers not subject to an additional loading under ER will face no additional costs.	Nil.
ACC	Some administrative implications associated with implementation.	Low one-off costs.
WorkSafe	No administrative implications.	No costs.
Total Monetised Cost		\$8 million.
Non-monetised costs		<i>Low.</i>

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
----------------------------------------------	---------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------

Expected benefits of proposed approach, compared to taking no action		
Levy payers subject to programme but not attracting extra loading	Those not subject to the additional loading will get the decrease in average levies given to all Work Account levy payers as outlined below.	Counted in all levy payers row below.
Employees	May be marginal claims reduction through better injury prevention and reduced claims cost from earlier sustainable return to work outcomes.	Low & uncertain.
All levy payers (including those not subject to programme)	All Work Account levy payers not subject to an additional loading under ER will get an average levy decrease a little under 1 cent per \$100 of liable earnings.	Estimated total reduction in cost of ER across all employers: \$8M This proposal is cost neutral to the AC Scheme.
ACC & WorkSafe	Possible reduction in incidence of injury and a reduction in the impact of injury on the community (including economic, social and personal costs).	Low & uncertain.
WorkSafe & Wider Government	Possible improved compliance with Health & Safety legislative requirements.	Low & uncertain.
Total Monetised Benefit		\$8 million.
Non-monetised benefits		<i>Low.</i>

Risks of preferred option

70. Providing financial incentives for lower injury rates can encourage employers to make changes to the work environment to lessen the chances of injury although at some point they may become excessive, and they might also encourage the suppression of injury claims.
71. Two New Zealand evaluations (MBIE, 2015; and, Colmar Brunton Research, 2014) concluded, however, New Zealand's ER had not resulted in claims suppression or under-reporting because employers perceived the risks of getting caught outweighed any potential benefit.
72. The evaluations mentioned above did not assess whether employers would expect claims suppression to increase in New Zealand if the levy discounts or loadings were larger. MBIE's Report noted that employers' lack of understanding of ER and the relatively low financial incentives on offer means it may not be fully factored into decisions on lodging claims.

Section 3: Delivering an option

How will the new arrangements be implemented?

73. If the Minister for ACC and Cabinet approve implementation of any options that are not maintaining the status quo, then:
- the Accident Compensation (Experience Rating) Regulations 2019 will need to be updated and come into effect from 1 April 2022, with changes to levies starting to apply to levies calculated for the following year.
 - If a fatality modifier is approved, then it will apply from the year commencing 1 April 2023 to ensure employers have sufficient notice of this more substantial change.
 - ACC will need to develop and execute an implementation and risk management plan, that includes a communications strategy that ensures employers understand:
 - the impact of the proposed experience rating changes; and,
 - the opportunities available to them to improve their claims experience.
 - ACC will need to evaluate the impact of programme's changes and, in consultation with MBIE, progress any further design work that might be required to further improve the programme.
74. ACC will be responsible for the ongoing delivery of the Experience Rating Programme.
75. In the event that the Government decides to retain the Experience Rating Programme in its current form, by choosing both the status quo options, the Experience Rating Regulations will still need to be updated to ensure they continue to apply to future years.

How will the new arrangements be monitored, evaluated, and reviewed?

76. ACC is responsible for monitoring and reporting on the Experience Rating Programme to its Board and the Minister for ACC.
77. We anticipate that ACC will develop key process and outcome indicators that will provide the basis for confirming that any agreed changes are properly implemented and determining whether they have a positive impact on scheme outcomes.