



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	Accident Compensation Work, Earners' and Experience Rating Amendment Regulations 2022	Date to be published	14 March 2022

List of documents that have been proactively released

Date	Title	Author
February 2022	Accident Compensation Work, Earners' and Experience Rating Amendment Regulations 2022	Office of the Minister for ACC
17 February 2022	Cabinet Minute of Decision, Accident Compensation Work, Earners' and Experience Rating Amendment Regulations 2022 [LEG-22-MIN-0005 refers]	Cabinet Office

Information redacted

YES / NO

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In Confidence

Office of the Minister for ACC

Cabinet Legislation Committee

**Accident Compensation Work, Earners' and Experience Rating
Amendment Regulations 2022**

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the submission of the Accident Compensation (Earners' Levy) Regulations 2022, the Accident Compensation (Work Account Levies) Regulations 2022, the Accident Compensation (Experience Rating) Regulations 2022, and the Accident Compensation (Experience Rating) Amendment Regulations 2022 to the Executive Council.

Executive Summary

- 2 The Accident Compensation Corporation (ACC) collects levies for four levied Accounts, alongside the government-funded Non-Earners' Account. Levy rates are currently reviewed and set by Cabinet every three years.
- 3 On 29 November 2021, Cabinet agreed to ACC levy rates for the 2022/23, 2023/24, and 2024/25 levy years. It also agreed to other levy-related policy and technical updates to levy regulations [DEV-21-MIN-0249 refers].
- 4 The following regulations are required to implement Cabinet's decisions relating to the Work and Earners' Accounts:
 - 4.1 the Accident Compensation (Work Account Levies) Regulations 2022;
 - 4.2 the Accident Compensation (Earners' Levy) Regulations 2022; and
 - 4.3 the Accident Compensation (Experience Rating) Regulations 2022.
- 5 The Accident Compensation (Experience Rating) Regulations 2022 implement the "business as usual" technical amendments including the three-year experience period used to calculate individual businesses' levy discounts or loadings for each levy year, and the Schedules that align to the Work Account Regulations for each levy period. Cabinet also agreed to the following enhancements to the Experience Rating Programme that will apply from 1 April 2022 and 1 April 2023 respectively:
 - 5.1 increasing the maximum loading that can be applied to businesses' Work levies through the Experience Rating Programme, from 75 per cent to 100 per cent; and

- 5.2 imposing a flat 20 per cent Work levy loading in the first year after a fatal injury followed by a 10 per cent loading in the second year, to align to the current treatment of workplace fatalities in the No Claims Discount programme.
- 6 In order to correct an error in the 2019/20 minimum liable earnings specified in regulation 6 of the Accident Compensation (Experience Rating) Regulations 2019, amendment regulations need to be progressed ahead of the Accident Compensation (Experience Rating) Regulations 2022. The following regulations are required to implement this correction:
- 6.1 the Accident Compensation (Experience Rating) Amendment Regulations 2022.
- 7 The introduction of the Accident Compensation (Motor Vehicle Account Levies) Regulations 2022 will be required to implement Cabinet decisions on Motor Vehicle Account levy rates. I intend to submit a separate paper introducing these regulations later in the year. This is because the levy year for the Motor Vehicle Account starts later than the Work and Earners' Accounts (1 July 2022 instead of 1 April 2022).

Policy

- 8 ACC is the Crown agent responsible for providing comprehensive, no-fault personal injury cover to all New Zealand residents and visitors to New Zealand. ACC cover is managed under five separate Accounts that are funded through levies, Government appropriation, or a combination of both. Three of the Accounts – the Work Account, Earners' Account and the Motor Vehicle Account – are funded solely through levies.

Decisions to be implemented through the Work Account Levies Regulations

- 9 The Accident Compensation (Work Account Levies) Regulations 2022 prescribe the levy rates for employers and the self-employed to fund cover and entitlements for workplace injuries.
- 10 On 29 November 2021, Cabinet agreed to reduce the average Work Account levy from \$0.67 to \$0.63 per \$100 of liable earnings (excluding GST) for 2022/23, 2023/24, and 2024/25 [DEV-21-MIN-0249 refers]. This is an average rate, which means that while the average levy rate is reducing, actual levy changes will vary for different business classifications.
- 11 As provided for under section 170 of the AC Act, regulations must prescribe a Work Account levy for each industry or risk class (Classification Unit) that most accurately describes their activity. Classification Units involved in similar industrial activities and similar claim histories are grouped together in 'Levy Risk Groups' to estimate the cost and frequency of future injury claims. This allows levies to better reflect differing risk profiles (the expected cost to the Accident Compensation Scheme).
- 12 Cabinet also agreed [DEV-21-MIN-0249 refers] to several minor changes to the prescribed classifications of industries and risks.

Decisions to be implemented through the Earners' Levy Regulations

- 13 On 29 November 2021, Cabinet agreed to increase the Earners' Account levy from \$1.21 to \$1.27 in 2022/23, \$1.33 in 2023/24, and \$1.39 per \$100 of liable earnings (excluding GST) in 2024/25 [DEV-21-MIN-0249 refers].
- 14 The Accident Compensation (Earners' Levy) Regulations 2022 set out this flat levy rate, which all employees and self-employed must pay on their liable earnings to fund cover and entitlements for non-work personal injuries (not including motor vehicle injuries).

Decisions to be implemented through both the Earners' Levy Regulations and Work Account Levies Regulations

- 15 The Accident Compensation (Earners' Levy) Regulations 2022 and the Accident Compensation (Work Account Levies) Regulations 2022 prescribe the maximum and minimum liable earnings on which levies are calculated.
- 16 Cabinet agreed [DEV-21-MIN-0249 refers] that the maximum and minimum liable earnings be increased in line with predicted changes to the Labour Cost Index and minimum wage:

	From (current amount, set in 2018)	2022-2023 levy period	2023-2024 levy period	2024-2025 levy period
Maximum for everyone	\$130,911	\$136,544	\$139,384	\$142,283
Minimum for everyone	\$36,816	\$42,465	\$43,349	\$44,250

Decisions to be implemented through the Experience Rating Regulations

- 17 Section 169 of the AC Act allows regulations to establish a system of experience rating for Work Account levy payers.
- 18 The Experience Rating Programme modifies a business's Work levy based on its claims history. Large businesses (those that have an annual Work levy of \$10,000 or more) are compared to their industry peers and can receive a discount of up to 50 per cent or a loading of up to 75 per cent on their levy.
- 19 Small businesses (those which have an annual Work levy of less than \$10,000) can receive a discount or loading of 10 per cent on their Work levy based on their individual claims history under the No-Claims Discount Programme.
- 20 Cabinet agreed to changes to the Experience Rating Programme that will apply from 1 April 2022 and 1 April 2023 respectively:

- 20.1 increasing the maximum loading that can be applied to businesses' Work levies through the Experience Rating Programme, from 75 per cent to 100 per cent;
 - 20.2 imposing a flat 20 per cent Work levy loading in the first year after a fatal injury followed by a 10 per cent loading in the second year, to align to the current treatment of workplace fatalities in the No Claims Discount Programme.
- 21 The Accident Compensation (Experience Rating) Regulations 2022 also implement consequential amendments including the three-year experience period used to calculate individual businesses' levy discounts or loadings for each levy year, and the Schedules that align to the Work Account Regulations for each levy period.

Motor Vehicle Account Levies Regulations to come

- 22 I will bring regulations for the Motor Vehicle Account to this Committee later in the year in time for the when their levy year begins, on 1 July 2022.

Correcting an error in the Experience Rating Regulations

- 23 We have identified a minor error in the Accident Compensation (Experience Rating) Regulations 2019. This error, an incorrect figure used for minimum liable earnings for the 2019/20 tax year included in the experience period for the 2021/22 year, was made by the COVID-19 Response (Further Management Measures) Legislation Act (No 2) 2020. Currently the Regulations specify \$32,760 for 2019/20 instead of \$36,816. This error, in regulation 6, is corrected by the attached Accident Compensation (Experience Rating) Amendment Regulations 2022.
- 24 Consultation requirements on updating the minimum liable earnings figure for 2019/20 were met by consultation undertaken by ACC at the time. This rate was set correctly in the Accident Compensation (Work Account Levies) Regulations 2019. The incorrect figure in the 2019 regulations only affects the calculation of levies for the 2021-2022 levy year, which ACC are yet to finalise.

Timing and 28-day rule

- 25 The Accident Compensation (Work Account Levies) Regulations 2022, the Accident Compensation (Earners' Levy) Regulations 2022, and the Accident Compensation (Experience Rating) Regulations 2022 (the Regulations) are required to come into force on 1 April 2022, when the 2022/23 levy year begins. The Accident Compensation (Experience Rating) Amendment Regulations 2022 are required to come into force on 25 March 2022.
- 26 In order to comply with the 28-day rule, the Regulations should be gazetted by 24 February 2022.

- 27 At the same time the regulations prescribing the rates of levies are made in the Gazette, ACC is required under sections 331(5A) and 331(5B) of the AC Act to publish a report in relation to the rate of levies prescribed in accordance with generally accepted practice within the insurance sector in New Zealand. This report must also include the long-term projections for the relevant Account of solvency rates, levy rates, Account balances, and the lifetime costs of claims in relation to injuries that occur in the relevant levy year, and the key assumptions on which the projections are based. This report must be published in the Gazette and on ACC's website.
- 28 ACC has indicated that the reports for the Work Account and the Earners' Account are on track to be published in the Gazette in early March 2022.

Compliance

- 29 The proposed regulations comply with each of the following:
- 29.1 the principles of the Treaty of Waitangi;
 - 29.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 29.3 the principles and guidelines set out in the Privacy Act 1993;
 - 29.4 relevant international standards and obligations;
 - 29.5 the Legislation Design and Advisory Committee's Legislation Guidelines (2018 edition).

Regulations Review Committee

- 30 There are no anticipated grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 31 The draft regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 32 A Stage Two Cost Recovery Impact Statement and a Regulatory Impact Assessment were prepared in accordance with the necessary requirements, and were submitted at the time the policy decisions were made on the levy rates and other levy matters for 2022/23, 2023/24, and 2024/25 [DEV-21-MIN-0249].

Publicity

- 33 On 10 December 2021, I announced Cabinet's agreement to 2022/23, 2023/24, and 2024/25 ACC levy rates. ACC has also informed relevant stakeholders.

Proactive Release

34 This paper will be made available to the public on MBIE’s website, subject to appropriate redactions.

Consultation

35 The relevant public consultation requirements of the AC Act have been met.

36 The following government agencies were consulted on the previous Cabinet Economic Development Committee paper regarding the 2022/23, 2023/24, and 2024/25 ACC Levies: Accident Compensation Corporation, Ministry of Business, Innovation and Employment, the Treasury, Inland Revenue, Ministry of Social Development, Waka Kotahi NZ Transport Agency, WorkSafe New Zealand, New Zealand Customs Service, Ministry for Women, Ministry for Pacific Peoples, Te Puni Kōkiri, Ministry of Justice, Ministry of Transport, and Ministry of Health. The Department of Prime Minister and Cabinet was informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that on 29 November 2021 Cabinet agreed to the following changes to the ACC Earners’ levy for the 2022/23, 2023/24, and 2024/25 period:

1.1. increase the Earners’ levy rate at the following rates per \$100 liable earnings, excluding GST;

Current 2021/22 levy rates	Agreed Levy Rates		
	2022/23	2023/24	2024/25
\$1.21 per \$100 wages	\$1.27	\$1.33	\$1.39

1.2. update the maximum and minimum liable earnings;

	2022-2023 levy period	2023-2024 levy period	2024-2025 levy period
Maximum for everyone	\$136,544	\$139,384	\$142,283
Minimum for everyone	\$42,465	\$43,349	\$44,250

2. **note** that on 29 November 2021 Cabinet agreed to the following changes to the Work Account for the 2022/23, 2023/24, and 2024/25 period:

2.1. set the Work Account levy rate at an average rate of \$0.63 per \$100 of liable earnings, excluding GST;

2.2. update the maximum liable earnings;

2.3. update the minimum liable earnings;

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- 2.4. update the rate of credit interest payable on provisional levies to 2.21 per cent;
- 2.5. amend the description of several Work Account Classification Units [DEV-21-MIN-0249 refers];
3. **note** that on 29 November 2021 Cabinet agreed to the following changes to the Experience Rating Programme:
 - 3.1. increase the maximum loading that can be applied to businesses Work levies through the Experience Rating Programme, from 75 per cent to 100 per cent, from 1 April 2022;
 - 3.2. increase the impact of a workplace fatality in the Experience Rating programme, from 1 April 2023;
4. **note** that the three-year experience periods that apply to the 2022/23, 2023/24, and 2024/25 levy years are updated in the Accident Compensation (Experience Rating) Regulations 2022 which is a consequential amendment needed to maintain the system of experience rating;
5. **note** that sections 331(5A) and 331(5B) of the Accident Compensation Act 2001 provides that ACC must prepare a report in relation to the rate of levies prescribed detailing the effect the prescribed levies are expected to have on the relevant Accounts (including future levy and solvency rates), which must be published at the same time the regulations prescribing the rates of levies are made in the Gazette;
6. **note** that the Accident Compensation (Earners' Levy) Regulations 2022, the Accident Compensation (Work Account Levies) Regulations 2022 and the Accident Compensation (Experience Rating) Regulations 2022 will implement the amendments described above;
7. **note** that the Accident Compensation (Earners' Levy) Regulations 2022, the Accident Compensation (Work Account Levies) Regulations 2022 and the Accident Compensation (Experience Rating) Regulations 2022 must come into force on 1 April 2022;
8. **authorise** the submission to the Executive Council of the Accident Compensation (Earners' Levy) Regulations 2022, the Accident Compensation (Work Account Levies) Regulations 2022 and the Accident Compensation (Experience Rating) Regulations 2022;
9. **note** that on 25 February 2019, Cabinet agreed to updating the minimum liable earnings in 2019/20 and 2020/21 to \$36,816 [CAB -19-MIN-0047 refers], with this change expected to be reflected in the relevant experience rating regulations when required;
10. **agree** to amend regulation 6 of the Accident Compensation (Experience Rating) Regulations 2019 to correct the minimum liable earnings for the 2019/20 tax year in the 2021/22 experience period from \$32,760 to \$36,816;

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11. **note** that the Accident Compensation (Experience Rating) Amendment Regulations 2022 will give effect to this decision;
12. **note** that the Accident Compensation (Experience Rating) Amendment Regulations 2022 will need to come into force on 25 March 2022 before the Accident Compensation (Experience Rating) Regulations 2022 come into force on 1 April 2022;
13. **authorise** the submission to the Executive Council of the Accident Compensation (Experience Rating) Amendment Regulations 2022;
14. **note** that the Accident Compensation (Motor Vehicle Account Levies) Regulations 2022, which implement Cabinet's decisions on the Motor Vehicle Account levy rates, will be submitted to Cabinet in April 2022, in order to meet the 1 July deadline for implementation.

Authorised for lodgement

Hon Carmel Sepuloni
Minister for ACC