

REGULATORY IMPACT STATEMENT FOR PROPOSED WORKPLACE SAFETY ACC LEVY DISCOUNT FOR SMALL BUSINESSES IN SIX HIGH RISK INDUSTRIES

STATEMENT OF THE NATURE AND MAGNITUDE OF THE PROBLEM AND THE NEED FOR GOVERNMENT ACTION

ACC injury claims data indicates that small employers with up to \$380,000 per annum liable earnings (a proxy for 10 full time equivalent staff) and self-employed people on average have a higher incidence per hundred employees and higher cost of ACC claims each year, compared to medium and large businesses. Claim incidence per hundred employees for small employers was 35% higher and for self-employed 45% higher, than medium to large employers.

International literature and anecdotal evidence from site visits by ACC injury prevention consultants and Department of Labour inspectors suggest that the higher claims rate is in part due to some small businesses having lower levels of health and safety awareness and hazard management practices. It is also due to a greater proportion of small businesses operating in higher risk industries. In 2003 six industry sectors – agriculture, forestry, construction, road freight, motor trades, and in-shore fishing – accounted for 33% of the total number of small businesses, but 53% of the number and 61% of the costs of all claims for work-related injuries from small businesses.

ACC and the Department consider that many small businesses (including self-employed) face barriers in implementing hazard management practices because:

- of comparatively limited health and safety capability and knowledge, staff, time and financial resources. Recent increases in small business and self-employed participation in educational programmes is encouraging, but the degree to which capability is put into practice is limited and there are large sections of the small business community still to be reached. For example, only around a quarter of employer and self-employed farmers have been through Farmsafe training and of those only 56% have implemented knowledge gained through the training.
- small businesses are numerous and not often formally networked, so they can be difficult for ACC and the Department of Labour to reach using standard promotional activities; and
- the existing ACC levy discounts programme, Workplace Safety Management Practices (WSMP), is difficult for small employers to access, due to its formal management systems emphasis, (which is inconsistent with the informal arrangements often used by small employers) and is not offered to self-employed persons. ACC data indicates that for businesses with employee liable earnings of less than \$300,000 per annum (approx 8 Full Time Equivalent staff or FTE), take up rates are below 2% and between \$300,000 and \$600,000 per annum (approx between 8 and 15 FTEs), take up rates are between 2% and 4% percent.

STATEMENT OF THE PUBLIC POLICY OBJECTIVE(S)

The public policy objective is for small businesses and self employed in high risk sectors to:

- reduce the number and severity of injuries and diseases and meet the goals of the NZ Injury Prevention and the Workplace Health & Safety Strategies and associated implementation plans;
- make ongoing improvements in workplace health and safety management capability and practices;
- be affordably incentivized to improve health and safety capability and practices without adversely affecting the health and safety performance of larger businesses.

STATEMENT OF FEASIBLE OPTIONS (REGULATORY AND/OR NON-REGULATORY) THAT MAY CONSTITUTE VIABLE MEANS FOR ACHIEVING THE DESIRED OBJECTIVE(S)

Option 1 - Status Quo

Reducing the incidence and severity of work-related injuries and disease is currently being tackled simultaneously across several fronts:

- The Health and Safety in Employment Act 1992 (the HSE Act) requires all businesses to have an effective method in place to identify and regularly assess hazards.
- ACC and the Department of Labour, in partnership with industry, undertake a range of promotional initiatives targeted at small employers and self-employed people. ACC contributes funding to industry-specific safety educational programmes such as Driversafe, Sitesafe and Fishsafe, and the Department provides small businesses with relevant health and safety information and facilitates networking through the Small Business Information Unit (SBIU).
- Vote Education separately funds programmes to heighten health and safety awareness, such as Farmsafe in the agricultural sector.
- Section 175 of the Injury Prevention, Rehabilitation and Compensation Act 2001 (the IPRC Act) describes when a levy can be adjusted up or down for an employer, on the basis of an audit of an individual employer's "safety management practices" in accordance with an audit tool approved by the Minister for ACC. Section 206A(1) allows for a downward levy adjustment to be made for the self-employed on the basis of their "safety management capabilities (including, for example, practices and qualifications)".
- Financial incentive programmes run by ACC and provided for under section 175 of the IPRC Act, such as the WSMP programme, which requires employers to pass an ACC audit of their safety management practices to obtain a 10%, 15%, or 20% levy discount.

Continuing with the existing mix of measures will, at best, only achieve the same injury prevention results that have been achieved so far. The status quo does not therefore meet the public policy objective and is not preferred.

Option 2 - Raised awareness through greater promotion of injury prevention initiatives

ACC could provide additional promotion of existing injury prevention initiatives, such as health and safety training and industry specific information. Although training and information provision can be effective in improving health and safety knowledge and practices, merely promoting these initiatives more aggressively may not reach larger numbers of small businesses or ensure that capability is put into practice after undergoing training. This may be due to attitudinal barriers and a lack of perceived risk and benefits of injury prevention. For example, evaluation of Farmsafe indicates that the participation rate is slowing, with three quarters of farmers having not participated in the training and with only 56% of participants (i.e. 14% of all farmers), having implemented what they learnt. Therefore this option is not favoured.

Option 3 - Simplified WSMP requirements

This would involve allowing self-employed to access WSMP and changing WSMP to recognise less formalised health and safety practices as an appropriate way of managing significant hazards and reducing the size of the audit exercise for all businesses (large and small), so as to avoid discrimination on the basis of size. This option would not require the demonstration of capability or be industry specific. Also, WSMP is tailored to the circumstances faced by medium and large firms. This option would therefore reduce the standard of the WSMP for all businesses to a level at which there would be little injury prevention benefit. It is considered that many small businesses lack health and safety

awareness and capability, and the development and implementation of such capability and awareness are considered to play a crucial role in preventing small business workplace injuries. Therefore this option is not favoured.

Option 4 – “No claims for injuries” recognition

Recognition could take the form of the type of no-claims bonus commonly offered by property and vehicle insurers, which operate on the assumption that they provide a positive incentive for injury prevention and a financial penalty (i.e. loss of the no-claims bonus) when injuries occur. However, if eligibility for rewards is based on a businesses' claims history only, there is no ability to discriminate whether the non-existence of claims is the result of good luck or good management practices. Furthermore, incentives based solely on claims history tend to create perverse incentives for mis-reporting and under reporting of work-related injuries. If work injuries are reported to ACC as non-work rather than work-related, then costs are shifted from business onto the Earners' account, which has considerable cross-subsidisation impacts. Accordingly, such incentives are not the favoured approach.

Option 5 - Preferred Option - 10% ACC levy discount for workplace health and safety for small businesses in high risk industries

From 1 April 2006 a 10% ACC levy discount, applying from 1 April in each year to 31 March in the following year, would be introduced under the IPRC (Employer Levy) Regulations and the IPRC (Self-Employed Work Account Levies) Regulations. Self-employed and small employers will be eligible to apply for the discount if they:

- have up to \$380,000 per annum in liable earnings or employ up to 10 FTEs;
- fall within specified classification units in the agriculture, forestry, construction, road freight, motor trades, and in-shore fishing industry groupings (to be included in schedule in the relevant regulations – see website);
- show they have, from training or prior learning, industry relevant capability in hazard identification and management, injury and incident investigation, emergency readiness, and in training employees (as relevant); and
- agree to allow ACC approved auditors to audit their workplace safety management practices.

As part of the application, eligible businesses must complete a self-assessment (to be renewed every three years) identifying the main hazards for their workplaces, and how they have put in place controls for identified hazards (based on the audit criteria set out in regulation for self-employed and employers). This self-assessment will be audited by ACC approved auditors.

In interim years to continue receiving the 10% discount, small businesses must provide an annual declaration of their eligibility for the programme (in terms of industry grouping, liable income, etc) and that the self-assessment is reflective of their safety circumstances.

ACC would conduct further audits in response to evidence indicating deficiencies in a businesses maintenance of its safety management practices and may revoke the discount if safety management practices are shown to be deficient. ACC would have descretion as to whether a failed applicant may submit an application within six months.

A downwards adjustment to the levy would be applied where ACC determines that the applicant has met the requirements of the audit relevant to the industry in which the business is operating. This determination will be made on the basis of the information

submitted by the applicant in the application and in some cases verified by a site audit. Applications would be dealt with in the order in which they are received.

In principle, the initiative would be funded entirely by the participant classification units. The programme will be reviewed in consultation with the Small Business Advisory Group (SBAG) and government agencies as appropriate in the first year of operation and evaluated over three years.

ACC would monitor uptake of industry specific training, injury rates in eligible industries and implementation of safety practices by businesses participating in the programme.

STATEMENT OF THE NET BENEFIT OF THE PROPOSAL, INCLUDING THE TOTAL REGULATORY COSTS (ADMINISTRATIVE, COMPLIANCE AND ECONOMIC COSTS) AND BENEFITS (INCLUDING NON-QUANTIFIABLE BENEFITS) OF THE PROPOSAL, AND OTHER FEASIBLE OPTIONS

Government

The proposed small business discount would have minimal fiscal impact on the government as an employer, as there are very few government employers in the six target industry groups. It would have no impact on Vote: ACC as all costs of administration and discounts would be attributed to industry via the ACC Employers' and Self-Employed Work Accounts.

Because some form of industry relevant health and safety prior learning or training is required for eligibility to enter the proposed programme, the proposal may increase demand for training in the agriculture and possibly other industries. There is potential for fiscal impact with respect to Farmsafe training, funded by Vote: Education. Demand is expected to increase by up to 10% over three years, equating to a fiscal impact for Vote: Education of additional \$60,000 per year. It is possible that the short awards report back in April 2006 [CBC Min (05) 8/21 refers] will recommend that government Farmsafe funding be discontinued, meaning that the entire cost would fall on industry (either directly or partly via ACC levy). If Vote: Education funding is withdrawn from Farmsafe, ACC would fund the provision of some agriculture industry appropriate training from ACC's existing injury prevention budget funded from the Employers' and Self-Employed Work Accounts. There would be no additional levy impact.

The proposal aligns with the government's objectives for small businesses outlined in the NZ Injury Prevention Strategy and the Workplace Health & Safety Strategy. Specifically targeting small businesses and self employed will ensure that larger business continue to be incentivised to participate in the WSMP.

The annual declaration requirement will enable ACC to maintain ongoing contact with applicant businesses over time and to provide them with updated information and advice on industry hazards and emerging issues.

The programme will provide small business with information to help them to more effectively manage their health and safety responsibilities, although it will in itself not ensure that participating businesses are at all times fully compliant with the HSE Act. If there are ongoing improvements in health and safety capability and performance over time, the Department of Labour may better prioritise limited resources by focusing its activities on businesses that do not participate in the ACC levy discount programme.

Industry

1. Small Business (up to \$380,000 in liable earnings or up to 10 FTEs) and self-employed within the specified classification units in the agriculture, forestry, construction, road freight, motor trades, or in-shore fishing sector:

(a) Estimated per annum costs of meeting requirements per business, depending on initial health and safety capability (i.e. whether or not training is needed), levy loading, liable earnings and hence time costs (here assumed at \$50 per hour or \$90,000p.a.) of completing initial training (if required), three yearly self assessment and annual declaration (more detail of application and ongoing costs in the BCCS):

Table 1

1. Every three years upon Application / Renewal:	Small employers	Self employed
Application / renewal costs	\$150 to \$350 Application \$150 on Renewal	\$50 to \$250 Application \$50 on Renewal
Levy loading payments	\$0 to \$190	\$0 to \$240
Total Application / Renewal costs	\$150 to \$540 Application \$150 to \$340 on Renewal	\$50 to \$490 Application \$50 to \$290 on Renewal
2. Interim years:	Small employers	Self employed
Declaration time costs	\$50	\$50
Levy loading payments	\$0 to \$190	\$0 to \$240
Total interim year costs	\$50 to \$240	\$50 to \$290

The costs in table 1 assume that no extra training is needed after entry to the programme. Those on incomes lower than \$90,000 p.a. will pay less levy and attribute lower per hour costs to their time (eg. someone earning \$46,000 p.a.would cost their time at \$22 per hour rather than \$50).

(b) Direct benefits per business:

- 10% reduction in levy totalling **\$80 to \$1,200 per annum**. This variation is influenced by the amount of liable earnings and levy rate that applies to their classification unit. Data on the likely spread of levy reductions is not available.

When looking at the costs in Table 1, the levy reduction shows that the direct financial incentives to small businesses (including self employed) to enter the programme may be marginal in some cases. However, there would be direct incentives for business take up where the levy reduction was greater than the ongoing costs. For those businesses there are expected to be injury reductions and harm minimisation outcomes.

Health and safety awareness would be raised and reinforced through the training, self-assessment and declaration exercises and existing knowledge would be put into practice by a number of businesses when previously it would not have been.

Benefits may include productivity gains from the associated general management up-skilling associated with hazard management capability, and the maintenance of productivity through protecting the wellbeing of their productive workers.

The following table outlines the estimated participation in the proposal across the industries over three years.

Table 2	Year 1	Year 2	Year 3
Agriculture	800	800	500
Construction	600	1000	500
Forestry	100	300	100
Motor Trades	600	600	400
Road Freight	900	900	600
In-shore fishing	300	200	100
Total	3300	3800	2200

2. Non – participant Business in agriculture, forestry, construction, road freight, motor trades, or in-shore fishing sector:

(a) Costs per business:

- 0 to 5 cents (0 to 2.0% levy increase) for employers in an eligible classification unit, depending on the proportion of uptake to the number of businesses in the affected classification unit and;
- 0 to 11 cents (up to 6 cents on the income component and up to 8 cents on the non-income component) or between 0% and 1.3% levy increase for self-employed persons, depending on the proportion of uptake to the number of businesses in the affected classification unit.

3. All Businesses in the affected classification units

The levy loadings outlined above include the administration costs of the proposal. These costs are estimated to be \$250,000 in the first year for additional computer system enhancements and administration (undertaking audits and processing applications) and around \$241,000 annually thereafter. These estimates depend on the level of uptake and represent less than 1 cent of the above levy increase estimates.

MED officials considered that limiting this policy to small businesses may provide small businesses in some instances with a commercial advantage. However, ACC and Department of Labour officials considered that any commercial advantage from the proposal will be minimal. As the business increases in size, the ratio of discount to compliance costs increases and the incentives favour businesses at the higher end of those targeted entering the programme, which are more likely to already have health and safety measures in place and hence require less improvement (noting, however, that the injury prevention gain would be less for these larger businesses).

If the proposal is effective and workplace injuries are reduced, all businesses in the classification units will benefit from reduced claims rates and reduced ACC levies for the target industry groups. However, because there are so many factors influencing claim rates (e.g. workforce participation rates), it is virtually impossible to estimate the impact of these discounts. Depending on uptake of the scheme, there may be between a 2% and 5% reduction in claims numbers over the medium term which would contribute to levy reductions for these industries.

4. Businesses in other classification units -

(a) Costs per business: Possible small impacts on levy, but these are unlikely.

Current ACC policy is for year-on-year levy rate increases in industry groupings not to exceed 25%. The funding requirement for the discount may possibly contribute a small amount to a levy group breaching the 25% cap. Other levy groups would then need to fund any breach beyond the 25% cap through a negligible levy increase. However, an increase

beyond this cap would be much more influenced by other drivers such as sharply increased claims costs and/or sharply decreased liable earnings.

There will be no benefits to businesses within this category.

Society

Improved hazard management and reduced injuries/illnesses will result in reduced pain and suffering, psychological costs, and social costs that are borne by injured individuals and their family and whanau who support them and also protect against lost opportunity costs (many of which are uncosted but significant). These gains may be limited if there is low uptake of the scheme by small businesses and self-employed.

The targeted industries are male dominated. Many women are represented in the 66% of small businesses that will not be targeted initially by this proposal. There may be an inequity in terms of the industries that women are in will not benefit from a levy discount. However, if the initiative is shown to be successful in reducing injuries, it may be expanded to cover other industry sectors in which more women are represented.

STATEMENT OF CONSULTATION UNDERTAKEN

The Proposal was first developed in response to small business industry representatives' requests (farming in particular) to provide a levy discount that small business is able to practicably access. Since then a two-staged approach to consultation has been made. ACC has engaged with representative industry bodies and the Department of Labour in the development of the proposal. Industry representative groups, including Federated Farmers, Rooding NZ, Road Transport Forum, NZ Timber Industry Federation, NZ Seafood Industry Council Ltd and Motor Trade Association, expressed in principle support for the proposal to recognise health and safety practices through a levy discount. The Road Transport Forum submission maintained that it should be applied only to small businesses (with up to 5 FTEs) and self-employed. This submission was taken into account and following further consultation with Business NZ, it was considered appropriate to target the initiative at self employed and small employers with liable earnings of up to \$380,000 per annum or with up to 10 FTEs.

The Small Business Advisory group (SBAG) broadly agrees with the objectives of the proposed programme (i.e. reducing workplace accidents) but has expressed reservations about particular aspects of its implementation. SBAG is opposed in principle to loading the levy rates to fund discounts and particularly the effect that this new scheme will have (for some employers) of again increasing their levy loading (i.e. paying for the existing WSMP and now this new proposal) apparently without regard to the fact that the compliance costs associated with joining either discount scheme significantly outweighs the likely financial benefits for those SMEs.

Secondly, SBAG raised concerns about the entry and renewal compliance costs for small businesses. They are concerned that the amount of discount would be too small an incentive, given their expectations of likely compliance costs, and therefore participation in the programme would be limited. This is because the scheme is primarily aimed at encouraging non-compliant employers to improve their health and safety regimes. SBAG was of the opinion that in order to qualify, therefore, such firms would not only need training but also would have to create and implement auditable systems, the average costs of which could be \$5000 (i.e. 100 hours of work) initially and \$200 (i.e. 3-4 hours per month) to maintain (and those figures do not include the costs of lost productivity from diverting staff to handle compliance systems).

Department of Labour officials consider that all businesses have obligations under health and safety legislation and compliance does not necessarily require the creation and implementation of such administratively intense systems as SBAG implies above. Therefore, the only compliance costs specifically associated with the proposal are the time taken to fill out self-assessment forms every three years, provide an annual written declaration, undertake training (if necessary), and for a few, undergo a site inspection. Any additional efforts required to become compliant with existing legal obligations cannot be counted as a compliance cost for the current proposal.

Officials have revised the programme so that businesses would only have to apply for the programme and complete a self-assessment once every three years, unless their safety circumstances change to the extent that the business considers that a new self-assessment is needed so as to be reflective of their safety circumstances.

Officials consider that while a 10% discount can work out at fairly low actual dollars, which has always made offering a discount to small business problematic, if the size of the discount is increased, the cost of the loading to affected classification units would increase and small businesses would get a higher proportionate discount compared to employers in the WSMP facing proportionately higher compliance costs. However, the level of discount may be considered following evaluation of the programme.

Thirdly, SBAG opined that, if the expected low levels of uptake (2.6% of self-employed and 5.6% of employers) meant that this proposal may have only a limited effect on reducing workplace accident rates, there might be more effective ways to improve workplace safety and these should have been canvassed more fully in the paper.

SBAG and Business NZ suggested that experience rating would be a more effective incentive for health and safety improvement. Officials consider that experience rating is not a good indicator of effective health and safety management for small businesses, because individual small businesses can operate for a long time without a serious ACC claim and therefore advised against this proposal.

Business NZ raised concerns regarding cross-subsidisation of the proposal by ineligible businesses. There was the potential for minimal cross-subsidisation within an affected levy risk group, that is, between businesses in a classification unit that are eligible for the scheme and businesses in a classification unit to which the scheme is not available. Officials have addressed this issue by requiring each classification unit in a levy risk group to fund its own discount, rather than funding the discount across all classification units in the levy risk group.

Government Departments/Agencies Consultation

The following government agencies were consulted on this proposal and their views are reflected in this paper: ACC, Ministries of Economic Development and Social Development, the Treasury, Ministries of Education, Tertiary Education Commission, Pacific Island Affairs and Women's Affairs, and Te Puni Kokiri. The Department of the Prime Minister and Cabinet was informed of the proposal.

The Treasury, Tertiary Education Commission and Ministry of Education raised substantive concerns with respect to the financial implications for Vote: Education and timing implications regarding a Cabinet report back on Vote: Education short award funding, which provides funding to Farmsafe agricultural health and safety courses, of

which a review is currently underway. Who should pay for health and safety training is one of the key questions in the short awards review.

Officials have established a clear funding contingency plan for the training involved with the proposal if Vote: Education short award funding is withdrawn. ACC would fund the provision of appropriate agriculture industry training from ACC's existing injury prevention budget funded from the Employers' and Self-Employed Work Accounts. Officials have also revised the definition of capability to include prior industry-relevant health and safety experience and training, therefore expanding the pathways to participation in the initiative and offsetting the potential pressure on specific forms of training.

Treasury notes that there is significant uncertainty about the actual benefits of introducing this scheme. There is a risk that uptake will be largely confined to those who already display appropriate workplace safety behaviour. In this case the scheme would have minimal impact on injury claim rates and hence average levy rates in these industries. Treasury supports a full review of this scheme in July 2007.

BUSINESS COMPLIANCE COST STATEMENT

To take up this discount, small employers and self-employed would incur the following costs (included in table 1 of the costs and benefits section):

If the business requires training, assuming an hourly rate of pay of \$50 (\$90,000p.a.) over three hours of industry led training (although up to five hours training could be required in exceptional circumstances), and a possible \$50 fee to pay for training materials, a business may face up to a \$200 cost to be eligible for the programme. Note that training is also intended to provide a business with information, relating to their obligations under the HSE Act, and hence is not necessarily all attributable to the requirements of the levy discount initiative.

Business owners would have to complete a self-assessment of their hazard identification and management practices every three years and agree to a possible site visit, estimated at 2 to 3 hours or \$150 for both activities for small employers, or 1 hour or \$50 for the self-employed.

Each year a business would have to make a declaration of their eligibility for the programme. This is estimated at \$50 (assuming time is valued at \$50 per hour). If they consider that their safety circumstances have changed to the extent that their self-assessment is no longer reflective of these, they could choose to provide ACC with a revised self-assessment, which would apply for another three years.

Further consultation with SBAG may improve the operational design of the proposal. ACC would publicise information on this proposal on the ACC website and inform industry sector groups.